SENATE—*January 18, 1995*

(Legislative day of Tuesday, January 10, 1995)

The Senate met at 11:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. Today we have a guest chaplain, the Reverend Mark E. Dever, pastor of the Capitol Hill Baptist Church.

PRAYER

The guest chaplain, the Reverend Mark E. Dever, offered the following prayer:

Let us pray:

God over all rulers, You are a great God, worthy of all our worship.

In Your presence we are aware of how different we are from You. No earthly accomplishments can hide that fact from us.

We rejoice that we are made in Your image, but we confess that we have marred that image by our rebellion against You. Thank You for Your patience with us. Lord God, give us humility as we go about great business.

Thank You for entrusting to these men and women the privilege of accepting and executing the offices to which You have called them.

We bring before You the problems of our day which seem beyond solution. Forgive us for our lack of faith in You, for our forgetfulness of Your remarkable goodness to us in years past. Remind us that when we begin to feel ourselves beyond hope, that then we are entering the arena in which You delight to act.

Remind these Senators even this day of Your concern for them and their work.

Educate the consciences of this Nation, and particularly of the Members of this Chamber, that their will in some manner would reflect Your own.

Help them to manage their public and private duties well.

Help them to maintain piety, justice, and peace by the laws they write.

Help them to see clearly the good and right way of compromise in detail, and to find unity in principle.

Give them an appreciation for the good desires of each other, a care to listen in disagreement, a willingness to reevaluate, a resolve to act.

We ask this of You because of our dependence on You for all things, through Jesus Christ. Amen.

RESERVATION OF LEADER TIME

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

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The Chair recognizes the distinguished majority leader, Senator DOLE of Kansas.

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

SCHEDULE

Mr. DOLE. Mr. President, I just make the announcement for my colleagues that the time of the two leaders has been reserved, and we will have routine morning business until 12 noon, with Senators permitted to speak for not to exceed 5 minutes each, with the following exceptions: Senator THOMAS for up to 10 minutes, Senator INHOFE for up to 10 minutes, and Senator CAMPBELL for up to 10 minutes, I guess.

At 12 noon, the Senate will resume consideration of S. 1, the unfunded mandates bill. Pending is still committee amendment No. 11.

A cloture motion was filed on Tuesday. Therefore, a cloture vote will occur tomorrow. All first-degree amendments should be filed at the desk no later than 1 p.m. today.

I just say generally for the information of Members, we are not making any progress on this bill. It is obvious that the people watching or not even watching know that we have been on this bill 3 days and not much has happened. That is the way the Senate can work, and certainly I have been in the position of slowing things down.

But, obviously, there is a slowdown in progress. If we do not make any progress between now and 1:25 p.m. on this bill, it would be my intention to recess the Senate maybe for the rest of the day so the Judiciary Committee can complete action on the balanced-budget amendment, because I assume there will be an objection to the Judiciary Committee meeting during the session of the Senate.

If my colleagues are willing to permit the Judiciary Committee to meet, obviously we would not have to recess the Senate. So I hope that accommodation might be forthcoming.

But with about 30, 40, or 50 amendments, there is no way this bill can be completed prior to the State of the Union message next week, and that is my hope. I know President Clinton would very much like us to move quickly on the Mexico matter, which is not foreign aid, I might say. It is a loan guarantee. As far as I am concerned, that effort is right behind the unfunded mandates bill. So I suggest maybe the President might want to urge some of his colleagues on the other side to cooperate on this bill.

I think it has broad bipartisan support, supported by nearly every Governor in America, every mayor, every county official, every public official, and the private sector, and it is something that could be passed in 1 good day of debate.

There are legitimate amendments, as there always are. But we will dispose of the bill one way or the other. We would like to accommodate our colleagues on the other side who plan a retreat on Friday. If we can obtain cloture tomorrow, maybe we can work that out with the Democratic leader, Senator DASCHLE.

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

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for morning business.

The distinguished Senator from Oklahoma is recognized to speak for up to 10 minutes.

Mr. INHOFE. Thank you, Mr. President.

UNFUNDED MANDATES

Mr. INHOFE. Mr. President, I was listening intently as the majority leader expressed a concern over the lack of progress that we are making; and certainly we are not making progress.

I also listened intently yesterday to the very distinguished Senator from West Virginia, as he quoted history and he quoted many of our Founding Fathers, concerning the subject at hand of unfunded mandates.

I have felt that unfunded mandates are the product of an assertive, greedy Government that has arrogantly injected itself into the dictatorial position that was feared most by our Founding Fathers.

And, you know, we deal with these subjects as if they are contemporary subjects, Mr. President, and they are not. Because in all of these subjects that we have been discussing that might be associated with the Contract With America, but certainly those things that 70 to 80 percent of the Americans want, our Founding Fathers dealt with these issues. They dealt with term limitations. It was their intent to have a citizens legislature for people to have to live under the laws

● 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

that we passed. And, of course, we discussed that under the accountability bill, and such things as the budget balancing amendment.

It was Thomas Jefferson who came back and said:

> If I could have made one improvement in the Constitution, it would have been to severely limit the abilities of our Government to incur debt.

And now we are looking at unfunded mandates, which, I think, at the crux of unfunded mandates is the 10th amendment to the Constitution. Certainly, James Madison was very eloquent in his discussion of the 10th amendment.

Just so that I do not misquote it, I will read it. The 10th amendment provides that:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectfully, or to the people.

When you stop and remember what our Founding Fathers came over here to escape, it was, in fact, tyranny. So many of the problems that we are looking at in a contemporary way were addressed in the past.

I remember so well, if you think back in the history of this country, as was discussed by the distinguished Senator from West Virginia yesterday, we remember that here we were, a handful of farmers and trappers over here, and we took on the greatest army on the face of this Earth, knowing that we were signing our own death warrants to do so, but knowing it was worth it to escape tyranny. That was what it was all about when that tall redhead stood in the House of Burgesses and said:

> We are not weak if we make a proper use of those means which the God of Nature has placed in our power. Three millions of people, armed in the holy cause of liberty, and in such a country as that which we possess, are invincible by any force which our enemy can send against us.

Patrick Henry was saying that we are escaping the tyranny that we left behind in a foreign country.

Now, where have we come today? Right back to that same tyranny. And while it is not a contemporary debate, it is now being debated contemporarily.

I think if you look around and you see of all of those items in the Contract With America, this is the one that transcends all ideological lines. It transcends all party lines and interests. This is something that all of the American people are for.

I listened to the Senator from California [Mrs. FEINSTEIN], I believe it was a couple of days ago, and she said it so well about what happened out in San Francisco back when she was the mayor. And while Mrs. FEINSTEIN and I—perhaps there are no two Senators further apart ideologically. We certainly agree we have one thing in common in our backgrounds. We were both mayors of major cities in America at the same time. In fact, Mr. President, we were on the board of directors of the U.S. Congress of Mayors at the same time. No one is going to say, by any interpretation, the U.S. Conference of Mayors is a conservative operation.

Yet, what was our major concern 15 years ago, when Mrs. FEINSTEIN and I were both mayors of major cities? It was unfunded mandates. If fellow Senators will talk to any of the municipal leagues around America and ask them what is the major problem they are facing in their towns, as well as their cities and States, they will not say crime, they will not say welfare; they will say it is unfunded mandates.

We wonder how we got in this situation. It reminds me a little of the two skeletons in the closet. One rattled to the other and said, "How did we get in here?" And the other said, "I don't know. If we had any guts, we would get out." I think it is time to get out. I think we got in because of the propensity of Members of Congress to, in hopes of getting people something and not having the money to pay for it, find a way to do it, and that is to force somebody else to pay for it. That is exactly what is happening.

If we look around—I can take you to the State of Oklahoma, in Oklahoma City alone. Keep in mind, in our infinite wisdom, we passed all these bills. In Oklahoma City, in order to comply with the Clean Water Act, the conservative estimate is $3 million for that city; to comply with the transportation regulations, and these were the reflective road signs, the metric conversions, and those things, that would be $2 million over a 5-year period; land use regulations, landfills, recycling, $2.5 million; the Clean Water Act, they cannot proximate it, but it is well over $2 million.

Go to a smaller town or city, such as Broken Arrow, OK: Clean Water Act, storm water regulations, $100,000. A person may say, what is that? In Broken Arrow, OK, that is a lot. They are going to have to give up a police officer to comply with that mandate that came from the Federal Government. Waste water treatment regulations, $125,000. Safe drinking water regulations, $40,000. EPA regulations, solid waste, $32,000. Fair Labor Standards Act, $30,000.

In my city of Tulsa, I checked and brought up to date the figures that were there back when I was mayor of Tulsa, the Clean Water Act, $10 million; Safe Drinking Water Act, $16 million; solid waste regulations $700,000; lead-based paint, $1 million. It goes on and on and on. I just listed $35 million worth of mandates that are imposed upon three cities in the State of Oklahoma.

Now, those are direct costs. We get into indirect costs when we look at other laws that were passed. The Davis-Bacon Act—when I was elected mayor of the city of Tulsa, we had to make some additions. What do we do about our capital improvements, because they are in dire need; we were rotting out from within. So I had to go out on the line, and for a conservative to do this, it was a very difficult thing, Mr. President. But I passed a 1-cent sales tax increase for capital improvements; and it passed.

In order to do this, we calculated, by having to comply with the Davis-Bacon Act, how much more it costs the taxpayers of this city of Tulsa, OK. What could we have done without the Davis-Bacon Act: 17 percent more in capital improvements, 6 more miles of roads and streets, 34 more miles of water and sewer lines, and we could have hired 500 more people.

I read in the Reader's Digest just the other day something I will share with Members. In Philadelphia, for example—and this is in December's Reader's Digest—electricians must be paid $37.97 an hour on Davis-Bacon projects, while private contractors pay an average of $15.76. In Oakland, carpenters get $28 an hour on federally funded projects, and they work for $15 an hour in the private sector. Many are paying the price indirectly, and paying dearly, for the price of the mandates.

I replaced a very distinguished former Senator, David Boren, when I was elected to the U.S. Senate this past year. David Boren—he is a Democrat and I am a Republican—was and is today one of my closest friends. I can remember in 1966, Mr. President, we were elected to the State legislature. We came up here, and three of us became very intimate friends: David Boren, myself, and a guy named Ralph Thompson, who is now a Federal judge, whose name has been mentioned very prominently as someone who might be a member of the U.S. Supreme Court someday.

We came up in 1967, almost 30 years ago. What was our mission? On the first trip when we came to Washington, the mission was to protest the mandates of Lady Bird's Highway Beautification Act of 1965.

Lastly—I do not want to go over my time, and I am afraid I am approaching that now—I will say what will happen if we do not do it. What is going to happen if we do not pass this bill that everyone, virtually everyone, in America is for? If we do not do it, it will be done for us. Just to the south of the State of the Senator from Colorado, in New Mexico, in Catron County, in frustration with dealing with the U.S. Forest Service, they enacted the U.S. Constitution as a county ordinance and put the Federal Forest Service on notice to show up at the county supervisors meeting to get permission to impose mandates.

Recently, in Walter Williams' column, he talks about the fact that California has joined Colorado, Missouri,

Hawaii, and Illinois in asserting 10th amendment rights demanding that the Federal Government cease and desist all mandates and interferences exceeding those delegated by the Constitution. Similar resolutions have been passed in 12 other States.

Mr. President, that is a total of 17 States. Just nine more States, and that will be a majority of those States. So I will conclude, and say that this is something that we will have to start discussing in a serious vein and actually bringing to a vote. I cannot think of anything that is more significant that we will be dealing with than this issue.

As the Reverend Mark Dever said in his prayer, opening the session today, we want unity of purpose for which we are elected. Without overly dramatizing, I would say we must free our States and counties from the bondage to which they have been subverted.

Thank you, Mr. President.

Mr. CAMPBELL addressed the Chair.

The PRESIDENT pro tempore. The distinguished Senator from Colorado.

Mr. CAMPBELL. Mr. President, before I make comments, I would like to associate myself with the comments of my friend, the Senator from Oklahoma, with whom I have had the privilege of serving for the last 8 years here in the U.S. Capitol.

He brings out certainly another example, and we have heard one after another, about the punitive action of the Federal Government in forcing States to comply with unfunded mandates.

Mr. President, I thank the Chair.

(The remarks of Mr. CAMPBELL pertaining to the introduction of S. 234 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. THOMAS addressed the Chair.

The PRESIDING OFFICER (Mr. INHOFE). The Senator from Wyoming is recognized to speak for up to 10 minutes.

BALANCED BUDGET AMENDMENT

Mr. THOMAS. Mr. President, I would like to comment this morning on an issue that I think is important to us and to this country, and that is the balanced budget amendment. Although we have been discussing over the past several days the unfunded mandates bill, the question of a balanced budget has come up. There is a relationship, and I understand the relationship.

Certainly, if I were a local government official and we were talking about a balanced budget amendment I would want the protection of an unfunded mandate bill so that the Federal Government would not shift the responsibility of payment to local government.

But the balanced budget amendment goes beyond that, it seems to me. It is one of the fundamental changes that needs to take place in the Federal Government so that decisions in the future will be different. If we are really talking about change, some of the procedural changes that are being discussed now need to happen and they need to happen soon.

We have already done the accountability of the Congress. That is excellent. There is no reason why the people here should not live under the same rules that they apply to others. We need a balanced budget amendment to give us some discipline for fiscal responsibility. We need to do that. We need to have a line-item veto. I have had some experience in the House where you have an item that simply does not belong in a bill. It is in the highway bill and it is a museum for Lawrence Welk, but you cannot touch it because the rules do not allow for that to happen. So you need a line-item veto.

We need term limitations. These are the kinds of fundamental changes, but I want to talk today about the balanced budget amendment.

It has to do with shaping the form of the Federal Government over a period of time. It has to do with the question of whether we will have fiscal responsibility or whether we do not. There has been a good deal of dissent on an issue which most people say they are for, and now we find an increasing number of people who begin to find reasons why they are not for it.

The local Hill paper says: "Balanced Budget Amendment Is a Charade."

I do not believe that. I think that is wrong. Let me talk about some of the issues.

First of all, it is a fundamental question and the question should be divided. The question is: Do you think it is fiscally or morally irresponsible to spend more than you take in? Do you think it is fiscally irresponsible to spend more than you take in? Is it morally irresponsible to shift the debt to our children, grandchildren and their children?

The answer is, yes, of course it is fiscally irresponsible; of course, it is morally irresponsible. That is the basic question. The answer is not, "Yes, it is irresponsible if it doesn't hurt too much," or, "Yes, I would like to do it if it doesn't pinch us a little bit."

The answer is, "Yes, it is irresponsible to continue to do what we have been doing for 40 years." That is the first question.

The second question then is how do you do it? The second question is, over a period of time, how do you do it? It does not matter to me particularly whether it takes 5 years or 7 years or 10 years, if we are on a glide path that holds us toward a balanced budget.

The second one we hear constantly is we do not need an amendment. We now have all the tools that are necessary to do it. The fact is, evidence does not support that. We have not had a balanced budget for 25 years. I think we have had two in 50 years. There is not evidence that this Congress can balance the budget, is willing to balance the budget or does balance the budget and, indeed, we need some discipline to cause that to happen. Talking about it does not cause it to happen.

The Director of OMB on the TV said, "Well, we have all the tools we need." Maybe so, but tell me how well it has worked. It has not worked. So we do need some discipline. We need some discipline to cause the Members of Congress to balance the budget.

Should it have more discussion? I heard the other day, someone said, "Well, it needs to be discussed." It has been discussed for at least 10 years. We voted on it several times. We voted on it in the House; we voted on it in the Senate. It is not a puzzle. It is not a difficult one to decide on the basic issue of whether a Government should be responsible enough to not spend more than it takes in. We have had lots of discussion.

Some say it is a gimmick. Some say it is bumper-sticker politics. Let me tell you something, it works in 48 States. I served in the Wyoming legislature. It works there. We have a constitutional provision that you cannot spend more than you take in. It works. There is no question about whether it works. It is not a gimmick. It provides the kind of discipline to force the members of the legislature to set priorities, and that is what a legislature is all about. Without that kind of discipline, it does not happen.

It is pretty simple. In the Wyoming legislature, and 48 others, when you get in the appropriations committee, of which I was a member, you say, "Look, we are spending more than we have to spend." You have to make some changes and you do that. It is not mystic; it is not magic. It is just the discipline that causes that to happen.

Some say, "Well, judges will be setting it." Not so. It is not true in the States. The States do not have judges setting budgets. That will not happen.

Some say, "Well, we have to have an outline before we can be for it. We have to know what you are going to cut." There is no way that you know what you are going to cut in 7 years or 10 years.

The first question is, Is it responsible to balance the budget? The second question is, How do you do it?

And if you really believe that it needs to be done, you do it. Raise revenues? Of course. I am not for that, but that is possible. And if you are willing to pay for it, you put a cost-benefit ratio. You can do that. If you are committed to a balanced budget, however, you will find the way.

Those who say, "We do not need the tools, we already have them," they have to do the same thing if they are

going to balance the budget. They say, "We are going to balance the budget, we don't need a balanced budget amendment." You have to make the same cuts to do it either way. What is the problem with having discipline? What is the problem with going to the States and saying to the State legislatures, "We have a balanced budget to the Constitution. You have a chance to vote." People want to be involved in government.

The administration says we are already cutting the deficit; we do not need it. The fact is that most of the deficit cut in the last 2 years has been the bookkeeping deficit, and the only real change in policy that has reduced the deficit has been an increase in taxes. The fact is, we spent more last year than we spent the year before. But we raised taxes and we did reduce the deficit, and I am pleased with that. But most of it was a bookkeeping change from the S&L's and Medicaid. Some of it was an increase in taxes. We have not balanced the budget. The projection is the deficit is going back up.

We hear a lot about the cuts that are needed. The fact is, we will be spending substantially more at the end of 7 years than we spend now. It is not a question of cuts. It is a matter of reducing the growth, and that is where we are.

So a balanced budget amendment, it seems to me, is the responsible thing to do. Balancing the budget is the responsible thing to do. If I heard something in this election in 1994 in Wyoming it is, "We want responsible government; we have too much government; it costs too much," and the balanced budget amendment is the discipline that we need to set priorities.

You have to spend within your budget in your family. You have to spend within your budget in your business and, over time, you have to spend within your budget in your Government, and this will provide the discipline to do it.

We answer the question: Is it morally and fiscally responsible to balance the budget? The answer is yes, and we ought to get on about it.

Thank you, Mr. President. I yield the remainder of my time.

Mr. GRAMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

MIDDLE-CLASS TAX RELIEF

Mr. GRAMS. Thank you, Mr. President. Mr. President, yesterday I testified before the House Ways and Means Committee on an issue of great importance to me: The Minnesotans, whom I represent in the U.S. Senate, and every overburdened American taxpayer. The issue is middle-class tax relief.

Two years ago while serving in the House, I introduced the idea of a $500 per child tax credit in my families-first legislation, coauthored by Congressman TIM HUTCHINSON, of Arkansas.

Our arguments then were simple: Taxes were too high; the burden of tax increases fell disproportionately on the middle class; and big government was forcing more workers out of the working class and into the welfare class.

Consider the facts: Most middle-class American families pay more in Federal taxes than they spend for food, clothing, transportation, insurance, and recreation combined.

Since World War II, Federal income and payroll taxes have increased from 2 to 24 percent of the median income of a family of four. Despite this, while Congressman HUTCHINSON and I were making the case for tax relief, Congress was in the midst of passing the 1993 Clinton tax proposal—the largest tax increase in American history.

Far from providing tax relief for the middle class, the Clinton proposal actually increased their tax burden, making it more difficult for the middle class to care for themselves and for their children. The message from Washington was clear: Give us your money and we will solve all your problems.

But the American voters said "no" to this message in November and delivered one of their own. And that was "let us keep our money."

Today, the arguments for tax relief have not changed. Taxes are still too high, the tax burden still falls too heavily on the middle class. The big difference, however, is that this year—with this Congress—we can do something about it.

We promised tax relief, and now we have to deliver. And as I said in my testimony yesterday, we have to do it for what country western singer Garth Brooks calls the "hard hat, six-pack, achin'-back, flag-wavin', fun-lovin' crowd," because these are the people who work hard every day, care for their children, pay their bills and finance the growth of big government with their hard-earned tax dollars. For years, they have watched their paychecks grow smaller while Washington grows bigger. And last November they spoke out loud and clear. They voted for change in the way things were done in Washington. They voted for less government and lower taxes. They voted for a balanced budget. And, yes, they voted for a $500 per child tax credit.

But even now, the old barons of Washington and the long-time defenders of big government still do not get it. They do not understand that every dollar Washington spends is one less dollar that taxpayers can spend. And worst of all, they do not understand that it is not the Government's money to begin with. They just do not get it. But the people do, and that is what counts.

And so what are we going to do about it? Well, the answer is simple: Let the taxpayers keep their money. And the way to begin this process is to pass the families first $500-per-child tax credit.

The families first tax credit means $25 billion annually to taxpayers across America—$500 million to Minnesota alone. And 90 percent of the benefits of the tax relief goes to families making annual incomes of $60,000 or less.

It is the largest, fairest, most progressive way of providing tax relief for families, and it lives up to our Government and our commitment of reducing the size of the Federal Government. By cutting Government spending to pay for middle-class tax relief, families first is the strongest response that we can send to the American people that we heard their message, that we accept their mandate, and we will deliver on our promises.

Mr. President, what we do in this Congress will be judged by the middle-class Americans who voted for us last November. And, Mr. President, what we do in this Congress, in this Chamber, will determine the makeup of the next Congress. Republicans made a commitment to the taxpayers, and I urge my colleagues to uphold that commitment as we continue to fight for the middle class and as we fight for fairness.

I yield back the floor.

GREENVILLE MIDDLE SCHOOL—A CLASS ACT

Mr. HEFLIN. Mr. President, the newspaper USA Today recently initiated an ongoing series of articles spotlighting schools and educational programs in the country that are both innovative and successful.

The first venture to be included in the series was the Builders Club at Greenville Middle School in Greenville, AL.

I want to congratulate the teachers involved in this unique community-service program and all the students at Greenville who participate in the Builders Club. They are setting an example that schools all over the Nation can follow.

I ask unanimous consent that the USA Today article on the Builders Club be printed in the RECORD following my remarks.

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

[From the USA Today, Jan. 4, 1995]

SERVICE CLUB BUILDS GOOD CITIZENS

(By Tamara Henry)

(This is the first in an ongoing USA Today series titled Class Acts, a look inside some educational ventures across the USA that work remarkably well)

GREENVILLE, AL.—To the 175 students at Greenville Middle School, splinters, needle pricks and scissor cuts are marks of valor—the price paid to serve the community.

On this day, approximately two dozen students are gathered in teacher Judy Tindal's

classroom to make Christmas ornaments as appreciation gifts for community leaders.

"Ouch," yells 11-year-old Laine English, struggling to thread a needle needed to sew lace over a ball of cotton.

Her friends giggle.

"There's the real fun over there, burning your fingers," she deadpans, pointing to a group adding wings and halos to the covered cotton balls.

"That's right!" agrees Amanda Myrick, II. "Here's where I burned myself with the hot glue gun."

The students are all Members of the Builders Club, a 5-year-old service organization funded by the state and actively supported by the local Kiwanis Club. The middle school is one of 23 public school systems in Alabama participating in a statewide community service effort such as this.

Nationally, thousands of school systems have what are popularly called service learning programs. They promote the notion that education is not complete until classroom studies are used to solve real-life problems.

Activities run the gamut, from an Alternatives to Violence high school program in Washington, D.C., to the creation of an ecosystem in the desert in rural eastern Oregon by elementary school pupils.

With its Builders Club Greenville has one of the largest service learning projects in the state. Unlike a lot of extra curricular activities that require top grades or special skills, the Builders Club is open to all middle school students willing to work on different projects during breaks and at lunch, as well as after school.

Greenville students have 10 ongoing projects, including frequent visits to nursing homes and development of a 5-acre nature trail. The goal is to teach students about leadership, loyalty, character and service, "which is what they absolutely have to have in order to be productive citizens," says Judy Manning community education coordinator for Butler County Schools, who spearheaded the group.

"Children who are involved are more productive academically," says superintendent Jimmie Lawrence. "The more involved kids are, the better they feel about themselves. Self-esteem improves. They are better adjusted, happier and have fewer disciplinary problems."

Manning says the program's success is proven by its membership numbers.

"If they didn't enjoy it, they wouldn't join it. You can't make middle school kids do anything they don't want to do," she says.

A TRIBUTE TO NANCY STILSON ON HER RETIREMENT FROM THE REDSTONE SCIENTIFIC INFORMATION CENTER

Mr. HEFLIN. Mr. President, I would like to congratulate Ms. Nancy Stilson, Chief, Documents Reference Librarian at the Redstone Scientific Information Center on the occasion of her retirement from Government service.

Ms. Stilson began her Government service career in Huntsville at Redstone Arsenal 41 years ago. She has worked in the documents section of the Redstone Scientific Information Center throughout her career. Her knowledge of the weapon and missile systems developed for the U.S. Army have ranged from those developed in the early 1950's up to the present time. Ms. Stilson has the respect and admiration of her customers who are scientists and engineers for the U.S. Army Missile Command. Indeed Ms. Stilson, through her experience, has the equivalent of a Ph.D. in missile technology as her customers can attest. When scientific and technical information is needed, Ms. Stilson has been the "one stop shop" for such information. Ms. Stilson has provided scientific and technical information to those designing, building, and fielding the Army's weapons and missile systems. In fact, if you could design an illustration of the components of the missile system, Ms. Stilson would figure prominently in the section dealing with technical information. Through her career she has served both distinguished scientists such as Dr. Warner Von Braun, as well as bench scientists and engineers creating the nuts and bolts of missile components. During Ms. Stilson's tenure, the scientific and technical library community advanced to the capability of supporting the highly technical and complex Army that exists today. She heavily influenced the evolution of the international collection of missile and rocketry that exists at the Army's premier technical library, the Redstone Scientific Information Center.

Mr. President, it is my pleasure to congratulate Nancy Stilson on her retirement and to thank her for many years of dedication and service to the men and women of the U.S. Army.

HAITI

Mr. LEAHY. Mr. President, I want to report today on a visit I made to Haiti 2 weeks ago. It was a very brief visit, but I came away from it profoundly moved.

I saw people, lots of people. Haiti, one of our closest neighbors, is crowded to bursting with people. It has the highest population density in the Western Hemisphere.

And most of these people are poor, incredibly poor. Haiti's unemployment rate must be 50 percent. The people have no jobs, so they jam the streets. They are struggling to survive on a few cents a day. In the vast Cite Soleil slum, they line up to get water from truck-supplied tanks—if and when the truck comes to deliver the water. Garbage and sewage are everywhere. Disease, including AIDS, is a pervasive threat.

And yet, Mr. President, in the midst of all this suffering, I found people anxious to shake my hand, to smile, and to say "thank you." Thank you? Why would they thank me, a foreigner surrounded by soldiers and policemen?

Mr. President, they were thanking me because I am an American. They were thanking me because we, the American people, have given them the thing that is even more valuable than food to eat.

Mr. President, we have given the Haitian people security. For the first time in 3 years, the Haitian people do not have to cower in corners fearing that they will be assaulted by thugs or dragged off to be tortured. For the first time in 3 years, they are free to go into the streets, laugh, dance, celebrate freedom. For the first time in 3 years, they are free to go and tear down with their bare hands those yellow buildings—one of which I visited—from which they used to hear the screams of people being tortured.

And why are they free? Because there are soldiers of the U.S. Army 10th Mountain Division patroling the streets of Port-au-Prince and Cap Haitien. There are units of the United States Special Forces patroling the streets of towns and villages throughout the interior of Haiti. The Haitian soldiers and police who used to terrorize them are being weeded out. And there are international police monitors from countries like Bangladesh and Argentina and Jordan as well as the United States spread across the country to work with and monitor the actions of Haitian police and make sure that people no longer have to fear for their basic security and rights.

Mr. President, last fall, I, along with many of my colleagues here, agonized over sending troops to Haiti. We wanted to help them escape from the hell that Raoul Cedras and his cronies had created for them. After all, if we would not defend human rights right next door, where would we defend them? But it was not clear what would happen, and we all appreciated that there were risks.

Last Thursday, we received a jolting confirmation of the risk. We learned of the death of Sfc. Gregory Cardott. I want to salute Sergeant Cardott. He died in the finest tradition of the men and women of our Armed Forces, doing his duty, serving his country, contributing to making the world a better place for all of us to live. I want to express deep condolences and respect to his wife Darlene and their two daughters, Elise and Erica.

At the same time that we mourn Sergeant Cardott, however, Mr. President, I believe we need to honor his memory by recognizing that he died in a good cause. We are doing good in Haiti. We are improving people's lives.

Everyone I spoke to in Haiti confirmed it:

President Aristide asked me specifically to convey to you and my other fellow Senators the gratitude of the Haitian people for the American intervention.

A Vermont soldier told me "I'm proud of what we are doing in Haiti. These people were desperate and we have given them hope."

Most eloquent of all, in Cite Soleil, I saw a little boy, barefoot and in rags, pick up a shiny Swiss Army knife that

Ray Kelly, the American chief of the International Police Monitors, had dropped. I expected him to run away with it. What did he do? He started shouting and running around among the policemen searching for the one who had dropped it, and returned it to Ray. What a wonderful affirmation of the goodwill that our troops are earning for the United States in Haiti.

And, Mr. President, I believe that our intervention in Haiti has the potential to yield dividends elsewhere as well. By reinstalling a democratically elected President, Haiti has moved us one step closer to a goal that we just recently have come very close to achieving: a Western Hemisphere that is fully democratic. Unfortunately, though, democracy remains fragile in a number of our Latin American neighbors. Many people throughout Latin America, both advocates of democracy and its enemies, are watching Haiti for signals as to the resolve of the United States and our partners in the Organization of American States. By defending democracy in Haiti, I believe that the United States and its international partners are reinforcing democracy throughout the hemisphere.

Mr. President, we have the makings of a success here, but the job is not done. Haiti has a long way to go yet to entrench the rule of law, ensure respect for democracy and human rights, and embark on sustainable economic development.

The security situation, while quite good compared to what we had feared at the outset, remains tenuous. Many of the perpetrators of repression remain free, not only because identification and apprehension is not always easy but also because Haiti's judicial system is in such a shambles that it is not capable of trying those accused of crimes. Particularly in the more remote towns and villages of the country where the multinational force is unable to maintain a constant presence, some of the old repressive elements continue to wield influence.

Since the multinational force is not large enough to eliminate this threat completely, the Haitians are placing a high priority on continuation of the international security presence until they can field a reliable, reformed police force of their own. Virtually everyone, both Haitian and American, with whom I spoke in Haiti expressed fear that withdrawal of that presence before the Haitian Government has had time to train its police force would result in reassertion of control by the antidemocratic elements. President Aristide asked me to convey to my fellow Senators his appeal that the U.S. Congress not require such a withdrawal.

In addition to security, Mr. President, I am deeply concerned about the state of the Haitian judicial system. It does no good to arrest those suspected of crimes if you do not have judges and prosecutors to try them, courts in which to try them, and jails in which to put them if they are convicted. Haiti at the moment has none of these. People have to be trained. Facilities have to be built and equipped. I am pleased that USAID is in the process of launching a comprehensive effort to fill these gaps. We are hoping that the Canadians and the French and other donors will also join in. I also hope that President Aristide and his government will take all steps necessary to ensure that this vital effort yield results rapidly.

At the same time that I support assistance to Haiti, however, Mr. President, I believe we also need to set realistic limits on that aid. We need to forewarn the Haitians and our partners in the international donor community that we will not put American troops at risk for very long, that our pockets are shrinking, not expanding, and that there is much that Haiti needs that we will not be able to do. I disagree strongly with those of my colleagues who have suggested that Haiti is a hopeless cause and that trying to help it at all is a waste of money and time. We can make a difference and we are making a difference, and I believe we would be representing the American people poorly if we suspended that effort now and gave up the progress that we have made. But we do need to prioritize. We cannot do it all.

Mr. President, the United States will in the course of the next 3 months hand over responsibility for maintaining security in Haiti to the U.N. Mission in Haiti [UNMIH]. Consistent with our leadership role, an American will command UNMIH and the United States will provide half of its troops, but the United Nations will fund it. This will reduce substantially the ongoing risk and cost of the Haiti effort to the United States and its troops. In addition, the administration assures me that they are working closely with the Haitian Government to ensure that training of the new Haitian police force will proceed rapidly so that UNMIH itself can be terminated. This will eliminate the largest element in the Haiti assistance program.

Mr. President, let me summarize the conclusions that I have drawn from my trip to Haiti. There are three:

First, the American intervention in Haiti has been successful in providing security and thus hope to the Haitian people, and we would be doing Sergeant Cardott and the other troops who risked their lives in that effort an enormous disservice to terminate our effort now. Participation in UNMIH is a good way to maintain the effort while reducing the cost.

Second, we cannot solve all of Haiti's problems, but there are some that can only be solved with United States leadership. Specifically, only we can lead a U.N. effort to maintain security in Haiti until the Haitian Government fields a retrained police force of its own. We must also lead the effort to train that new police force. Finally, we must lead the effort to create a judicial system capable of defending democracy and human rights in Haiti.

Third, we must make clear to the Haitians and our partners in the assistance effort that United States participation is going to decline rapidly over time and that the Haitians must equip themselves as quickly as possible to take responsibility for their own affairs.

In conclusion, Mr. President, I want once again to salute the men and women of our Armed Forces serving in Haiti. They are doing a great job for their country. In Haiti 2 weeks ago, thanks to them, I felt very proud to be an American.

ROGER MORIGI

Mr. THURMOND. Mr. President perhaps once in a generation, one person will emerge as a master artisan, a person whose vision, skills, and creations not only inspire others, but set that artist apart from all others practicing the craft. Until this past Wednesday, we were fortunate to have such a person, Mr. Roger Morigi, living in the Metropolitan area. His many sculptures and carvings not only paid homage to the United States, but have been seen and enjoyed by literally millions of people.

Mr. Morigi was a part of what is literally a vanishing breed of artists—stone carvers, individuals who create monuments to people and ideas through the medium of rock. Not surprisingly, Mr. Morigi was a native of Italy, the home of some of history's greatest artists, and a country where sculpting has always been an appreciated and valued art form. Born in Como and schooled in Milan, Mr. Morigi emigrated to New Haven, CT, where he and his father practiced their craft.

In the following years, Mr. Morigi became an accomplished artist as he worked on projects in New Haven, New York City, New York State, North Carolina, Ohio, Pennsylvania, Michigan, West Virginia, and South Carolina. It was right here though, in the District of Columbia, where Mr. Morigi spent most of his adult life and where his works are most prevalent. The U.S. Supreme Court Building, the U.S. District Court Building, the Commerce Building, the Department of Justice Building, and the Department of Agriculture Building are just a few of the places where Morigi's works appear. Perhaps some of Mr. Morigi's most impressive work is a part of the ornately decorated National Cathedral, where he worked and created stone carvings for almost three decades. One of the most prominent carvings, that of Adam, is a part of the cathedral's main entrance

and Morigi said of that work, according to the Washington Post, "I finished where God began."

With each project he completed, not only did Mr. Morigi create a piece of artwork, he improved his skills and knowledge, which helped him to earn the title of "master stone carver emeritus" and to be characterized by some as the "greatest carver of the 20th Century". Perhaps more importantly, he used his talents to craft pieces that beautified and paid a lasting tribute to his adopted homeland, the United States. While this great artist will be missed, his creations will ensure that he is never forgotten. My sympathies go out to Mr. Morigi's wife, Louise; and children, Francis and Elayne.

WAS CONGRESS IRRESPONSIBLE? THE VOTERS SAID YES

Mr. HELMS. Mr. President, before contemplating today's bad news about the Federal debt, let's do that little pop quiz again: How many million dollars are in a trillion dollars? (When you arrive at an answer, remember that it was Congress that ran up a debt exceeding $4.8 trillion.

To be exact, as of the close of business yesterday, Tuesday, January 17, the Federal debt (down to the penny) at $4,802,867,735,976.01—remaining that every man, woman, and child in America now owes $18,231.09 computed on a per capita basis.

Mr. President, to answer the pop quiz question (how many million in a trillion?) there are a million million in a trillion, and you can thank the U.S. Congress for the present Federal debt of $4½ trillion.

REVISED RULES OF PROCEDURE

MR. CHAFEE. Mr. President, the Environment and Public Works Committee has adopted an amendment that revises the committee's rules of procedure. I ask unanimous consent that a copy of the revised rules be printed in the RECORD.

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

RULES OF PROCEDURE

RULE 1. COMMITTEE MEETINGS IN GENERAL

(a) Regular meeting days: For purposes of complying with paragraph 3 of Senate Rule XXVI, the regular meeting day of the committee is the first and third Thursday of each month at 10:00 a.m. If there is no business before the committee, the regular meeting shall be omitted.

(b) Additional meetings: The chairman may call additional meetings, after consulting with the ranking minority member. Subcommittee chairmen may call meetings, with the concurrence of the chairman of the committee, after consulting with the ranking minority members of the subcommittee and the committee.

(c) Presiding officer:

(1) The chairman shall preside at all meetings of the committee. If the chairman is not present, the ranking majority member who is present shall preside.

(2) Subcommittee chairmen shall preside at all meetings of their subcommittees. If the subcommittee chairman is not present, the ranking majority member of the subcommittee who is present shall preside.

(3) Notwithstanding the rule prescribed by paragraphs (1) and (2), any member of the committee may preside at a hearing.

(d) Open meetings: Meetings of the committee and subcommittees, including hearings and business meetings, are open to the public. A portion of a meeting may be closed to the public if the committee determines by rollcall vote of a majority of the members present that the matters to be discussed or the testimony to be taken—

(1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

(2) relate solely to matters of committee staff personnel or internal staff management or procedure; or

(3) constitute any other grounds for closure under paragraph 5(b) of Senate Rule XXVI

(e) Broadcasting:

(1) Public meetings of the committee or a subcommittee may be televised, broadcast, or recorded by a member of the Senate press gallery or an employee of the Senate.

(2) Any member of the Senate Press Gallery or employee of the Senate wishing to televise, broadcast, or record a committee meeting must notify the staff director or the staff director's designee by 5:00 p.m. the day before the meeting.

(3) During public meetings, any person using a camera, microphone, or other electronic equipment may not position or use the equipment in a way that interferes with the seating, vision, or hearing of committee members or staff on the dais, or with the orderly process of the meeting.

RULE 2. QUORUMS

(a) BUSINESS MEETINGS: At committee business meetings, six members, at least two of whom are members of the minority party, constitute a quorum, except as provided in subsection (d).

(b) SUBCOMMITTEE MEETINGS: At subcommittee business meetings, a majority of the subcommittee members, at least one of whom is a member of the minority party, constitutes a quorum for conducting business.

(c) CONTINUING QUORUM: Once a quorum as prescribed in subsections (a) and (b) has been established, the committee or subcommittee may continue to conduct business.

(d) REPORTING: No measure or matter may be reported by the committee unless a majority of committee members cast votes in person.

(e) HEARINGS: One member constitutes a quorum for conducting a hearing.

RULE 3. HEARINGS

(a) ANNOUNCEMENTS: Before the committee or a subcommittee holds a hearing, the chairman of the committee or subcommittee shall make a public announcement and provide notice to members of the date, place, time, and subject matter of the hearing. The announcement and notice shall be issued at least one week in advance of the hearing, unless the chairman of the committee or subcommittee, with the concurrence of the ranking minority member of the committee or subcommittee, determines that there is good cause to provide a shorter period, in which event the announcement and notice shall be issued at least 24 hours in advance of the hearing.

(b) STATEMENTS OF WITNESSES:

(1) A witness who is scheduled to testify at a hearing of the committee or a subcommittee shall file 100 copies of the written testimony at least 48 hours before the hearing. If a witness fails to comply with this requirement, the presiding officer may preclude the witness's testimony. This rule may be waived for field hearings, except for witnesses from the Federal Government.

(2) The presiding officer at a hearing may have a witness confine the oral presentation to a summary of the written testimony.

RULE 4. BUSINESS MEETINGS: NOTICE AND FILING REQUIREMENTS

(a) NOTICE: The chairman of the committee or the subcommittee shall provide notice, the agenda of business to be discussed, and the text of agenda items to members of the committee or subcommittee at least 72 hours before a business meeting.

(b) AMENDMENTS: First-degree amendments must be filed with the chairman of the committee or the subcommittee at least 24 hours before a business meeting. After the filing deadline, the chairman shall promptly distribute all filed amendments to the members of the committee or subcommittee.

(c) MODIFICATIONS: The chairman of the committee or the subcommittee may modify the notice and filing requirements to meet special circumstances, with the concurrence of the ranking member of the committee or subcommittee.

RULE 5. BUSINESS MEETINGS: VOTING

(a) PROXY VOTING:

(1) Proxy voting is allowed on all measures, amendments, resolutions, or other matters before the committee or a subcommittee.

(2) A member who is unable to attend a business meeting may submit a proxy vote on any matter, in writing, orally, or through personal instructions.

(3) A proxy given in writing is valid until revoked. A proxy given orally or by personal instructions is valid only on the day given.

(b) SUBSEQUENT VOTING: Members who were not present at a business meeting and were unable to cast their votes by proxy may record their votes later, so long as they do so that same business day and their vote does not change the outcome.

(c) PUBLIC ANNOUNCEMENT:

(1) Whenever the committee conducts a rollcall vote, the chairman shall announce the results of the vote, including a tabulation of the votes cast in favor and the votes cast against the proposition by each member of the committee.

(2) Whenever, the committee reports any measure or matter by rollcall vote, the report shall include a tabulation of the votes cast in favor of and the votes cast in opposition to the measure or matter by each member of the committee.

RULE 6. SUBCOMMITTEES

(a) REGULARLY ESTABLISHED SUBCOMMITTEES: The committee has four subcommittees: Transportation and Infrastructure; Clean Air, Wetlands, Private Property, and Nuclear Safety; Superfund, Waste Control, and Risk Assessment; and Drinking Water, Fisheries, and Wildlife.

(b) MEMBERSHIP: The committee chairman shall select members of the subcommittees, after consulting with the ranking minority member.

RULE 7. STATUTORY RESPONSIBILITIES AND OTHER MATTERS

(a) ENVIRONMENTAL IMPACT STATEMENTS: No project or legislation proposed

by any executive branch agency may be approved or otherwise acted upon unless the committee has received a final environmental impact statement relative to it, in accordance with section 102(2)(C) of the National Environmental Policy Act, and the written comments of the Administrator of the Environmental Protection Agency, in accordance with section 309 of the Clean Air Act. This rule is not intended to broaden, narrow, or otherwise modify the class of projects or legislative proposals for which environmental impact statements are required under section 102(2)(C).

(b) PROJECT APPROVALS:

(1) Whenever the committee authorizes a project under Public Law 89-298, the Rivers and Harbors Act of 1965; Public Law 83-566, the Watershed Protection and Flood Prevention Act; or Public Law 86-249, the Public Buildings Act of 1959, as amended; the chairman shall submit for printing in the Congressional Record, and the committee shall publish periodically as a committee print, a report that describes the project and the reasons for its approval, together with any dissenting or individual views.

(2) Proponents of a committee resolution shall submit appropriate evidence in favor of the resolution.

(c) BUILDING PROSPECTUSES:

(1) When the General Services Administration submits a prospectus, pursuant to section 7(a) of the Public Buildings Act of 1959, as amended, for construction (including construction of buildings for lease by the government), alteration and repair, or acquisition, the committee shall act with respect to the prospectus during the same session in which the prospectus is submitted. A prospectus rejected by majority vote of the committee or not reported to the Senate during the session in which it was submitted shall be returned to the GSA and must then be resubmitted in order to be considered by the committee during the next session of the Congress.

(2) A report of a building project survey submitted by the General Services Administration to the committee under section 11(b) of the Public Buildings Act of 1959, as amended, may not be considered by the committee as being a prospectus subject to approval by committee resolution in accordance with section 7(a) of that Act. A project described in the report may be considered for committee action only if it is submitted as a prospectus in accordance with section 7(a) and is subject to the provisions of paragraph (1) of this rule.

(d) NAMING PUBLIC FACILITIES: The committee may not name a building, structure or facility for any living person, except former Presidents or former Vice Presidents of the United States, former Members of Congress over 70 years of age, or former Justices of the United States Supreme Court over 70 years of age.

RULE 8. AMENDING THE RULES

The rules may be added to, modified, amended, or suspended by vote of a majority of committee members at a business meeting if a quorum is present.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. BENNETT). The time for morning business has expired.

UNFUNDED MANDATE REFORM ACT

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

The legislative clerk read as follows:

A bill (S. 1) to curb the practice of imposing unfunded Federal mandates on States and local governments; 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; and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Committee amendment No. 11, beginning on page 25, line 11, pertaining to committee jurisdiction.

The PRESIDING OFFICER. We now return to the pending question, which is the committee amendment on page 25, line 11.

Who seeks recognition?

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, for the past week, the U.S. Senate has renewed debate on the issue of unfunded Federal mandates. Senate bill 1, which curbs unfunded Federal mandates, is a fundamental change in the way we do business in the Congress and it is a fundamental change in our relationship with State and local governments.

As I mentioned when I introduced S.1, Congress has gotten away from the fundamentals as envisioned by our Founding Fathers. We shouldn't be here to dictate to the States. We are to be here on behalf of our States—representing and protecting the interests of each sovereign State.

Mr. President, each of the States, and more than 87,000 other municipalities are anxiously and carefully following this debate on unfunded mandates and more importantly, the 10th amendment, as it unfolds here on the floor of the Senate.

But they're not just watching the debate; they are following our lead. In my home State of Idaho, the State legislature is ready to address the issue of unfunded State mandates. Our new Governor, Phil Batt, pledged to stem the flow of unfunded mandates from the State onto Idaho's cities and counties.

Legislation has now been introduced to do just that, and this afternoon, Mr. President, the Idaho State Senate's Local Government and Taxation Committee will hold it's first hearing on Senate bill 1003, Idaho's Community Regulatory Relief Act introduced by State Senator Rod Beck.

Governor Batt and Senator Beck should be applauded for recognizing that we not only must improve the partnership between Federal and State governments, but also between State and local governments.

Mr. President, I would also add that this morning, the Idaho State Senate passed a joint memorial—Senate Joint Memorial No. 102—similar to resolutions and memorials passed by several other States which calls on the Federal Government to observe the 10th amendment to the Constitution and to end mandates that are beyond the scope of its constitutionally delegated powers. Our distinguished majority leader, Senator DOLE, has pledged to help this body remember the 10th amendment, and each week the Senate is in session he will insert the 10th amendment into the CONGRESSIONAL RECORD.

Again, Mr. President, our efforts here in Congress to own up to our responsibilities and to stop shifting our burdens onto States and local government are not going unnoticed. I'm proud to be a part of this great movement to restore trust in this institution, to enhance our partnership with States and local governments, and to see the States establishing similar partnerships with cities and counties.

Mr. President, I ask unanimous consent that following my suggestion that there is an absence of a quorum, I will retain the floor so that we can proceed.

Mrs. BOXER. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. Is the Senator suggesting the absence of a quorum?

Mr. KEMPTHORNE. Mr. President, yes.

The PRESIDING OFFICER. The clerk will call the roll.

Mrs. BOXER. Mr. President, may I make a parliamentary inquiry before the quorum?

The PRESIDING OFFICER. Does the Senator from Idaho withhold his suggestion of the absence of a quorum so that the Senator from California may make a parliamentary inquiry?

Mr. KEMPTHORNE. Yes, I would withhold.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I would just like to know exactly where we are because I was intending to offer a second-degree amendment to one of the committee amendments. I wanted to make sure that would still be in order at this point.

The PRESIDING OFFICER. The Senator from Idaho has the floor. Amendments to the committee amendment are in order.

The Senator from Idaho.

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

Mr. President, now that we have both managers on this bill, I would like to

proceed and lay out what course of action we would like to follow. What I will be doing is seeking a unanimous-consent agreement so that the pending amendment before us can be laid aside.

The reason that I will make that request is because a motion to table that last night was not successful. During the hours since then, different concerned Senators have been discussing what sort of modifications might be made to that amendment language. Since there has been no agreement at this time, it will be my request that we lay that aside so we can then take up the next pending committee amendment which would be before us. We would dispense with that committee amendment so that we can keep moving. So that is going to be my intent.

Again, as I just confer with the other manager, I would again suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been suggested. 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.

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

ORDER OF PROCEDURE

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that the Senator from Pennsylvania be allowed to make remarks as though in morning business for approximately 10 minutes, and that following his comments I reserve the right to the floor.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Pennsylvania is recognized for 10 minutes.

Mr. SPECTER. Mr. President, I thank the Chair. I thank my colleague from Idaho.

THE BASEBALL STRIKE

Mr. SPECTER. Mr. President, I have sought recognition while there is a lull in the action on the pending legislation to talk for a few minutes about the pending issues before the Judiciary Committee on possible legislation regarding the antitrust exception which might have an impact on the current baseball strike.

I believe that it is highly unlikely—virtually impossible—for the Congress of the United States to act on an antitrust exemption to have any meaningful impact on the pending strike and, therefore, urge in the strongest possible terms that both parties return to the negotiating table to work in a collective bargaining sense to end the strike and bring baseball to the playing field this spring.

I have had long reservations about the antitrust exemption as it applies to baseball, as it applies to other major sports, like football, which has an antitrust exemption for revenue sharing, and participated more than a decade ago, in 1982, in extensive hearings when the Los Angeles Raiders, then the Oakland Raiders, were proposing a move. And those hearings were very important and raised some of the same considerations which are now pending on the baseball strike.

As we have moved forward in the consideration of the complex issues on the antitrust exemption, my view has been to retain the exemption as it impacts on the Pirates, which are a major factor in Pittsburgh, and a major constituent interest of mine. If we eliminate the antitrust exemption, we will have bedlam with respect to franchise changes. I notice my colleague Senator GORTON nodding in agreement because of the impact on the Seattle baseball team.

One thing is certain, Mr. President, and that is that it is highly unlikely, I am almost certain, that Congress is going to act with any speed, and I think that Congress should not act, should not get involved in the midst of a labor dispute, where there are very, very serious issues, to try to affect the outcome of that labor dispute. At the present time, the Judiciary Committee is totally involved in the consideration of the constitutional amendment for a balanced budget. And on the Senate floor we are involved in very complex legislation on taking away mandates by the Federal Government which are not paid for. There is a very, very heavy agenda on economic issues, budget issues, trying to reduce the size of Government, trying to reduce spending, and the consideration of tax cuts, so that far behind on the back burner is this issue of changing the antitrust exemption.

My comments this morning are prompted, in part, by this banner headline in the Philadelphia Inquirer this morning: "Phillies President Blasts Union, Hinting at Player Defections."

Bill Giles is president of the Philadelphia Phillies, and he is a very, very mild-mannered man. I cannot remember a headline on Bill Giles speaking out in such emphatic terms. What he is saying bears directly on my comments, where he makes the statement that "The union has spent most of their energy in Washington trying to do away with our antitrust exemption instead of negotiating and trying to grow the game."

I have been in frequent contact with Mr. Don Fehr, head of the union, asking him what help I could be or what help the Senate could be in a constructive way in trying to bring the strike to a close. I first made that contact with Mr. Fehr last summer before the strike started on August 12. And at the same time period, I talked to the acting commissioner, Bud Selig, and the officials of both the Philadelphia Phillies and Pittsburgh Pirates, my two home State teams, to see what help we could be. The antitrust exemption came up briefly last fall on the Judiciary Committee calendar, and it was voted down, I think, largely because of a sense that the Congress and the Senate should not get involved in a pending labor dispute. The issue in Pittsburgh is especially touchy at the present time because the Pittsburgh Pirates are up for sale, and the Pirates have been kept in Pittsburgh by a consortium of hometown business people who have bought the Pirates, to keep it in Pittsburgh. That is a difficult matter because the Pirates are losing so much money, which is a source of the controversy today which has led to the strike. The Pirates have had a prospective buyer, John Rigas, of Coudersport, PA. I have been trying to be helpful in meeting with officials of the Pittsburgh Pirates to see if that sale could be effectuated. That sale is going to be held up because of the uncertainty of what is going to happen in the strike and to the antitrust exemption.

Obviously, I speak as only one Senator, one member of the Judiciary Committee. I think that given the complexity of the Judiciary Committee calendar, and given the complexity of the Senate Calendar, and the complexity of the House Calendar, it is as close to a certainty as anything can be that there is not going to be legislation coming out of the Congress between now and April on the antitrust exemption. There are too many things ahead of it. If it did come to the floor, I think many would agree with my position that the Congress ought not to intervene to try to alter—ought not to change the level playing field. That is an expression we use very frequently about our debates on many subjects, but it is certainly applicable not to change the level playing field when we talk to the baseball effort.

What the Phillies' president has had to say on one end of my State, and what is happening with the Pirates at the other end of my State, trying to sell the team to keep it in Pittsburgh, I hope that the parties will go back to the bargaining table and will settle the dispute so that we can have baseball this spring, and not to look to the Congress to try to intervene, which is not our place and is so highly unlikely on the current state of the record. I thank the Chair.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

UNFUNDED MANDATE REFORM ACT

AMENDMENT NO. 31

(Purpose: To prevent the adoption of certain national history standards)

Mr. GORTON. Mr. President, I have an amendment at the desk and I ask that it be read.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Washington [Mr. GORTON] proposes an amendment numbered 31.

At the end of the language proposed to be stricken by the amendment, add the following:

SEC. . NATIONAL HISTORY STANDARDS.

(a) IN GENERAL.—Notwithstanding any other provision of law, the National Education Goals Panel shall disapprove, and the National Education Standards and Improvement Council shall not certify, any voluntary national content standards, voluntary national student performance standards, or criteria for the certification of such content and student performance standards, on the subject of world and United States history, developed prior to the date of enactment of this Act.

(b) PROHIBITION.—No Federal funds shall be awarded to, or expended by, the National Center for History in the Schools, after the date of enactment of this Act, for the development of voluntary national content standards, voluntary national student performance standards, or criteria for the certification of such content and student performance standards, on the subject of such history.

(c) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) voluntary national content standards, voluntary national student performance standards, and criteria for the certification of such content and student performance standards, on the subject of world and United States history, established under title II of the Goals 2000: Educate America Act should not be based on standards developed by the National Center for History in the Schools; and

(2) if the Department of Education, the National Endowment for the Humanities, or any other Federal agency provides funds for the development of the standards and criteria described in paragraph (1), the recipient of such funds should have a decent respect for the contributions of western civilization, and United States history, ideas, and institutions, to the increase of freedom and prosperity around the world.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, what is a more important part of our Nation's history for our children to study—George Washington or Bart Simpson? Is it more important that they learn about Roseanne Arnold, or how America defeated communism as the leader of the free world?

According to this document—the recently published "National Standards for United States History"—the answers are not what Americans would expect. With this set of standards, our students will not be expected to know George Washington from the man in the Moon. According to this set of standards, America's democracy rests on the same moral footing as the Soviet Union's totalitarian dictatorship.

Mr. President, this set of standards must be stopped, abolished, repudiated, repealed. It must be recalled like a shipload of badly contaminated food. Today, before our children are asked to spend their evenings studying Bart Simpson instead of Benjamin Franklin's discovery of electricity, these standards must be abolished.

My amendment will stop this set of standards from becoming a guide for teaching history in America's classrooms. In order to stop this perverted idea in its tracks, and to ensure that it does not become, de facto, a guide for our Nation's classrooms, it must be publicly and officially repudiated by this Congress.

That is precisely what this amendment seeks to do.

These standards are ideology masquerading as history. These standards would have us reinvent America's history. They are terribly damaging, and they constitute a gross distortion of the American story from its conceptual foundations to the present.

America's story is both triumph and tragedy, but mostly triumph, of flawed yet unprecedented accomplishment. But in this teachers' and textbook manual it becomes a sordid tale "drenched in dark skepticism," as a Wall Street Journal editorial put it, emphasizing what is negative in America's past, while celebrating only politically correct culture and causes.

(I) THE STANDARD PROJECT'S INITIAL CHARTER

The history standards project began as a response to the alarming illiteracy of our Nation's children about their own, national history. Citizens of a pluralistic, democratic society must have a deep, historically based understanding of our liberties' origins and institutions, and appreciate the corresponding responsibilities essential for our survival as a nation, as a people.

Such an appreciation is dependent on a mastery of basic American history. The founding truths of this country may have been self-evident to the Founders, but as studies have demonstrated again and again, they are not genetically transmitted.

William Bennett in his book, "The De-Valuing of America," underscores the urgency of our problem in his call for "true reliable national standards." He cites the Finn/Ravitch study "What Do Our Children Know?" that revealed 43 percent of our high school seniors could not place World War I between 1900 and 1950. More than two-thirds of them did not know even the half-century in which the Civil War took place. And more than 75 percent were unable to place within 20 years when Abraham Lincoln was President.

One-third of all high school students tested in 1986 did not know that the Declaration of Independence marked the American colonists' break from England. Sixty percent did not know that the Federalist Papers was written to urge ratification of the Constitution, and 40 percent could not say even approximately when the Constitution was written and ratified. Only three students in five were able to recognize a definition of the system of checks and balances that divides power among the three branches of our Federal Government.

If, as Lincoln believed, the liberty and prosperity of a nation such as ours is dependent on the "mystic chords of memory," then we are indeed, as William Bennett's 1981 national literacy report evidenced, "A Nation at Risk."

(II) WE DIDN'T GET WHAT WE PAID FOR

In 1992, when UCLA's National Center for History in the Schools won the bid to produce national guidelines for American and World history curricula, they were given three basic tasks:

First, to develop guidelines by which to determine the most important historical material for students to learn;

Second, to develop a balanced and objective document; and

Third, to develop a consensus process that would consider many perspectives from many different sources.

After 2 years and more than $2 million of the American taxpayers' money, the history project has failed to reach any of these goals.

Let members examine a sample of some of the outrageous examples found on almost every page of these documents. As we look at this material, we should keep in mind that President Bush and all the Nation's Governors, at the national educational summit in Charlottesville, VA, in 1989, recommended the development of national standards based upon what was most worth knowing.

(III) THESE PROPOSED STANDARDS DO NOT CONCENTRATE ON WHAT IS MOST WORTH KNOWING

Examples:

First, George Washington makes only a fleeting appearance in the standards. He is never described as our first President.

Second, the Constitution: The Constitution is not mentioned in the 31 core standards, although the standards mention the Depression three times.

Third, central figures and events in American political, cultural, and scientific life are either barely noted—in a 300 page book—or they simply disappear from the story of America's past. Important historical issues, such as the development of the role of Congress in our Federal Government are not discussed. Under these standards, Paul Revere and his midnight ride will never capture the imagination of our children. Ben Franklin's discovery of electricity will not encourage young scientists to seek out their own discoveries that can change the world.

Fourth, significant historical figures pivotal to America's past, such as Daniel Webster and Robert E. Lee, vanish. Titans who exemplify scientific progress in American history are also omitted from the standards. With these standards in place, our children will not learn of Thomas Edison, Alexander Graham Bell, the Wright brothers, or Albert Einstein. Americans who changed the entire world for the better will cease to exist.

As Robert Park of the American Physical Society has noted, the only reference to science in the standards is as an activity from which women have been excluded. Nothing else about the history of science is apparently worth mentioning.

While the standards ignore people such as Webster, deemphasize George Washington and the founding of America, ignore our political heritage, and abandon our accomplishments in technology—there is no shortage of celebratory information of the politically correct inclusive variety.

Thus, American students in the standards are asked to "assess the survival strategies and construct historical assessments of people such as Prudence Crandall, Prince Hall, and Speckled Snake." They are asked to "analyze the reflection of values in popular TV shows" such as Roseanne and the Simpsons.

Where are the priorities in the standards?

Given the limited amount of time our kids have to master the basics of their Nation's history, are these information fragments more important than George Washington and the Constitutional Convention?

(IV) PREEMPTIVE STRIKE AT CRITICS BACK HOME

Do not misunderstand me. I certainly believe it is important to tell the whole story of America. Our history should be inclusive. It should study previously neglected groups and individuals who made real contributions to our common heritage. It should examine our Nation's tragedies—the sub-human treatment of native Americans, the crime against humanity over which we fought our bloodiest war to abolish, the battle for women's rights, Jim Crow and the great sacrifices made by so many during the civil rights movement of the 1960's, the ongoing battle for the complete realization of our Nation's founding first principle, that all men are created equal, that they are endowed by their Creator with certain unalienable rights—all these are parts of our history about which our children should learn.

But let us disabuse ourselves of the modern conceit that this great first principle was a 1960's innovation. I think of George Washington's letter to a Hebrew congregation in which he compares America's right to religious freedom with the, at best, begrudging religious "tolerance" of other nations.

It is now no more that toleration is spoken of as if it were the indulgence of one class of people that another enjoyed the exercise of their inherent natural right, for, happily, the government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens. * * * May the children of the Stock of Abraham, who dwell in this land, continue to merit and enjoy the good will of the other inhabitants, while every one shall sit safely under his own vine and fig tree, and there shall be none to make him afraid.

Proponents of this manual will tell you that the proposed American history standards devote more than 40 pages to colonial and early national periods. What is emphasized in those 40 pages, however, is the separate histories of different groups based on race, ethnicity, gender, and class, at the expense of what is most important for students to know—the building of a nation, of "a people", and the constitutional development of the American Republic, still the envy and the prototype for emerging democracies around the world.

(V) POLITICALLY CORRECT DRIVEL

The standards suggest that students "analyze Pontiac's speech to the French on the reasons for making war in 1763, and compare his reasons with those of Opechancanough in 1622 and Metacomet (King Philip) in 1676. No doubt an interesting question for a graduate seminar, but is that something every child in America should learn?

Mr. President, Americans not yet familiar with this monument to political correctness will be astonished to learn that at the same time that the standard focus on such arcane issues, they fail to discuss what are perhaps the most important documents in American constitutional history.

America's constitutional achievement: The Federalist papers, Nos. 10 and 51, which explain why checks and balances are crucial to our liberties, are omitted altogether. Madison, Hamilton, Jay are never identified as the Federalist papers' authors. In fact, the only reference to the Federalist papers is a brief mention of No. 84. This is appalling. Today the Federalist papers are among the most important teaching documents used by civic educators in the new democracies of Central and Eastern Europe. It is ridiculous that the authors of these national standards in American history, in 300 pages, could not find room for the most eloquent articulation of our entire constitutional system ever written.

(VI) THE PROPOSED NATIONAL STANDARDS ARE NOT BALANCED AND OBJECTIVE

The few belief examples will have to suffice but I invite you to pursue all 300 pages at your leisure.

The cold war: Both the American history standards and the world history standards present this historical battle for the hearts and minds of the human race as just another conflict between two superpowers. Never mind that the Soviet Union murdered 65 million of its own people, its rulers forever justifying any and all "means," at the same time that Americans were debating constitutional rights of due process for every citizen, while at the same time providing a shield for the independence of free nations around the world. Americans and free people around the world believed these differences were worthy of the lives of their sons and daughters, sacrificed in the hills of Korea and jungles of Vietnam for the cause of freedom. But this great contest for minds and lives is ignored in their standards. There is no mention of the contending ideologies. The enormous sacrifice of American taxpayers, particularly during the Reagan administration to bring the Soviet monster to its knees is a matter of indifference to these standard netters.

And yet there are 19 references to McCarthyism, is though this regrettable but relatively short episode in our story is the central reality of the cold war. This is outrageous ideological distortion, rendering the victory of the free world under U.S. leadership essentially irrelevant.

The standards describe the nature of this sacrifice in the way:

The swordplay of the Soviet Union and the United States rightfully claims attention because it led to the Korean and Vietnam wars as well as the Berlin Airlift, Cuban Missile Crisis, American interventions in many parts of the world (no mention of Soviet staged revolutions and mass murders in its client states, or of any "intervention" at all).

What would all those desperate prisoners still locked within Castro's police state say about this equating of American and Soviet ends in the great battle of our century?

The standards actually refer to "the U.S.S.R.'s desire for security in Eastern Europe" as something normal and of understandable national interest. Tell that to the Balts, Czechs, Poles, and Hungarians, Rumanians, and others.

American immigrants: The world standards refer to the immigrants who came to the United States during the 19th century as "intrusive European Migrants"—page 234. This might be the first effort by historians to put the millions of Scandinavians, Jews, Italians, Greeks, Poles, Czechs, Hungarians who went through Ellis Island, and the earlier arrivals, the Irish, Germans, and other pioneer immigrants, together and in a negative light. The American standards emphasize the discrimination many immigrants faced in the United States, but nowhere in the document is there any discussion of the great success story of the descendants of European, Asian, African, and Hispanic immigrants in their new country.

Poverty in America: The section on the history of debate over the extent of

poverty in the United States asks students to read Michael Harrington, an advocate of the Great Society Federal antipoverty programs, but never suggest that students read critics of the program's big Government approach, such as Thomas Sowell, George Gilder, and Milton Friedman. Those scholars simply do not exist.

The world history guidelines whitewash the less attractive historical backgrounds of many non-Western civilizations. In fact, Western civilization is buried as a relatively minor element of the world we live in today. For example, Aztec achievements are lauded, but human sacrifices are ignored. It may as well have never happened. By contrast, extensive examinations of Western imperialism are both legion and repetitive.

The world history standards warn against ethnocentricm and bias, but the only examples given are of Western ethnocentricity and Western bias. Thus Greek images of the Persians are described as "ethnocentric" and students are asked to read John of Plano, a 13th century papal emissary, on the Mongal threat and analyze his social and cultural biases about the Mongols.

The world history standards fail to note that although slavery ended in the West during the 19th century, at the cost of the blood of hundreds of thousands of sons of the intrusive European immigrants, slavery continues to exist today as it has for millenia in the non-West, according to official United Nations reports.

These world history standards do not compare and contrast political systems in the West and the non-West during the 19th and 20th centuries.

Thus, teachers are not encouraged to compare Western democracies with Asian and African despotism. Nor are post-1989 students encouraged to consider the Communist ideal versus the historical reality. Why not compare the Soviet Socialist experiment with the American story in the 20th century, or contrast Lenin's reign of terror with Washington's leadership? Too unimportant to consider seems to be the view of these standard makers.

Our students need to know the theoretical foundations of our liberties. They need to learn why the dictatorship of the proletariat failed in its promised bliss.

The world history standards assert that students should be able to assess the accomplishments and costs of Communist rule in China during Mao's Great Leap Forward of 1958. Current estimates of the costs are 30 million murders of Mao's own fellow citizens. Why not ask students to analyze the Great Leap Forward itself, rather than to suggest that its accomplishments may have been worth its costs? A truly suitable activity? Read Jung Chaing's "Life and Death in Shanghai," a record of the arrests, mock trials, endless imprisonment, the beatings, the innocent children murdered—all in the name of social progress during Mao's Cultural Revolution.

As recently reported in the Nation's newspapers, apologists for this project will tell you this is "work in progress." Nothing to be alarmed about. Changes can be made.

Mr. President, this does not look like work in progress. Nothing in its content, nothing in its introductory chapters indicates that it is to be modified. It is a finished project.

At the present time, there are 10,000 copies of the United States, world, and K–4 history standards in circulation. These copies are in use throughout the educational world. In some cases they are already being used as curriculum guidelines. They are in the hands of textbook publishers, curriculum writers, and other education experts. Funded by taxpayers money, UCLA has been selling the standards books—$18 for individuals and $24 for groups—and they are making money.

Last Saturday, an apologist for the project was quoted in the Washington Post saying, "We shouldn't try to throw out the entire barrel just because there are a few bad apples in it."

Do not believe it. It is the opinion of Lynn Cheney, who herself authorized this project as Chairman of the National Endowment of the Humanities; Dr. Elizabeth Fox-Genovese, a professor of history and women's studies at Emory who was on the project's National Council, Gilbert Sewall, director of the American Textbook Council, also on the project's advisory board; and many others directly involved from its conception that these standards are beyond any hope of salvaging—much to their own great disappointment as much of their personal time and efforts were offered to the cause.

I agree. These standards must be junked in total.

The problem is not one of mere detail. The problem is in its philosophical foundations. Those foundations are fundamentally anti-Western, and anti-American in their conceptual framework. The correction of a few of the worst excesses will not remove that anti-American, anti-Western formulation at its base. And it is a most serious problem. Whether or not the standards are certified by the still to be created Goals 2000 NESIC Board, according to Gilbert Sewall and many others, the way in which the textbook establishment works, this manual, having the extraordinary prestige of being the first national curriculum guide, will become, de facto, official if not strongly repudiated. As Dr. Sewall has stated, "It will be the first draft of the next generation of textbooks."

Right now, there are 10,000 copies of these standards being circulated among leading American educators. Like the infamous exploding Pinto, these manuals pose a horrendous threat to the vitality and accuracy of American history education, and they must be recalled.

Mr. President, I have been in favor of national standards. Although I had serious reservations, I added my vote to Goals 2000. The development of this ideologically driven, anti-Western monument to politically correct caricature is not what the Congress envisioned, nor is it what the American people paid for. The purpose of this amendment is therefore publicly to repudiate its continued use and stop its further influence. Should such a project ever be taken up again, and I am not at all sure it should be, in light of this experience, it must be undertaken by scholars with at least a passable understanding of and decent respect for this country and for its roots in Western civilization.

On the eve of the Civil War in March 1861, in his first inaugural address, Abraham Lincoln reminded the troubled country of the importance of our shared and common past:

> Though passion may have strained, it must not break our bonds of affection. The mystic chords of memory, stretching from every battlefield and patriot grave, to every living heart and hearthstone, all over this broad land, will yet swell the chorus of the union, when again touched, as surely they will be, by the better angels of our nature.

The proposed national standards in American history are designed to and will destroy our Nation's mystic chords of memory, so eloquently invoked by Lincoln 130 years ago.

Those mystic chords of memory are already perilously frayed. Study after study demonstrates the wounding absence of a shared knowledge of our Nation's history. These standards would only serve to deepen that wound, and so they must be rejected.

Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. Is there a sufficient second?

At the moment there is not a sufficient second.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

RECESS

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate stand in recess until 2:05 p.m.

There being no objection, the Senate, at 1:35 p.m., recessed until the hour of 2:05; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. GREGG].

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

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

UNFUNDED MANDATE REFORM ACT

AMENDMENT NO. 139 TO AMENDMENT NO. 31

(Purpose: To prevent the adoption of certain national history standards)

Mr. DOLE. Mr. President, I send a second-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE] proposes an amendment numbered 139 to amendment No. 31.

Mr. DOLE. 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 after "SEC." and add the following:

. NATIONAL HISTORY STANDARDS.

(a) IN GENERAL.—Notwithstanding any other provision of law, the National Education Goals Panel shall disapprove, and the National Education Standards and Improvement Council shall not certify, any voluntary national content standards, voluntary national student performance standards, and criteria for the certification of such content and student performance standards, regarding the subject of history, that have been developed prior to February 1, 1995.

(b) PROHIBITION.—No Federal funds shall be awarded to, or expended by, the National Center for History in the Schools, after the date of enactment of this Act, for the development of the voluntary national content standards, the voluntary national student performance standards, and the criteria for the certification of such content and student performance standards, regarding the subject of history.

(c) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the voluntary national content standards, the voluntary national student performance standards, and the criteria for the certification of such content and student performance standards, regarding the subject of history, that are established under title II of the Goals 2000: Educate America Act should not be based on standards developed by the National Center for History in the Schools; and

(2) if the Department of Education, the National Endowment for the Humanities, or any other Federal agency provides funds for the development of the standards and criteria described in paragraph (1), the recipient of such funds should have a decent respect for United States history's roots in western civilization.

Mr. DOLE. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Is there further debate?

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

The PRESIDING OFFICER. The clerk will call the roll to ascertain the presence of a quorum.

The legislative clerk proceeded to call the roll.

Mr. JEFFORDS. 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. JEFFORDS. Mr. President, I would like to address the pending amendment.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, if one is not aware of the history of this issue over the past decade or so, this amendment might seem like one that we ought to concentrate on and seriously consider.

It brings up the issue of educational standards, but it takes our attention away from the basic reasons for the development of the Goals 2000.

When these goals were developed by the Governors in 1989, it came as a result of a 1983 report called "A Nation at Risk."

That report was released by the Secretary of Education at the time, Ted Bell, who served as Secretary of Education during the Reagan administration. It described serious deficiencies in our educational system. Those results have been verified by many studies including the somewhat recent Work Force 2000 report which pointed out very importantly and very critically that this Nation is not presently prepared to compete in the international market and will be less so in the future.

Here are some of the problems that created the demand for Goals 2000. Too many of our people right now do not even graduate from high school. But much more seriously is that only half of those who presently graduate have what is considered an acceptable basic education. Even more troubling is the fact that two-thirds of that half are functionally illiterate to one degree or another. They do not have the basic skills necessary to handle an entry level job. This means that our school system turns out millions of young people each year needing remedial education before they can effectively help us compete in the world economy.

The purpose of "A Nation at Risk" was to raise awareness that our Nation was facing a serious crisis. The standard of living had been slipping for the past decade or more and would continue to slip if we did not raise the quality of our education.

In the late 1980's, the business community was concerned that educational reform was not being implemented, even after President Bush had convened the national education summit and the Nation's Governors had created the goals which, with the input of Congress, are now referred to as Goals 2000.

The need for progress on this issue was important to the business community. I remember very well the first meeting I had in my office as a new Senator and as member of the Education Subcommittee with a group of this Nation's top CEO's whose firms were involved in international ventures. I expected that they might come to me and say, "We have to do something about capital gains."

They did not. They said that we must fully fund Head Start. If the United States did not make sure that everyone had the advantage of preschool training, early childhood education, and other compensatory programs, we would not produce the kind of high school graduates who would be able to compete internationally.

Our educational failures impact the business community, especially in those areas of graduate education which are so critical to our competitive edge in high-technology fields. Right now, about 40 percent of the slots for graduate schools in critical areas of science, engineering, and mathematics go to foreign students because they are more competitive for those slots.

That used to be fine, and I remember in my own State we had many foreign students who went to graduate school and ultimately worked for IBM. These days, unfortunately, foreign graduate students are not staying here. They are not returning the advantage of their skills and knowledge to our industries. They are all going home. In other words, we are sending about 40 percent of graduates from our schools, which are the best in the world, to work for our competitors.

I wished to raise this specter because this is the kind of problem which national standards should address. When we passed Goals 2000, we set forth a set of voluntary national goals and standards. In addition to the original goals proposed by President Bush and the 50 Governors, we expanded upon the goal for math and science competitiveness and added such subjects as history and arts.

What we are talking about today is the beginning of a process of developing standards which are necessary for our ability to compete in the international economy. I would hate to think we will begin debating subjects which are important but unrelated to

the more important issue of competitiveness and thereby disparage our national and worldwide standards.

Recently, members of the business community spoke about job training before the Labor Committee and said that we must enforce worldwide educational standards for our people can become qualified for the work force of the future. If people do not understand the requirements, they will continue presuming that the standards which we have been utilizing, the ones which we feel are an acceptable education, are quite all right.

People fail to realize that students in Taiwan graduate 2 years ahead of our students in science and math. In addition, studies show that not only are we removed from the list of top nations in science and math achievement, but that we are at the bottom of the heap.

My point is that we must concentrate on why the Goals 2000 bill was developed. It was deemed necessary to improve the standard of living of the Nation: To improve our standards and our competitiveness. While it is important for us to stay informed about recommendations for important subjects such as history, I am concerned that we will begin to forget why we are here, and that is to save the Nation.

I will introduce a second-degree amendment at an appropriate time which will address the concern of my good friend, the Senator from Washington, regarding the development of certain standards at the UCLA Center for History in Schools, those standards which have raised considerable controversy. But we must remember that those standards have not been adopted by anyone, and they are not in a form to be adopted. In fact, the panel which would approve them has not even been named yet. So we are prematurely criticizing something which is not even ready to be adopted.

But more importantly, the amendment requires that anything meritorious or relevant or acceptable that is in those standards should not be used. Now, I am not sure whether that means the acceptable elements could be proposed and later approved, or not. The amendment does not say. It simply states that the standards cannot be used and that no more money can go to them.

Therefore my amendment will leave in the final paragraph of the amendment of the Senator from Washington, which states the concern about how we adopt the history standards, but will remove that part which states that we should simply throw away everything that has been done in this area and prohibits the information from being used.

Out of a very substantial number of examples in the history standards, only a very few have provoked great controversy. Therefore, I will speak again later, when I offer my amendment. But I just want everyone to realize that the critical goal is to have an educational system second to none which will keep the United States competitive in the next century by providing the necessary skilled work force.

I will also mention the cost of doing nothing and the cost of trying to do away with these standards. Right now, over $25 billion each year are spent by our businesses on remedial education because of the failures of our school system. In addition, we have about a half a trillion dollars loss in the economy due to illiteracy, imprisonment, and the many other social ills that result from educational shortfalls. This is an extremely important issue, and I hope that we will remain focused on the primary issue of developing a more competitive nation for the future.

Mr. President, I must oppose the amendment offered by my colleague from Washington. The amendment, which has not been subject to any hearings or review by the committee of jurisdiction, prohibits the National Education Goals Panel and the National Education Standards and Improvement Council from certifying any voluntary national content standards in the subject of history.

As my colleagues may recall, under the Bush administration grants were awarded to independent agencies, groups, and institutions of higher education to develop worldclass standards in all the major subject areas.

The history standards were developed by the UCLA Center for History in Schools with the contribution of hundreds of individual teachers, scholars and historians. The standards, which have just recently been published, have raised concern among some readers. Criticism has focused not on the standards themselves but upon the examples of activities for students in each grade level. Of the thousands of examples, not more than 25 were considered controversial. However, upon receipt of public input and criticism the Center for History in Schools is reviewing and altering its work. This, in fact is, and should be, the appropriate process and primary purpose of public commentary.

But, I am not here to defend the specific content of these standards—that is best left to teachers, educators, and parents. Instead, I am concerned that this amendment has much broader implications.

At issue is not so much the specific substance of these standards. Indeed, the standards have neither been endorsed by any Federal body nor, for that matter, even been finalized. Rather, the issue is whether or not we have in place a process for developing world class standards. I cannot overstate the importance of this matter. Countless reports have outlined that our country is falling behind in international test comparisons because our children have not learned the necessary skills in order to compete successfully.

A recent survey of Fortune 500 companies showed that 58 percent complained of the difficulty of finding employees with basic skills. The chief executive officer of Pacific Telesis reported: Only 4 out of every 10 candidates for entry-level jobs at Pacific Telesis are able to pass our entry exam, which are based on a seventh-grade level.

It is no longer enough for Vermont to compare itself to the national average. Comparing one State with another is like the local football team believing itself to be a champion of national stature because it beat the cross town rival. No, we must compare ourselves with our real competitors—the other nations of this global marketplace. To date, it appears that they are quickly outpacing us in many pivotal areas.

I have had meetings upon meetings with the chairmen and CEO's of major U.S. corporations to urge me to support the development of high academic standards. Why? Because the status quo in our schools has failed. Too many of our graduates finish school without knowing the three R's, much less more rigorous content standards. For our country to remain competitive, it is essential that our schools prepare our future work force for the demands of the 21st century. Unfortunately, until we present our students with challenging content standards that goal will not be realized.

Instead, estimates indicate that American businesses may have to spend up to $25 billion each year just for remedial elementary math and reading instruction for workers before they can train them to handle modern equipment. Not only does this drain critical funds from our corporations but it dramatically affects our ability to compete in the global marketplace.

For the past decade the average wage has gone down. The standard of living is slipping and wealth is accumulating only at the top.

Until we are able to prepare our children for the future we will have failed ourselves, the next generation and this country. The first step to success is establishing strong academic standards so that our children leave school ready for the work force or for postsecondary education. Remedial education should not be the main function of our institutions of higher education or our businesses and corporations. By preparing our students while they are in school, we will reduce the need for catchup courses so many of our graduates now have to take.

We have a process in place to get our children ready for the 21st century. That process includes reforming our school and creating high benchmarks for students. That process is done through the National Council on Education Standards and Improvement. NESIC will be a 19-member council composed of professional educators,

representatives of business, industry, higher education, and members of the public. The council is authorized to certify voluntary national education standards and pass their recommendations to the goals panel for final approval. The role of the council is to certify that the standards developed in each subject area are credible, rigorous and have been developed through a broad-based process.

NESIC provides a mechanism for ensuring that standards remain national rather than Federal. If this duty was not being performed by such a council, the responsibility for certifying national voluntary standards would fall squarely upon the shoulders of the Secretary of Education—which would positively result in greater Federal involvement.

This body is a separate entity created to oversee the certification of voluntary national standards. It has absolutely no oversight authority over States. In other words, States are not required to agree with the voluntary national standards, they are not required to accept or incorporate any portion of the national standards or even acknowledge existence of standards.

Yet such a national council is essential to States and local schools to assist them in weeding out and reviewing voluntary standards. Without such an entity, each State will have to undertake that review by itself. To do that 50 times over simply does not make sense. Clearly, the recommendations of the council are not binding on States. The council's certification process is simply a Good Housekeeping seal of approval to assist States in determining which standards are rigorous and competitive.

For us to step in and derail this process makes no good sense. By passing this amendment and legislating a Federal override of NESIC's responsibility we not only jeopardize the whole independent nature of NESIC, we also jeopardize the process of creating tough academic standards. I don't think we have that luxury.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, if I may enter into this debate for a moment from a little different angle. I have enormous respect for the Senator from Vermont, who has just spoken with great dedication to the issue of education. He has devoted a great deal of time to the issue, both when he was in the other body as a Member of Congress and since he has been in the Senate and is now chairman of the Education Subcommittee of the Labor Committee.

I also can understand where the Senator from Washington is coming from in his concerns about the model national history standards which have been developed with Federal funds. However, as the Senator from Vermont has pointed out, they have not been adopted or certified as national standards yet.

There has been a lot of controversy about these standards as they have been proposed—controversy which, I may say, could have been anticipated. I was troubled when we first started down the path of providing Federal funding for the development of national standards. I would like to note that standards in various subject areas have been developed by professionals in the field, not by Federal employees as some may think. However, where Federal moneys are involved, there is often misunderstanding about the nature of the Government's involvement.

I am sure that developing these standards was very difficult for these professionals. It is far easier to develop standards, say in the field of mathematics or science, because there is more preciseness in both of those fields. When you get to history, however, so much revolves around a teacher's interpretation of the material that they may have in front of them. So I think when you get into particular areas of study like history, that it becomes much more difficult to develop standards on which there is going to be agreement. Whether it is with the particular standards we are discussing now or a totally different set of standards, I think you would find just as many people with concerns about them.

Although these are voluntary standards, as has been repeatedly emphasized whenever we have had these debates, this is a point which often gets lost. One reason I opposed the Goals 2000 legislation which was enacted last year is that it took Federal activities in this area yet another step further by including an authorization for a national council to review and endorse the national standards.

There is certainly a difference between voluntary national standards and mandatory Federal standards—but this is a distinction which is generally lost when such standards are put forward, particularly when they are likely to come before a group such as the national council which is charged with reviewing them. As one who believes strongly that the strength of our education system lies in its local base and community commitment, I have not felt it wise to expand Federal involvement into areas traditionally handled by States and localities.

I will support the Gorton amendment due to my concern about Federal involvement in national standards, even voluntary ones. At the same time, I believe the real issue is far broader than the current controversy over the history standards. Prohibiting a federally authorized council from certifying a particular set of voluntary standards is not the real answer. The real problem is that we have established in legislation such a group—the National Education Standards and Improvement Council, or NESIC—in the first place.

In the near future, I will be introducing legislation to repeal NESIC. My legislation would get the Federal Government out of the loop in an area which I believe is best handled by States and localities. Many of our States are already developing standards that the teachers and educators in the field of history feel is important for the schools in their States. But those States do not need to have a Federal seal of approval for those standards, voluntary or not. That is why I believe we may be missing the heart of this debate.

Nevertheless, I think the Senator from Washington has addressed a real concern regarding the model national history standards that have been developed with Federal funds.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I wish to speak against the Gorton amendment. I think the Gorton amendment fails to recognize the immense amount of work that has gone into trying to put this country on a road to having and pursuing higher national standards, higher standards in education throughout the country. This is work that has primarily been done by the Governors of this country. I will point out that it began in Charlottesville, when President Bush was there with our 50 Governors some 5 years ago.

Today, the National Education Goals Panel is made up primarily of Governors. There are eight Governors on this panel, there are two administration representatives, and there are four representatives from Congress. But clearly the Governors are those who set up the National Education Goals Panel. They are the ones who have led the way for this country to pursue national education goals and standards.

The Governors who currently serve on that are an extremely distinguished group: Governor Romer, Governor Bayh, Governor Fordice of Mississippi, Governor Hunt, Governor Engler, Governor Carlson, Governor Edgar, and Governor Whitman of New Jersey. They are a very distinguished group of Governors.

The amendment of Senator GORTON, in my view, would be an insult, if we were to pass this amendment, given the current state of deliberations by the National Governors and by the National Education Goals Panel on national standards. Essentially, this amendment says the National Education Goals Panel shall disapprove some proposed standards which have

not even been presented for consideration before the panel as yet. It completely puts the Congress in the position of preempting the National Education Goals Panel.

It further puts us in the business of preempting the National Education Standards and Improvement Council, which has not even been established. The members of that group, NESIC for short—that is the acronym that has been applied to this National Education Standards and Improvement Council—have not even been appointed. Yet, we are here being asked to adopt legislation directing this unappointed panel not to certify certain standards which have not yet been presented to them since they are not in existence.

It strikes me that this is the height of arrogance on the part of Congress, to be stepping into an area where we have not had the leadership. Just to the contrary, the Governors have had the leadership. And we are saying by this amendment, if we adopt it: Do not take any action to approve standards. You, the Governors and the other members of this panel, disapprove these proposed standards that have not yet even been presented to you. And second, if and when we get a National Education Standards and Improvement Council appointed, they are also directed not to certify any standards along the lines that have been proposed.

I certainly agree that there are major problems with the national standards that were proposed on history. I do not think that is the issue that is before us today. This whole business of getting standards in history is something which was started by the former administration, during the Bush administration. I recall the then Chair of the National Endowment for Humanities, Lynne Cheney, led the contract at that time to have these national standards developed. She has also, I would point out, been the main spokesperson objecting to the standards that have come back, or the proposed standards.

My reaction is that clearly she is right, that there are problems with what has been proposed, and we need to change what has been proposed or, on the contrary, we need to get some other standards adopted in the area of history before we go ahead.

But we are not in a position in my opinion as a Congress to be directing the National Education Goals Panel, made up primarily of Governors in this country, directing them as to what action to take or not to take on specific standards at this point.

The whole standards-setting process I believe has been a very healthy, forward looking, progressive effort in this country, and it has been bipartisan. It was bipartisan when it was started in the Bush administration with the Governors. It has remained so since then.

I have the good fortune of serving on a council that was established by the Congress to look at the whole issue of whether we should have national standards. That council came up with a report which said the high standards for student attainment are critical to enhancing America's economic competitiveness, the quality of human capital, and the knowledge of skills. The knowledge and skills of labor and management helps determine a nation's ability to compete in the world marketplace. International comparisons, however, consistently have shown the academic performance of American students is below that of students in many other developed countries. The standard setting process was a reaction to our concern in this area, and it is a reaction which the Governors took the lead in because of the primary responsibility for education has always been at the State and local level, and should remain there.

But we found in that council that I served on—this is a quotation from the report they came out with:

> In the absence of demanding content and performance standards, the United States has gravitated toward having a de facto minimal skills curriculum.

That is what the Governors were trying to deal with in the standard setting process. We should not allow our concern about some specific set of proposed standards which have not even been presented to the National Education Goals Panel for approval yet but we should not allow our concern about those specific standards to deflect us from the long-term objective of having standards, and holding ourselves accountable to reaching those standards. They are voluntary standards. They ought to be voluntary standards. But still they are standards. They are standards for which we believe certain benchmarks are appropriate. And clearly I believe that the standard setting process is an extremely important part of improving the American education system.

It would be a tragedy for us to step in before the first set of those standards have been presented to the National Education Goals Panel for approval and pass legislation directing how the National Education Goals Panel and the Governors who make up the majority of that group, are to dispose of standards.

So I hope very much that we will defeat the Gorton amendment. I know Senator JEFFORDS has an alternative which I will plan to support and speak for at that time. But I hope very much that the Congress does not overreach and try through this amendment that has been presented by the Senator from Washington to usurp the authority which I think has rightfully been seen as resting with the Governors of this country.

I thank you, Mr. President. I yield the floor.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I rise in opposition to the amendment offered by the Senator from Washington.

To my mind, this amendment is an unwarranted governmental intrusion into what is basically a private effort. It also constitutes micromanagement to a degree that is neither wise nor necessary.

First, the national standards that are being developed, whether in history or any other discipline, are purely voluntary. This was made clear in the Goals 2000 legislation and reinforced in the reauthorization of the Elementary and Secondary Education Act.

Second, the voluntary standards do not have to be submitted to either the National Education Standards and Improvement Council or the National Goals Panel. That, too, is voluntary. If the organization that developed the standards wants to submit them, they may do so at their own volition. It is not required.

Third, certification is nothing more than a Good Housekeeping Seal of Approval. It carries no weight in law, and imposes no requirements on States or localities. They are free to develop their own standards, and may use or not use the voluntary national standards as they wish.

Fourth, the history standards in question are proposed standards. They have not been finalized. Quite to the contrary, representatives from the National History Standards Project have met with critics and have indicated their willingness to make changes in both the standards and the instructional examples that accompany the standards. Their commitment is to remove historical bias and to build a broad base of consensus in support of the proposed standards.

Fifth, make no mistake about it, these proposed standards were not developed in secret or by just a few individuals. They are the product of over 2½ years of hard work. Literally hundreds of teachers, historians, social studies supervisors, and parents were part of this effort. Advice and counsel was both sought and received from more than 30 major educational, scholarly, and public interest organizations.

Mr. President, I strongly believe that we should not interfere with a process that is still in play. We should not inject ourselves in a way that might impede both the important work being done in this area and the effort to develop a broad base of consensus. Accordingly, I would urge my colleagues to oppose this amendment, and to support instead the substitute to be offered by the Senator from Vermont.

I yield the floor.

Mr. LIEBERMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I rise to support the amendment offered by the Senator from Washington [Mr. GORTON]. In fact, I ask unanimous consent at this point that I be added as an original cosponsor of the amendment.

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

Mr. LIEBERMAN. I thank the Chair.

Mr. President, I support this amendment because it puts the Senate on record opposing the national standards for U.S. and world history which, while not endorsed by any Federal agency, were developed with Federal tax dollars first issued in 1991. While not a Federal mandate in that sense, they are voluntary, nonetheless, I rise to speak in opposition to them because they carry the imprimatur of the Federal Government, and have the capacity to broadly affect the course of education and the teaching and understanding of history by succeeding generations of our children, the American children.

Mr. President, I should make clear, as I believe the Senator from Washington has made clear, that I support the idea of setting national voluntary standards to upgrade our education and to give us something to aim for. But I must say that the standards that were produced, the national standards for U.S. and world history that are at the core of what this amendment is about, were a terrific disappointment and may undercut some of the fundamentals, the core values, the great personalities and heroes of America and Western civilization and world history. By doing so, we put our children at risk of not being fairly and broadly educated.

While the hope of those involved at the time that these standards were authorized, which goes back some years, was clearly to encourage State and local educators to raise standards in the teaching of history to elementary and secondary school students, the draft proposed is full of the kind of valueless, all-points-of-view-are-equally-valid nonsense that I thought we had left behind—and I certainly believe we should leave behind—in the teaching of our children.

The history that many of us who are older learned in school obviously had its failings. It was not as inclusive as it should have been in many ways. But at least it provided core information about who we are as a nation and how our world and our Nation have progressed over time.

Mr. President, we have a lot to be proud of in American history. This great idea of America grew out of the Enlightenment and was established—now more than 200 years ago—by a courageous, principled, and patriotic group of Founders and Framers who were not casual about what they were doing.

They were motivated by an idea, by a set of values, and it is part of our responsibility as this generation of adults, let alone as this generation of elected officials and national leaders, to convey that sense of our history—about which we have so much to be proud—to our children.

First, in the interest of truth, because the American idea is a unique idea and has dramatically and positively affected the course of world history since the founding of this country—not just the course of world history in a macro sense, in a cosmic sense—it has positively affected, in the most dramatic way, the course of the lives of millions of Americans and millions of other people around the world who have been influenced by the American idea and by American heroes. And we ought not to let that be disparaged. We ought not to let that uniqueness, that special American purpose, be lost in a kind of "everything is equal, let us reach out and make up for the past exclusions in our history" set of standards.

So to me this is consequential. I guess the social scientists tell us that our children should think well of themselves if we expect them to do good things; that they have to have a good self-image. They mean this in the most personal sense of how parents raise children, how society gives children an impression of themselves. I say that in a broader sense of citizenship, our country has a responsibility, honestly and accurately conveying some of the blemishes as well as the great beauty of our history, to give our children a sense of self-worth as Americans. And part of that is respecting the great leaders in America that have gone before.

Mr. President, these draft standards are, alternatively, so overinclusive as to lose major events in American and world history, major participants, leaders, heroes in American and world history, in a tumble of information about everybody and everything. And then, on the other hand, they are oddly underinclusive about important events, people and concepts. Robert E. Lee, Thomas Edison, Albert Einstein, Jonas Salk, and the Wright Brothers, just to name a few, appear nowhere in these standards.

Thomas Edison, whose most memorable invention has become the very symbol of a good idea—the light bulb—is not mentioned. Albert Einstein, whose extraordinary contributions to our sense of the physical universe, let alone beyond, who changed our understanding of our existence in so many dramatic ways—not mentioned. The Wright Brothers, whose courage and boldness and inventiveness, steadfastness—with the development of airplanes, flight—has dramatically affected the lives of each of us and of society—not even mentioned in these standards.

In another way, in the world history standards, slavery is mentioned briefly in reference to Greece. The only other discussion of slavery concerns the transatlantic slave trade. Slavery, to the world's shame, existed in many cultures over many centuries, and those examples are not mentioned.

The Holocaust in Nazi Germany received significant attention, as it should. But the death, persecution, and humiliation in a cultural revolution in China go by with barely a whisper. There is nothing in the cold war section of these standards, this experience that dominated the lives of most of us in this Chamber from the end of the Second World War to 1989, when the Berlin Wall collapsed. The section on the cold war does not give the reader, the student, the teacher, the sense that that conflict involved principles at all, involved ideals. It describes it, in my opinion, solely as a contest for power. There is no indication that we were fighting a battle for democracy—not just a system, a way of government, but a way of government that has a particular view of what humans are all about, and a particular view that is rooted, I think, in the idea and the principle that people have a Creator. We say it in our founding documents, "that all men are created equal, that they are endowed by their Creator with certain inalienable Rights," not a casual accident of nature, but a conscious act by a Creator. Democracy is on the one hand, and totalitarianism is on the other, which denies all of that. The cold war is described blandly and revealingly in one sentence as "the swordplay of the Soviet Union and the United States." Inadequate, to put it mildly; insulting, to put it more honestly and directly.

We do not need sanitized history that only celebrates our triumphs, Mr. President. But we also do not need to give our children a warped and negative view of Western civilization, of American civilization, of the accomplishments, the extraordinary accomplishments and contributions of both.

I recognize that the Federal Government is not talking about forcing these standards on anybody. These standards were always intended to be voluntary, and I recognize that the standards we are talking about are not final. They are in a draft form. But the standards, by virtue of their being developed with Federal funds, have the unavoidable imprimatur of the Federal Government. Ten thousand of these are available throughout America. It is a very official-looking text. I, for one, worry that some well-meaning official of a local school district will get hold of it and think this is what we in Washington have decided is what the teaching of American and world history ought to be all about. In fact, I have been told that text book publishers are waiting to see what happens next with these standards so they can make their own plans as to whether to adopt the draft

standards wholesale. In fact, I have heard also that some school districts are close to adopting them.

I think it is particularly appropriate that my colleague from Washington has chosen this bill about mandates and Federal involvement in our society for us to speak out, to make sure that no one misunderstands these standards, to hope that teachers, parents, and students will understand the ways in which some of us feel they are deficient, and that, as the business of setting such standards goes forward from here, they will be developed with a better sense of balance and fairness and pride.

History is important. We learn from it. It tells us who we are, and from our sense of who we are, we help determine who we will be by our actions. The interest in these standards, in some sense, confirms the importance of history. And what I am saying, and what I believe Senator GORTON is saying, is that we should celebrate the vitality of that interest in history by starting over to develop standards that more fairly reflect the American experience, not to mention world history, and to particularly give better and fairer attention to the positive and optimistic accomplishments and nature of the American people.

I thank the Chair, and I congratulate my friend from Washington for taking the initiative on this matter.

I yield the floor.

Mr. BINGAMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, let me just make one additional point. I heard my good friend from Connecticut and my freind from Wahington.

I think it is particularly ironic that this amendment is being considered on the so-called Unfunded Mandate Reform Act of 1995. This bill that is being considered before the Senate today, the bill that is proposed to be amended, says in its preface:

> To curb the practice of imposing unfunded Federal mandates on State and local government; to strengthen the partnership between the Federal Government and State and 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.

Mr. President, we did try to defer to the States when we set up the education goals panel in the legislation, the Goals 2000 legislation, last year. We established that panel with eight Governors, four State legislators. And those 12 who represent the States would be offset by six representing the National Government, two from the administration and four Members of Congress.

Now we have taken this 18-member panel, the National Education Goals Panel, set them up and given them the responsibility to review proposals that are made for national standards. And here in Senator GORTON's amendment, we are proposing to step in before any standards have been presented to them and to legislatively prohibit them from adopting a set of as yet unproposed standards.

Now this is a Federal mandate, it is a mandate by this Senate, by this Congress to that National Education Goals Panel, made up primarily of State government representatives, and telling them what they shall and shall not do.

I, quite frankly, think it is insulting to the Governors, who are giving of their very valuable time to serve on this National Education Goals Panel, for us to be rushing to the Senate floor and passing legislation of this type before they have even been presented with anything in the National Education Goals Panel.

I am one of the two Senators that serves on the National Education Goals Panel. I represent the Democratic side. Senator COCHRAN represents the Republican side. We have not had a meeting to discuss these proposed standards. In fact, the proposed standards have not even been put on the agenda to be discussed at future meetings, and yet the Senate is considering going ahead and adopting an amendment by the Senator from Washington which says, "Notwithstanding any other provision of law, the National Education Goals Panel shall disapprove" these standards in whatever form they ever come to us.

Mr. President, I have no disagreement with my friend from Connecticut about the substance of the proposed standards that have been developed under the funding of the National Endowment for Humanities and the contract that Lynne Cheney let when she was in that position. I agree there are some serious problems there. But let us defer to that group primarily representing States and allow them at least to do some of their work before we step in and dictate the result. Particularly, let us not dictate the result as an amendment to a bill which is designed to end the imposition of Federal mandates on State, local and tribal governments.

I think it is the height of irresponsibility for us to proceed to adopt this amendment at this stage. I really do think those Governors and State legislators who are serving on that National Education Goals Panel deserve the chance to do the job which they are giving of their valuable time to do before we step in and try to overrule them and second-guess something which they well may decide not to do. I have no reason to think they are less patriotic or less concerned about a proper depiction of U.S. history than we here in the Senate are. And I think we should give them a chance to do the right thing.

Mr. President, I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, first, I should like to say with respect to my friend and colleague, the Senator from Connecticut, that it is always a pleasure to deal with him on the same side of an issue just as it is very dangerous to disagree with him and attempt to prove a case.

But as I have listened to the case presented against this amendment by three of my colleagues, one of my own party and two of the other, it seems to me that they argue in an attempt to have it both ways. Each of them was a strong supporter of Federal legislation, Goals 2000, which was designed to come up with national standards for the teaching of various subjects in our schools. Each of them, as far as I can tell, approved of spending some $2 million of Federal taxpayer money to finance a private study which resulted in these national standards.

But when it comes to our debating these highly controversial and I firmly believe perverse and distorted standards for world and American history, we are told we should butt out; we, the Congress of the United States, should have nothing to say about national standards for the teaching of American history. Or, in the alternative, the Senator from New Mexico says it is too early because they have not been adopted yet.

Would his argument be different if this commission had in fact adopted these standards? Well, of course not. His argument would be even stronger that we should have nothing to do with this process. Far better to express the views of Members of this body, and I hope of the House of Representatives, on a matter which is of deep concern to many of our citizens before some potential final action has been taken than to wait until afterwards.

But, Mr. President, this volume does not look like a rough draft. Nothing in this volume, for which we have paid $2 million, indicates that it is only tentative, it is subject to huge revisions. This is a set of standards which without regard to whether or not it is approved by a national entity has already been distributed in some 10,000 copies to educational administrators and interested people all across the United States which already has behind it the force of being a national project financed with national money.

I believe it more than appropriate that this technically nongermane amendment should be added to a bill on mandates, the bill we are discussing here today. While the Goals 2000 entity, the National Education Standards and Improvement Commission, cannot enforce its judgments on the States, they will certainly be given great weight by each of these States. And that council is a Federal entity. It may well be

made up of some Governors as well as some Members of this body and some legislators and the like, but it is a national body created by the Congress with a national purpose.

Nothing in my amendment, in which the Senator from Connecticut has joined, tells any Governor or State educational administrator that he or she cannot accept this book today, lock, stock, and barrel, if he or she wishes to do so. It does say that a Federal entity will not certify it as worthy of consideration as a guide for the teaching of American history. In that sense, each of these people is part of a national entity created by the Congress with a Federal purpose. Not only is it appropriate for Members to instruct such a group, I believe it to be mandatory.

We created the group. If it is our view that this is, in fact, a perverse document that should not be the basis for teaching American history, now is the time we should say so. Not after it has been adopted by several States. Not after it has been adopted by this national organization, but right now.

Opponents cannot duck behind the proposition that somehow or another they are taking no position. By voting against this amendment, they are taking the position that it is perfectly appropriate for these standards to be presented to the States of the United States as the way in which to teach the history of the United States of America.

The very individual, Lynne Cheney, then Chairman of the National Endowment for the Humanities, who came up with much of the financing for this, finds these standards to be totally outside of what she or the Endowment expected or participated.

And the critics are not from some narrow group in the United States. They represent the broadest possible mainstream of American thinking. Former Assistant Secretary of Education, Chester Finn, now at the Hudson Institute, called these history standards "anti-Western," and "hostile to the main threads of American history." Elizabeth Fox-Genovese, professor of history of women's study at Emory University declared "The sense of progress and accomplishment that has characterized Americans' history of their country has virtually disappeared" from these standards.

The president of the Organization of History Teachers, Earl Bell, of the University of Chicago Laboratory Schools, called the world history standards "even more politically correct than U.S. history standards." Charles Krauthammer, writing in the Washington Post, said that these proposed standards reflect "the new history" and "the larger project of the new history is to collapse the distinction between fact and opinion, between history's news and editorial pages. In the new history, there are no pages independent of ideology and power, no history that is not political." Herman Beltz, history professor at the University of Maryland said "I almost despair to think what kids will come to college with. I'm going to have to teach more basic things about the Constitution and our liberal democracy." Albert Shanker, president of the American Federation of Teachers, described the original draft of World History Standards as "a travesty, a caricature of what these things should be—sort of cheap shot leftist view of history." Finally, of course, Lynne Cheney said "the World History Standards relentlessly downgrade the West just as the American history standards diminish achievements of the United States," both calling into question "not only the standard-setting effort but the Goals 2000 program under which these standards became official knowledge."

In U.S. News & World Report, John Leo wrote:

> This won't do. The whole idea was to set unbiased national standards that all Americans could get behind. Along the way the project was hijacked by the politically correct. It is riddled with propaganda, and the American people would be foolish to let it anywhere near their schools.

Mark my words: To vote against this amendment is to vote approval of certifying a set of books, in this case entitled "National Standards for United States History," paid for by the American taxpayer, submitted to a Federal organization for its approval. I want to repeat, we do not tell any school district or any State that if it wants to treat this as a bible that it is forbidden to do so. All we do is to tell an organization we created that it is not to certify these standards. That they are unacceptable. That they denigrate the Western and the American experience, ignore the most important achievements of our history, and that if the Federal Government wants to do this job it ought to start over and do it again with people who have a decent respect for American history and for civilization.

I am a Senator who, unlike my distinguished colleague who sits next to me here, the junior Senator from Kansas, who voted in favor of Goals 2000 and in favor of national standards. And like others now seriously must question my own judgment in doing so, if this is the kind of product which is going to arise out of that process.

I believe very firmly that if we are to have national standards, if we are to have support not only of this Congress but of the American people for national standards in education and various subjects, we must do much better than this. Not later. Not a year from now. Not 3 years from now. This is the time to say, "This doesn't measure up." It does not reflect the American experience. It is not an outline of what we should be teaching our children about the history of this country, and for that matter, the history of the world.

The vote, like it or not, is on whether or not you agree or disagree with what has been produced here. Turn down this amendment, we are telling this national council "everything is OK; approve it, and go right ahead." Accept the amendment and we will have a positive impact not only on the teaching of our American history but of future standards in other subjects which are still incomplete. We may yet be able to save the true goals of Goals 2000.

Mr. BINGAMAN. Mr. President, could I ask the Senator a question as to his intent in the future, if the Senator would yield?

Mr. GORTON. I am happy to yield.

Mr. BINGAMAN. Mr. President, I ask my colleague from Washington, Mr. President, if it would be his intent every time a standard is developed for consideration, that we in the Congress would pass legislation for or against that before the goals panel got a chance to consider it?

Mr. GORTON. My answer to the Senator from New Mexico is that is a very good question, to which the answer is "no."

I sense that educational goals are likely to fall into two categories, one of which is more likely to be controversial than the other. Some of the standards in other areas—for mathematics, for example, or for the teaching of physics—will, I think, be very unlikely to be found controversial or be driven by ideology.

In the case of a set of standards which come from a narrow perspective, a narrow political perspective, it is certainly possible that there will be future debates, as there ought to be. I think the future debates are more likely to be driven by public reaction to these standards than they are by the preferences of individual Members of the Senate. This Senator was made aware of the standards by the blizzard of criticism which they created almost from the day that this book was published.

Now, by the fact that so many traditional historians in the United States find them so terribly objectionable, my deep hope, I say to the Senator from New Mexico, as a member of this national commission, will be that a decent respect for American traditions in the future in this and in the study of other kinds of social services on the part of those academics who generally dominate their writing such standards, will result in no action at all on the part of the Congress, because while there may be elements of controversy and particular standards, that controversy will not reach the fundamental basis of the very philosophy or ideology out of which they arise.

So I hope that this is not only the first time that we take up a subject like this, but the last time.

Mr. BINGAMAN. Mr. President, let me just ask one additional question. The education goals panel, to which we are here giving instructions prohibiting them from taking certain action, is scheduled to meet a week from Saturday here in Washington, with Governor Bayh—I believe he is the new Chair of the education goals panel.

What is the Senator intending to do by this action, by this vote, by this amendment? What is he intending to tell that group of Governors, and others who sit on that panel, about what their responsibilities are for considering standards in the future? Should they wait until we get some reading from the Congress as to whether or not there has been too much public concern?

I am just concerned that we are setting a precedent which essentially makes their job irrelevant or their role irrelevant if we are going to have public debates in the Congress and pass mandatory legislation dictating how they are to proceed every time a new set of proposals comes forward.

Mr. GORTON. Mr. President, I say to my friend from New Mexico, there is hardly an important commission or entity or agency in the United States whose controversial decisions or operations do not create controversy or debates on the floor of the U.S. Senate.

We are elected by the people. We have strong views on particular subjects. Of course, frequently, well beyond this particular council, we are going to have debates on ideas which other people, appointed by the President or appointed by us, deal with.

As the Senator from New Mexico well knows, there is not the slightest doubt that we will be engaged in a debate sometime later this year on the future of the Corporation for Public Broadcasting, and Members will attack and defend the way in which Federal money is spent by that independent organization, as it is by a myriad of other organizations.

As for the meeting a week from Saturday of this particular Commission, I would be astounded if this amendment were the law by then. Certainly the speed with which we have dealt with this unfunded mandates bill so far hardly indicates that it is going to be through this body and the House of Representatives, the differences between the two settled, on the President's desk and signed by the President by a week from Saturday.

So I suspect that legally, at least, that Commission will be perfectly free a week from Saturday to take whatever action it wishes.

I strongly suspect that many of those who are elected to positions in their own States and are appointed members of this Commission may have reached the same conclusion that I and others have at this point, and I strongly suspect that they will give great weight to the way in which this vote comes out. But they are going to give that great weight either way.

If we vote in favor of this amendment, even though it has not become law, I think that will greatly influence that council in rejecting these standards. By the same token, if we turn down this amendment, my opinion is that many members of that council will, in effect, say the Congress has approved these standards and they ought to go ahead and do so themselves.

Mr. LEVIN. 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.

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

Mr. GORTON. Objection.

The PRESIDING OFFICER. Objection is heard.

The assistant legislative clerk continued the call of the roll.

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

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

Mrs. BOXER. I thank the Chair.

I rise to speak about where we are at this time with this bill, to make the point that I have been basically on my feet since 12 noon trying to offer a very important and timely amendment that has bipartisan support, that is about an issue of great importance to the people of this country because, indeed, it is about law and order in this country.

On December 30, there was a horrible shooting in Massachusetts at a health care clinic.

The following day there was a shooting in Virginia, at a health care clinic. Obviously, at that time, the U.S. Senate, this 104th Congress, had not taken its place here and we were unable to respond, as I know we would have in a timely fashion, to condemn the violence and to call on the Attorney General to take the appropriate action to ensure the safety of those innocent people at those clinics around this country. As soon as I got back here I made a number of calls to Democrats and Republicans and I put together a resolution which currently has 21 cosponsors, some of them from the Republican side of the aisle.

I knew that this Senate had a lot of important business, but I also believed in my heart we would take 60 minutes or 30 minutes, or some time to go on record, speaking out as Americans—not Republicans, not Democrats—Americans speaking out against that violence.

I was very hopeful when I heard the majority leader, the new majority leader, Senator DOLE, speak out on national television, condemning the violence and saying that he was appalled at the violence. I said to myself, we will have bipartisan support so we can go on the record in this U.S. Senate. I know my Republican friends have a contract, a Contract With America or for America—or on America, some people call it—and they believe in that contract. Some of the things in there are good. A lot of it is awful, in my opinion. And they are on a timetable to move that through.

But I have to say that, while I believe the bill before us is very important—and I say to the occupant of the chair I know how much he worked, so hard on this unfunded mandates bill. I myself come from local government. I had to deal with the most ludicrous mandates in the 1980's that you could believe. I would love to be able to get a bill before us that does not go too far, that is sensible. And I want to work toward that end. I have a number of amendments that deal with it.

But I thought, as reasonable men and women, we could respond to a terrible problem we have in our country, and I was very heartened when I had bipartisan support. The Senator from Maine and I worked in a bipartisan fashion to speak to the majority leader, to speak to the new chairman of the Judiciary Committee. This goes back many days ago. Can we not set aside the bill for a very short time, the unfunded mandates bill, to take up this resolution in a bipartisan spirit and move on?

I waited. I was very patient, because I really wanted to get this done in the appropriate spirit of cooperation. The manager of the bill, someone I have grown to respect and admire and like, has been very open with me. I have to say the majority leader himself has continued the dialog with me. However, he has informed me that he does not want this to be pursued; that he will block my every effort to offer this as a second-degree amendment to the committee amendments in the hope that I can work out an agreement with some of those on the Republican side of the aisle who objected to this coming forward.

I have to say, both sides of the aisle put out what we call a hotline here to advise Senators that this was a proposal, and on the Democratic side there was no objection. There was objection on the Republican side. The majority leader would like to work this out.

I have read my amendment over. There was one phrase in it that I agreed we could change. I offered to make that change. I have to tell you, I think the amendment as it stands is very reasonable. It only has a small resolved clause:

> It is the sense of the Senate that the United States Attorney General should fully enforce the law and recommend to Congress any further necessary measures to protect persons seeking to provide or obtain or assist in providing or obtaining reproductive health services from violent attack.

I cannot imagine any reasonable person opposing that "resolved" clause. I

have looked at it again and again. We are calling on the Attorney General to fully enforce the law and recommend to Congress any further necessary measures needed to protect decent people.

I think it is important to note that there have been over 1,600 incidents of arson, bombing, vandalism, and assault against reproductive health care clinics and the people who work there since 1977. This is not a problem that has started yesterday. Last year, there were over 130 incidents, 50 reports of death threats to doctors and other clinic workers, 40 incidents of vandalism, 16 incidents of stalking, 4 acts of arson, 4 murders, and 3 attempted bombings. That is what is going on in America.

I think we should be able to agree in a bipartisan fashion to a very simple statement that we call on the Attorney General to fully enforce the law and to come back to us if she thinks other measures should be taken. My goodness, we are not asking for more dollars here. We are not asking for anything more than the law be fully enforced and that, if for some reason, more needs to be done, that we be told about it.

I want to hold up, here, a poster which is a sample of what is being distributed across America today. It is a "wanted" poster, with pictures and names of physicians. The language is frightening. "Wanted for killing unborn babies in the South Bay." This is from California. The language is violent language, and I hope that the people behind these kinds of posters will rethink their language.

I know they are committed to an issue that they feel deeply about. I defend their right to peacefully protest. As a matter of fact, if they were not able to do that, I would join them in that fight, I believe so much in America and freedom of speech. But I do think, again, we have often used the example: We have freedom of speech, but when we yell "fire" in a crowded theater, perhaps it is going to lead to something horrible.

This is leading to something horrible, to people being killed. I have met the families of these physicians who have been murdered. They lost dads and they have lost moms. I met the families of the volunteers who helped the women trying to obtain their health care, one of them a retired military person, shot down dead trying to protect women exercising their rights. So when you say, "How can a doctor deliver babies one day and kill them the next," you have to think about the words that you are using.

I hope that we will come together on all sides of this issue and recognize that we resolve our problems here in America, not the way they do it in Bosnia, not the way they do it in Haiti, not the way they do it in Russia, but by fighting for laws that we think are right. And by the way, we passed one of those laws, and we did it in a bipartisan way. But it seems to me that as we went on record then, we should go on record now.

Since 1982 the Bureau of Alcohol, Tobacco and Firearms has investigated 148 clinic bombings and arson causing $12 million in property damage. Doctors working in clinics go to work every morning haunted by murderers. They have their homes picketed and their children followed to school. At one time one of the organizations mounted a national campaign called "No Place to Hide" complete with "Abortion Busters Manual on How to Attack." They placed doctors' names and addresses on "wanted for murder" posters, distributed fliers listing the times, dates, and places for picketing medical clinics and physicians' homes and churches. And other groups put out a handbook calling it a "How-to Manual of Means to Disrupt and Ultimately Destroy Satan's Power to Kill Our Children." The book provides 99 covert ways to stop abortion. It advocates "Super Glue" for jamming locks on clinic doors, cutting off water power, breaking windows, spray painting walls, and expresses ways to use muriatic acid—I have talked to people who worked in clinics who are aware of this—including injecting it into the clinic ceilings and ventilating systems.

The book also has a recipe for homemade plastic explosives and suggestions on how to make a bomb threat and techniques for uncovering unlisted phone numbers and addresses. In a section of the book claiming to be an interview, a member of this organization says, "I ask you what would you do if your very own child was scheduled for execution in the morning." And the answer comes back in this book: "One, blow the place to kingdom come; and, be there with all the guns and ammunition in the morning just in case."

I cannot believe we cannot take an hour's time out on a bipartisan resolution like this simply calling on the Attorney General to do all she can do to enforce the law, the law that we passed in a bipartisan fashion. I have been so willing to cooperate with the majority leader, and to his credit he has been very direct with me, I will say that. But I have been blocked from offering this.

I do not ever remember blocking anyone from the other side from offering an amendment. I really might fight their amendment. I might argue against their amendment. But I never tried to block their ability to offer an amendment. I am very saddened that this is where we are. I think the American people must wonder. We are debating mandates. That is good. But that mandate law is going to take a while to be put in place. It will create a huge bureaucracy. You should be ready for it. I mean, that mandates bill will have bills make more stops than the local bus on the way to becoming a law. And we will debate that.

But this amendment is merely a sense of the Senate that puts the Senate on record in a bipartisan way. All we are saying is, "Attorney General, enforce the law. Enforce the law even if you need to come back and tell us what else you have to do."

We know one American who killed Dr. John Britton and his volunteer escort James Barrett outside of the clinic in Florida. He claimed it was justifiable homicide. This Senate cannot sit back. I know we move slowly, but these incidents occurred at the end of December. We have yet to go on record. I think that is wrong. I think that is horribly wrong.

So, Mr. President, I look forward to being able to get this resolution before the body. And I will continue to stay here as long as it takes so that this Senate goes on record in a bipartisan way and says this killing, this violence is wrong, and says in a bipartisan way we call on the Attorney General to do all she can to protect those clinics.

I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Thank you, Mr. President. I will be brief.

I would like to thank the Senator from California for her words on the floor of the Senate. As I understand it, this is a sense of the Senate. It is the sense of the Senate that the U.S. Attorney General should fully enforce the law and recommend to the Congress any further, necessary measures to protect persons seeking to provide, or obtain or assist in providing or obtaining, reproductive health services from violent attack.

Might I ask the Senator, is this what she wants the U.S. Senate to go on record for?

Mrs. BOXER. If the Senator will yield, that is correct.

Mr. WELLSTONE. Mr. President, I just would like to say to people in the country, citizens around the country, that quite often—I have only been in the Senate now for 4 years; that puts me in my first term—but quite often what we could be doing, the deliberative body that we are, is while we are working on a piece of legislation when there are compelling issues before us, then we bring amendments out that we think are important whereby the Senate takes a position on an extremely important question.

I have to say, given the murders that have taken place in this country recently—and murder is never legitimate—the amendment of the Senator from California is extremely important. I think people should know that basically what has happened here is that she is blocked from offering her amendment.

Mr. President, for the life of me, I do not understand why we could not bring this amendment out on the floor, why it could not be a sense of the Senate passed. I think it is a terribly important amendment. It is a sense of the Senate, but it is an amendment that says that all of us, Democrats and Republicans alike, care fiercely about law and order and care fiercely about protecting people's constitutional rights, that we are opposed to murder, that we are willing to take a strong position on this.

So I thank the Senator for her amendment. I hope that we will be able to bring this to the floor and have an up-or-down vote.

Mr. President, if there are no other Senators seeking recognition or interested in speaking right now, I would be pleased to yield the floor. Otherwise, I would like to suggest the absence of a quorum. I would like to see whether I cannot get an amendment to the floor. But could I, first of all, 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. WELLSTONE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. WELLSTONE. Mr. President, I ask unanimous consent that we set aside the pending committee amendment and call up the committee amendment on page 33 so that I can offer an amendment to that amendment.

Mr. NICKLES. Mr. President, I object for the time being.

The PRESIDING OFFICER. Objection is heard.

Mr. WELLSTONE. Mr. President, just so my colleague from Oklahoma and others following will know what I am trying to do here, like the Senator from California, I am anxious to get on with amendments. My understanding was that the committee amendment on page 33, if we could put aside this committee amendment and move to that committee amendment, I might be able to offer an amendment to that amendment.

I do not think it is an amendment that is controversial. I am trying to get an amendment up on the floor which deals with the whole issue of whether or not as a part of how we look at accountability committees would not be required, if they were going to file reports, to have a child-impact statement. So it is an amendment that is straightforward. I am prepared to agree to a time limit. It is an extremely important amendment. That is the amendment I am trying to bring to the floor.

I gather that my colleague from Oklahoma has not changed his view on this matter. Mr. President, I have tried with all my might, and I am blocked from bringing up the amendment at this point. I am anxious to get going with amendments and a discussion, and I hope soon there will be some sort of break in this impasse.

Mr. President, I yield the floor.

Mr. GLENN. Mr. President, what is the legislation before us now? Exactly what is the pending business?

The PRESIDING OFFICER. The Dole amendment to the Gorton amendment.

Mr. GLENN. The Dole amendment would modify the——

The PRESIDING OFFICER. The Dole amendment is an amendment to the Gorton amendment.

Mr. GLENN. Second degree.

The PRESIDING OFFICER. That is correct.

Mr. GLENN. 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. 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 rise in support of the amendment offered by the Senator from Washington, which addresses the issue of national standards in the area of U.S. history and world history.

This amendment is very appropriate in light of the discussions which have recently occurred and the presentation which has been made now by this national standards proposal.

The question which is before us really is: Is it appropriate for the Federal Government to be in the business of setting national standards which, although voluntary in name, in actual fact may end up being standards that will be used throughout the country and will inevitably be enforced upon many school districts in this country?

Once you have a group which has been funded by the Federal Government to the tune of $2 million, producing a set of national standards in any curriculum activity, it is inevitable that those standards will be used by local groups within activist educational communities to try to force that curriculum on local school boards and local school districts. In fact, I think it is logical to presume that once a national standard has been set and defined by some group which has received the imprimatur of the Federal Government, you will see that that standard is aggressively used as a club to force local curriculums to comply with that national standard.

This is something that concerned me greatly when we took up the issue of Goals 2000, and I argued aggressively at that time that it was a mistake to set up this national school board called NESIC. By setting up that national school board you were essentially creating a situation where the term "voluntary" was actually illusory. You would end up where the Federal Government would start defining what would be in the curriculum of the local school districts, and they would have to comply with that not only because local educational activists would start litigating for compliance and claiming that local school districts which were not in compliance were therefore not teaching properly, but also because of the fact that funding from the Federal level will inevitably, at some point, be tied into whether or not local school districts are complying with these national standards.

In fact, when we took up the elementary and secondary school bill, that was the exact attempt that was made. It was fought off here in the Senate by those of us who were members of the conference committee, and it did not end up being the final law. But it was an aggressive attempt made to apply to local school districts national standards in the area of opportunity to learn, and those national standards were going to be enforced on the local school districts by using the funding mechanisms of the Federal Government as a club to require compliance.

And so now we have a curriculum exercise coming again from the national level which will inevitably, in my opinion, lead to a top-down directive as to how a curriculum should be structured in this country. There are a lot of problems with that, but there are especially a lot of problems with that when the curriculum which is designed, and which is being put forward by the national organizations, is so biased and so editorial in comment.

This is a curriculum which spends very little time addressing the substance of history and the facts of history and spends a great deal of time presenting the editorial comment on history and a revisionist view of history. As has been mentioned before, within these standards, eight times we see the American Federation of Labor mentioned. We see Senator McCarthy mentioned 19 times. Ku Klux Klan is mentioned 17 times. Granted, the American Federation of Labor did have a major impact on American history, and Joseph McCarthy had an impact—passing at best—on American history. The Ku Klux Klan was a representative of a reprehensible period in our history. But if you are going to put that much time into those types of activities, why and how could you possibly ignore the mention, as has been pointed out here, of the undertakings of people like the Wright Brothers, Thomas Edison, Albert Einstein? It does not really get into the issue of who the combatants were in World War I, or the factual events that created the War of 1812, and what the battle of New Orleans was all about, for example. If you

want to take a historical event that ought to at least be pointed out in our history books, that allowed for the opening up of the entire West. It would not have occurred without it. That list goes on and on.

Then in the area of discussing how we as a culture came together, the fact that we are a Western-based culture appears to be something that this historical standard which is being promoted here tries to ignore, possibly even reject, and certainly undermines, as it spends an incalculable amount of time pressing the logic that should be taught as being the logic of Muslim scholars and scholars who really have very little relevance to what is the core culture of the American society, which is Western, whether you like it or not; that is what we come from. You cannot really understand America's heritage unless you understand our Western culture. You also cannot understand our Government, or the way we function, unless you at least have passing knowledge with people like Henry Clay, Daniel Webster, and even historical figures like Paul Revere, and the people who fought for the Sons of Liberty in Boston. Yet, these individuals who played a fairly significant role in defining our course in history as a Nation are virtually ignored.

History is about individuals, whether you like that or not. History is about individuals. Individuals have a major impact on the course of our lives. The study of major individuals within history is necessary if you are going to understand the course of history.

You cannot possibly understand 20th century world history unless you understand Adolf Hitler, or Joseph Stalin, or Lenin. You cannot understand American history unless you look at people like Daniel Webster and what he did, or Thomas Edison and what he did, or Albert Einstein and what he represented, or the Wright Brothers and what they represented.

Yet, this new curriculum would essentially ignore the concept that individuals matter and would base its thought process on a revisionist view of what history is and how individuals impacted it.

The proposal, as it comes forward, for all intents and purposes, ignores the cold war as a confrontation of ideology. The Soviet system, which was an outgrowth of Marxism, does not even discuss the concept, for all intents and purposes, that it was the United States culture of freedom, of individuality, of individual rights going up against a culture of totalitarianism, of collectivism, and of the usurpation of the individual and the replacement of individual rights with the right of the State. That confrontation, over which this country spent billions of dollars and lost many, many American lives is, for all intents and purposes, passed over as a casual event, an event that is not of enough significance to spend a great deal of time on or an event which is caricatured through the representations of somebody like Joseph McCarthy.

The rewriting of history, I believe, we found throughout various cultures is extremely risky. A culture that lies to itself about what its history was, tries to undertake revisionist history and teaches its children revisionist history, is a culture that is going out on thin ice. This was seen in most recent examples in this century in the Soviet history system or in the Chinese history system as it presently exists today or, of course, in the German history system of the 1930's and early 1940's where, essentially, people who have a political philosophy—totally repugnant, of course, in our terms, but it was a political philosophy—defined history in terms of their political philosophy.

One cannot look at this book which has been proposed on American history and not conclude that what we have here is a group of folks who wanted to define American history in the terms of their political philosophy. They have, it appears, only a passing interest in factual history; virtually no interest, actually, in factual history; and a deep interest in cultural history, but it is a cultural history which they are going to define in their terms and under their procedure. OK, if they want to view history that way, that is their decision. If that is the way these folks who have decided to rewrite American history wish to view our times and the times of our ancestors, that is their decision. But the problem here is that they are taking that view of the world and they are putting it upon educational systems throughout this country by having it nationalized and having it receive the imprint of appropriateness, the seal of correctness, through Federal financing and what will probably be Federal activity through the national school board, NESIC.

And that is what is wrong with it. It is not only incorrect history, in my humble opinion—and I guess people can disagree with that—and very much revisionist history and politicized history and editorialized history, but it is also an attempt to take that editorial viewpoint and subject school districts throughout this country to it by designating it as the correct history.

Well, I do not believe that the Federal Government should be in the business of defining the correct history. And I certainly do not feel it should define the correct history for the State of New Hampshire or for the school systems within my State. And I especially do not appreciate it when that correct history is so grotesquely biased in its presentation.

There was some discussion earlier by a Senator as to the effect of the drafting of this even if it is not endorsed by NESIC. I think we need to look at that, because this is the first exercise of this nature that has come forward.

I am extremely concerned that, because of the nature of the community of historians who dominate the intellectual process of defining our history in this country, we are going to find that this correct history will become the standard of the new textbooks.

Anybody who has had the experience of dealing with American history textbooks knows that they go in sort of fads. They go through periods of one textbook being in and the next textbook being appropriate. And because textbooks are so expensive for school systems and so expensive to produce, they tend to be single entities that become very big best sellers and dominate the curriculum within the school systems.

My concern is that what we have created here is the ability of an insidious monster. I guess all monsters are insidious, but this one is especially so because, as a practical matter, what we have created here is the core of what I suspect textbooks are going to look to. Because if you are a textbook creator and a writer or publisher, you are going to say you want to pick the course of least resistance and the easiest approach. You are going to say, "Well, here is the Federal Government that spent $2 million to produce this cultural treatise. Why should I go out and reinvent the wheel? I am just going to take over what has been done by the Federal Government. After all, it has been done by the Federal Government, so who could ever argue with me," I, the publisher, "if I undertake the republication of this document basically in the form it was produced?"

And so we have created a situation where, I suspect, inevitably the core elements of this cultural document will end up being part of the text in a textbook initiative which will be promoted across the country, and it will have been done at taxpayers' expense and at our history's cost. And that will be unfortunate.

I hope that the publishers of this country who produce our textbooks will take note of the debate on this floor and sense the significant concern that is being expressed here about the quality of the workmanship of this product, because it is not good quality and it does undermine the teaching of history in this Nation, in my opinion.

So I wish to associate myself with the comments of the Senator from Washington.

I also wish to associate myself with the Senator from Kansas when she came to the floor earlier and stated that she intended to offer an amendment to repeal NESIC and end this national school board experiment. It should never have been proposed in the first place. It was a mistake and we

should terminate it right now. The Federal Government does not have a role in this area, and it certainly should not be putting taxpayers' dollars at risk in this area.

I yield back my time.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I thank my friend from New Hampshire for his eloquent support.

During the period of time this was actively debated between myself and the distinguished Senator from New Mexico and others, he and I have reached an agreement, which I find to be most constructive. As a result of that agreement, I intend in just a moment to ask unanimous consent to modify the Dole second-degree amendment, to modify it in a manner which would turn it from a statute to a sense-of-the-Senate resolution.

Since technically if the committee amendment to strike is ultimately adopted it will all fall. In any event, the most important, the vital part of what we are doing is really to express the views of this Senate to this National Education Standards and Improvement Council.

It will do so in the fashion that I asked for. We will have a vote on it. The vote will be far more one-sided than it would have been on the original amendment, and I have every confidence that the National Standards Council will listen to what the Senate has to say. If it does not, any Member is free to bring up the subject at any future time. This will also help the progress of the underlying bill, S. 1, itself.

AMENDMENT NO. 139 TO AMENDMENT NO. 31, AS MODIFIED

Mr. GORTON. With that in mind, Mr. President, I ask unanimous consent that the Dole second-degree amendment be modified in the fashion which I have already sent to the desk.

Mr. GLENN. Mr. President, reserving the right to object, I do not believe I will object, but I want to clarify this.

Ordinarily, a person who puts in the amendment would modify his own amendment. Is this something the Senator has worked out with the majority leader?

Mr. GORTON. Mr. President, I answer my friend, it is the second-degree amendment to my original first-degree amendment that was prepared by the majority leader as a courtesy to me. I have worked it out with his office and he agrees to it.

Mr. GLENN. Mr. President, I will not object.

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

The amendment will be so modified.

The amendment (No. 139), as modified, to amendment No. 31, is as follows:

Strike all after "**SEC.**" and insert:

"NATIONAL HISTORY STANDARDS.

"(a) IN GENERAL.—It is the sense of the Senate that the National Education Goals Panel should disapprove, and the National Education Standards and Improvement Council should not certify, any voluntary national content standards, voluntary national student performance standards, or criteria for the certification of such content and student performance standards, on the subject of world and United States history, developed prior to February 1, 1995.

"(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

"(1) voluntary national content standards, voluntary national student performance standards, and criteria for the certification of such content and student performance standards, on the subject of world and United States history, established under title II of the Goals 2000: Education America Act should not be based on standards developed primarily by the National Center for History in the Schools prior to February 1, 1995; and

"(2) if the Department of Education, the National Endowment for the Humanities, or any other Federal agency provides funds for the development of the standards and criteria described in paragraph (1), the recipient of such funds should have a decent respect for the contributions of western civilization, and United States history, ideas, and institutions, to the increase of freedom and prosperity around the world."

Mr. BINGAMAN. Mr. President, I would like to comment and thank my colleague from the State of Washington for his willingness to work with me to modify this amendment. I have devoted considerable time and effort to the National Education Goals Panel and I appreciate Senator GORTON's understanding of my concerns about the role of that Panel and especially about preserving the national character of the Panel and its work. In adopting this amendment we are expressing displeasure with the current version of the national history standards, but we are also saying two very important things:

First, that the U.S. Senate is not interfering with the National Education Goals Panel doing its work and performing its duties under the law; and

Second, that the U.S. Senate is not interfering with the appointment of the work of the National Education Standards and Improvement Council or the performance of its duties under the law.

I think these are important points to make as we take this action.

Again, my thanks to Senator GORTON for his courtesy and understanding with respect to this very important issue.

Mr. LEVIN. I want to commend Senator BINGAMAN of New Mexico, for his successful effort to modify the Gorton amendment. The modified amendment expresses a sense of the Senate but does not bind the panel on which Senator BINGAMAN serves. We have asked that panel to serve as independent persons bringing their own experiences and talents to an important task. They should not be dictated to by Washington if we wish them to sue their best judgment and to usefully spend their valuable time. The modification allows for that independent functioning to continue. I particularly commend Senator BINGAMAN for his energy in achieving the modification and to Senator GORTON for agreeing to modify his original language.

Mr. KENNEDY. Mr. President, I rise in opposition to Senator GORTON's amendment. I do not oppose the principle that national standards in history for the Nation's schools should respect our country's roots in Western civilization. I completely agree with that concept. It is vitally important that our students learn that the foundations of our democracy owe a great debt to our European ancestors.

The National Center for History in the School is the group that received the contract to develop the history standards. It has a sole source contract awarded by President Bush's Director of the National Endowment for the Humanities, Lynn Cheney. The Center agreed with critics, and it will revise the standards and reissue them this next spring.

But this amendment represents extreme congressional interference in the work of the National Education Goals Panel. This distinguished and independent group was created by President Bush, Governor Clinton, and other Governors after the Education Summit in 1989. Last year, in the Goals 2000 Act, Congress endorsed the Goals Panel and gave it statutory authority to review any standards that were voluntarily submitted to it.

A process of certification for voluntary national and State standards was established by Congress last year in title II of the Goals 2000 Act. It provides a process for a through and objective review and certification of the standards.

The distinguished Americans serving on the panel have been assigned the responsibility of making judgments on the criteria for certification and on the overall determination as to whether a specific set of standards should be certified.

The Panel includes Senators BINGAMAN and COCHRAN, Congressmen GOODLING and KILDEE, Governors Jim Edgar of Illinois, John Engler of Michigan, Daniel Fordice of Mississippi, Evan Bayh of Indiana, Jim Hunt of North Carolina, Roy Romer of Colorado, and Christine Todd Whitman of New Jersey. Secretary of Education Richard Riley is also a member of the panel.

The amendment says, in effect, that the Senate does not trust the judgment of these distinguished officials serving on the panel to carry through their responsibilities and determine whether history standards are appropriate.

In approving the Goals 2000, Congress took great care to assure that the important and sensitive process of certification would be carried out in a careful and thoughtful way. We should let the panel do its work and I urge my colleagues to reject the amendment.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I believe a rollcall has already been ordered on this second-degree amendment. Also, if there are no other persons that wish to speak, I am ready to have a rollcall vote.

Mr. BYRD. Mr. President, would the distinguished Senator add my name as a cosponsor to his amendment?

Mr. GORTON. Mr. President, I would do so now, as I have forgotten another matter. I ask unanimous consent that the distinguished Senator from West Virginia be added as a cosponsor to the amendment as modified.

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

Mr. GORTON. Mr. President, I ask that this Senator be added as a cosponsor to the amendment as modified.

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

Mr. GORTON. Mr. President, I ask unanimous consent that the senior Senator from Texas [Mr. GRAMM] be added as a cosponsor to the original.

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

Mr. KEMPTHORNE. Mr. President, I believe all Senators who wish to address this particular issue have done so. It would be in order, so I suggest we go forward with the vote at this time.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment numbered 139, as modified. The yeas and nays have been ordered. The Clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 99, nays 1, as follows:

[Rollcall Vote No. 23 Leg.]

YEAS—99

Abraham	Daschle	Hutchison
Akaka	DeWine	Inhofe
Ashcroft	Dodd	Inouye
Baucus	Dole	Jeffords
Bennett	Domenici	Kassebaum
Biden	Dorgan	Kempthorne
Bingaman	Exon	Kennedy
Bond	Faircloth	Kerrey
Boxer	Feingold	Kerry
Bradley	Feinstein	Kohl
Breaux	Ford	Kyl
Brown	Frist	Lautenberg
Bryan	Glenn	Leahy
Bumpers	Gorton	Levin
Burns	Graham	Lieberman
Byrd	Gramm	Lott
Campbell	Grams	Lugar
Chafee	Grassley	Mack
Coats	Gregg	McCain
Cochran	Harkin	McConnell
Cohen	Hatch	Mikulski
Conrad	Hatfield	Moseley-Braun
Coverdell	Heflin	Moynihan
Craig	Helms	Murkowski
D'Amato	Hollings	Murray
Nickles	Rockefeller	Snowe
Nunn	Roth	Specter
Packwood	Santorum	Stevens
Pell	Sarbanes	Thomas
Pressler	Shelby	Thompson
Pryor	Simon	Thurmond
Reid	Simpson	Warner
Robb	Smith	Wellstone

NAYS—1

Johnston

So the amendment (No. 139), as modified, to amendment No. 31, was agreed to.

The PRESIDING OFFICER. We now have amendment 31, as amended, before the body.

Mr. KEMPTHORNE. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

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

Mr. HOLLINGS addressed the Chair.

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

The legislative clerk proceeded to call the roll.

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

Mr. KEMPTHORNE. Mr. President, I object.

The PRESIDING OFFICER. Objection has been heard. The clerk will continue the call of the roll.

The legislative clerk continued with the call of the roll.

Mr. BYRD. 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. BYRD. Mr. President, if I might have the attention of Mr. KEMPTHORNE and the managers on our side?

The PRESIDING OFFICER. The Senator will suspend. The Senate is not in order.

The Senator from West Virginia.

Mr. BYRD. Mr. President, I note in both committee reports, the report by the Committee on Governmental Affairs and the report by the Budget Committee, the following language—page 12 of the committee report from the Committee on the Budget; page 15 from the committee report of the Committee on Governmental Affairs. Let me read this. Then I want to make an inquiry.

Mr. President, I read as follows. I will presently read from the report of the Committee on the Budget, page 12:

This section provides two new Budget Act points of order in the Senate. The first makes it out of order in the Senate to consider any bill or joint resolution reported by a committee that contains a Federal mandate unless a CBO statement of the mandate's direct costs has been printed in the Committee report or the Congressional Record prior to consideration. The second point of order would lie against any bill, joint resolution, amendment, motion, or conference report that increased the costs of a Federal intergovernmental mandate by more than the $50,000,000, unless the legislation fully funded the mandate in one of three ways:

1. An increase in direct spending with a resulting increase in the Federal budget deficit (unless the new direct spending was offset by direct spending reductions in other programs);

2. An increase in direct spending with an offsetting increase in tax receipts, or

And this is the one I wish to ask Senators to pay close attention to.

3. An authorization of appropriations and a limitation on the enforcement of the mandate to the extent of such amounts provided in Appropriations acts.

The Committee notes that "direct spending" is a defined term in the Balanced Budget and Emergency Deficit Control Act. The Committee also intends that in order to avoid the point of order under this section, any direct spending authority or authorization of appropriations must offset the direct costs to States, local governments, and Indian tribes from the Federal mandate.

Notice, "If the third alternative is used"—in other words, authorization of appropriations—if that alternative is used, "a number of criteria must be met in order to avoid the point of order."

First, any appropriation bill that is expected to provide funding must be identified. Second, the mandate legislation must also designate a responsible Federal agency * * *

Let me read that again. Let me read that paragraph again.

Second, the mandate legislation must also designate a responsible Federal agency that shall either: implement an appropriately less costly mandate if less than full funding is ultimately appropriated * * * or declare such mandate to be ineffective.

This is page 12.

Mr. HOLLINGS. Page 12. OK.

Mr. BYRD. The report of the Committee on the Budget.

The same language is in the other committee report but upon different pages. Page 12, right at bottom.

To avoid the point of order, the authorizing committee must provide in the authorization legislation for one of two options:

1. The agency will void the mandate * * *

Now, this is the executive branch agency. I hope Senators will get this.

The agency will void the mandate if the appropriations committee at any point in the future provides insufficient funding to states, local governments, and tribal governments to offset the direct cost of the mandate.

2. The agency [meaning an instrument of the executive branch] can provide a "less money, less mandate" alternative, but this alternative requires the authorizing legislation to specify clearly how the agency shall implement that alternative.

Mr. President, I do not believe that this body should pass worrisome provisions such as this, that may lead to greater litigation and further complicate the issue. I understand that this provision—and I hope that I can verify this by one or both managers on both sides of the aisle—I understand

that this provision was not in S. 993; am I correct? Of last year?

Mr. GLENN. Yes, that is correct. That is not in S. 993.

Mr. BYRD. So this was not in the bill of last year. But it is something that is new now, as it has come to the floor in the bill that is before us and is referenced in both committee reports: The Budget Committee and the Committee on Governmental Affairs. It seems to me it is incumbent on the Senate to eliminate this provision until such time as the issue is more fully debated.

Mr. HOLLINGS. Will the distinguished Senator yield?

Mr. BYRD. Yes, I will be happy to yield.

Mr. HOLLINGS. Is it the Congressional Budget Office, or what executive agency is that referred to on page 12?

Mr. BYRD. It does not name the agency. It is obviously—to me—not the Congressional Budget Office. It says, "responsible Federal agency." To me, it is referring to an executive branch agency, some agency in the executive branch.

Mr. HOLLINGS. Then is it not the case that we are into the separation of powers? We have a case where we could not avoid the executive, and certainly the executive cannot legislate by mandating the end of a piece of legislation.

Mr. BYRD. Absolutely. Absolutely.

Mr. HOLLINGS. Repealing the legislation, in essence, by—what does it say, mandating—"void the mandate?" How do you void the mandate without legislation? So they have the executive agency legislating? Is that the case?

Mr. BYRD. That is the way I read it. The agency here overrules——

Mr. HOLLINGS. I thank the Senator.

Mr. BYRD. As the distinguished Senator has correctly, in my judgment pointed out, this is a separation of powers issue.

The agency will void the mandate if the appropriations committee at any point in the future provides insufficient funding to states, local governments, and tribal governments to offset the direct cost of the mandate.

2. The agency can provide a "less money" less mandate alternative. * * *

Here we have a Federal agency, an executive branch agency that can nullify the action of the Congress. In essence, it can repeal a law of the Congress or it can modify it. I am disturbed about that. I would like to hear——

Mr. KEMPTHORNE. Will the Senator yield?

Mr. BYRD. Yes. Yes.

Mr. KEMPTHORNE. Mr. President, on page 12, as you read this, you will note that it does state in parentheses—and this is very important, "pursuant to criteria and procedures also provided in the mandate legislation."

In other words, we do not leave this at the discretion of an agency. The agency itself will be determined by the authorizing committee. They will so state, which Federal agency will be dealing with this.

In that legislation also, I say to the Senator, they will choose one of those two options. If they choose the option that states that should a subsequent appropriations bill not provide full funds, then that authorizing committee in its legislation is going to specify to that agency the criteria upon this scaling back. If they were to choose the other option, which is should the subsequent appropriations bill not provide the funds, then, again, based on the criteria as outlined by the authorizing committee, under those directions that agency would then so state. But it would be, again, at the direction of the authorizing committee in legislation that would then have to be passed by Congress.

It does not in any way leave that to the discretion of the Federal agency.

Mr. BYRD. Mr. President, why do we leave it in the hands of a Federal agency to determine whether or not a mandate should be nullified or should be modified?

Why should a Federal agency determine on the basis of "less money, less mandate"? Why should not the legislative branch do this? Why not require that an agency seek the approval of the Appropriations Committees and suggest a reprogramming? That is done from time to time. But why turn a decision of this sort—it is a final decision—over to an executive branch agency? It seems now we are setting up a procedure here that stands in direct conflict with the provisions of article I, section 1, the very first sentence of the U.S. Constitution, which vests all legislative power in the Congress of the United States.

Mr. KEMPTHORNE. Will the Senator yield?

Mr. BYRD. Yes. I yield.

Mr. KEMPTHORNE. I appreciate that.

Mr. President, the triggering mechanism is on the fund amount. In other words, if they choose the option that it is to provide the funds through a subsequent appropriations bill, and that appropriations bill provides full funds, then again there is no further recourse except to implement and mandate.

Mr. BYRD. Yes.

Mr. KEMPTHORNE. If that authorizing committee chose the option that said, in the event it does not provide full funds, that is the threshold, and if that subsequent appropriation does not hit that threshold, then that Federal agency can in fact do a scaleback. But it is based upon language by the authorizing committee. The authorizing committee directs the criteria for that scaleback. It does not leave it up to the discretion of the agency.

Mr. BYRD. Why not eliminate these two paragraphs, eliminate the risk of litigation, eliminate the risk of running afoul of the Constitution in respect to the separation of powers? This troubles me. Why have language in the bill that would open up further litigation? If we truly intend to limit or to rescind future Federal mandates and not fully fund them, then I believe such actions should be taken by the Congress.

Mr. BUMPERS. Will the Senator yield for a question?

Mr. BYRD. Yes. I would be happy to yield.

Mr. BUMPERS. I thought for a moment that the Senator from Idaho had explained this to me. But in looking it over again, I have difficulty getting the sequence of events as to how this is going to happen and in what sequence. It says that the third alternative here—that is, the authorization for appropriations—a number of criteria must be met in order to avoid the point of order. First, any appropriations bill that is expected to provide the funding must be identified. So far so good. Second, the mandated legislation must also designate a responsible Federal agency. That is fine. We can designate the agency that will implement the mandate, that shall either, one, implement and appropriate a less costly mandate if less than full funding is ultimately appropriated, or—this is really a big "or"—declare such mandate to be ineffective.

Does that mean that we are authorizing after we have imposed a mandate and provided the funds—it says "or" allow that agency to declare the mandate ineffective. So they could, if they decide, as I read this—and I want to be corrected because this is an immensely complex bill. Does this mean that agency, if they find that we have not fully funded that mandate, could provide for a less costly method of implementing it? And I assume we have designated them and given them the authority on the front end. The bill is already passed and we have given them the authority to come up with a less costly method of implementing the mandate or declaring it inoperative. Am I reading that correctly?

Mr. BYRD. That is the way I read it. I think we are opening up a Pandora's box here, if we are going to provide authority to an executive branch agency to modify or to nullify a mandate if the Appropriations Committees of the Congress do not provide the full appropriations. It seems to me we are saying that an executive branch agency can have the authority to void the entire mandate, or to determine how much of the mandate shall go into effect; "less money, less mandate."

Mr. KEMPTHORNE. Will the Senator yield?

Mr. BYRD. Yes.

Mr. KEMPTHORNE. Mr. President, in response to the Senator from Arkansas, in his sequencing scenario, the authorizing committee in its language would determine which option it chooses. If it chooses the option that states

that in the event that subsequent appropriations do not provide full funding, then it so states that mandate will not become effective. That is at the direction of the authorizing committee. So that is a separate issue here. If, however, that authorizing committee chooses the other option, which is that in the event full funding is not provided in a subsequent appropriation, then a Federal agency is directed—directed by the authorizing committee—to scale back that amendment. But the criteria for the scaling back again are included in the language of the authorizing committee.

Let us say the executive agency is carrying out the direction of legislative branch. It is carrying out the direction as specified, and it does not leave these decisions to the discretion of that executive agency.

Mr. BUMPERS. If I may comment on that very last sentence, this says that if the appropriation is less than the amount this agency determines to be needed to fully implement the mandate, you are giving that agency two options as I read this. They can either cut the mandate to some extent, modify it to make the money fit the mandate, or, as I started out a moment ago, or declare the mandate to be ineffective.

I think the Senator and I both are reading this the same way now. What I am really suggesting is that this is a tremendous discretion that we are handing to the executive branch to declare that we either have not funded it fully and, therefore, they are going to cut it, or they are just going to torpedo it altogether.

Now, why would we want to give the agency that kind of authority? Obviously, we feel the mandate is important or we would not have passed the bill.

Mr. KEMPTHORNE. Will the Senator yield?

Mr. BYRD. Mr. President, I ask unanimous consent that I may yield for the purpose of the colloquy between and among other Senators, including myself, without my losing my right to the floor.

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

Mr. KEMPTHORNE. Again, I appreciate that.

Mr. President, to the Senator from Arkansas, I can only reiterate what the process is. The authorizing committee, of necessity, has had to work closely with the appropriate appropriations committee. There has been communication, so that there is, based on that communication, based upon the progress of that bill, the authorizing committee knows if in fact the money will be appropriated. They will know that it is either a yes or no issue. So, again, they will choose the option. It does not allow—does not allow—the executive agency to make that determination as to whether or not they just rule that there is not enough money, so we are going to wipe it out, because the authorizing agency has that power, and they initiate that power in the language of the authorizing committee, which is then passed by Congress.

Mr. BUMPERS. Let me make one observation. I am not going to pursue this and belabor it any further. But as I read this language here, Senator Chiles used to say "the mother tongue is English," and this is the way I read this English. The sequence would be that the authorizing committee would authorize appropriations. I assume that the authorizing committee would either say such sums as shall be necessary, or if they have a CBO figure, what it is going to implement that, they would authorize that amount to be appropriated. The Appropriations Committee on which I sit would subsequently decide, also based on what CBO says it would cost to implement the mandate, and the figure might be different than the one the authorizing committee used when they passed the authorizing legislation.

But assume for the purposes of our argument that the authorizing committee says it will take $100 million to implement this mandate; the Appropriations Committee comes along, as we usually do several months later, to discuss whether we want to appropriate this $100 million or not, because it may be that CBO by that time has said—let us assume for the purpose of argument—it will only take $90 million. So we appropriate $90 million. This Federal agency down here—as I read this, it says that if they find that our appropriation is not sufficient, after we have made our very best estimate on it, used the best information we could get from CBO, or somebody else, the agency down there says, well, you flunked, you did not appropriate enough money; this is going to cost $130 million to implement this, or $150 million.

Mr. BYRD. It might be years later.

Mr. BUMPERS. It could be. It could be any time in the future.

Mr. BYRD. Because it is every year we are talking about.

Mr. BUMPERS. Certainly. So they say that because you goofed, we are going to take it upon ourselves to vastly reduce the mandate, no matter how critical it might be—it might be asbestos, water well pollution, or whatever, and they can say we are going to either severely reduce the requirement on the cities, counties, and States, or, two, we are negating the mandate. Now you are giving them an option, Senator. Even though we may have appropriated $90 million, to say that is not enough to get the water hot, so we are negating the entire mandate. Is that a fair reading of it?

Mr. BYRD. That is the way I read it.

Mr. GLENN. There were a number of changes from S. 993 which we brought out of committee last year. A lot of changes were made in S. 1. Most of them, I was part of. This particular change was not in S. 993, and I was not part of this.

Let me address this a little different way. The point made is a very good one. The point, basically, is that we are giving away our legislative authority when we say to an agency: You have authority to void something. I think that was probably a poor choice of words in this. What we were trying to cover in these two parts, I believe—and I ask my friend from Idaho to correct me if I am wrong—was to say where the authorizing committee put in a certain amount that in our best judgment was going to take care of this and then there were no appropriations followed up for it, then what happens? Well, what we should have said was that the agency will not be responsible for carrying out the enforcement of this mandate instead of saying the agency has the authority to void what the Congress has done—in that case, where there is no money. That is in the first case. So I think the void-the-mandate language was probably a poor choice of words in this. It was not intended to pass along legislative authority over to an agency.

No. 2 says, OK, we authorize certain things in committee to take care of this mandate, but the appropriators did not have all that money. But they said maybe it would have required $100 million. They say, well, we just do not have that; you have $60 million to carry this thing out. In that case, the agency can provide an alternative of less money, of less mandate, but this alternative requires the authorizing legislation to specify clearly how the agency shall implement that alternative. In other words, we would give scaled-back advice if that is necessary. So I think the one that the distinguished colleague from West Virginia cites here, the voiding the mandate, was probably language that should not have been in there to begin with. I think it would have been better if we said if there is no money, then the agency is not required to carry out the mandate. That would not pass authority, to void a legislative act of the Congress over to an agency.

Mr. BYRD. Under the Constitution, only the Congress has the power to enact laws, and only the Congress can appropriate moneys. If there is a need to rescind or to repeal or to modify, why does the legislative branch not do that? Why turn that over to some unelected bureaucrat—and this is no disparagement of bureaucrats, because we have to have them—why turn that over to an unelected bureaucrat, who is given no power under the Constitution? I am one who believes that the Congress cannot give away power that is

vested in the Congress, and the Congress only, by the Constitution.

Mr. GLENN. If the Senator will yield, let me make an analogy here. I think we do this all the time, if it is taken in the light just stated.

Mr. BYRD. We delegate certain authority.

Mr. GLENN. Then we say there are no appropriations to carry it out. For instance, we require by law a nuclear cleanup in this country. So we say the agency is supposed to go out there—the Department of Energy—and make an assessment of all these places and do a nuclear cleanup. They are supposed to do the best job possible. In some places we will not have money appropriated to do that. The authorization is still there. And in some places we will partially fund that operation. That does not mean that the authorization should come back to Congress and be changed. It just means that the authorization is still there, but we have not been able to provide enough money to do it. So we say, "Do what you can."

Mr. BUMPERS. If I may make an observation, then I will withdraw from this colloquy. This would have been much better, in my opinion—and I would want to think about it because there are probably better solutions—but if the language of this bill had said: At such time as the designated Federal agency—or if at any time the Federal agency determines that the appropriated amount is insufficient to fully comply with the mandate, to execute the mandate, such agency shall report their findings to the Congress forthwith for such determination as the Congress chooses to make. Would that not solve it?

Mr. BYRD. Right.

Mr. KEMPTHORNE. Will the Senator yield?

Mr. BYRD. Yes.

Mr. KEMPTHORNE. Mr. President, I believe, I say to my friend from Arkansas, that, as you have just stated it, in essence that is what we have provided here.

The Senator from West Virginia is correct. We should not give our power away. But we do not. We make that determination. We make that determination. If the funds are not there, we, the Congress, have stated that that mandate will not take effect. We, the Congress, have stated——

Mr. BUMPERS. I am reluctant to interrupt the Senator, but that is not the way I read it. We give the agency the right to say that they do not have to implement that mandate. If they find there is less money than is necessary to carry out the mandate, you give them the option of reducing the mandate or torpedoing the mandate. That is what the Senator from West Virginia and I are both objecting to.

Mr. BROWN. Will the distinguished Senator yield on that point?

Mr. BUMPERS. I am happy to yield.

Mr. BROWN. I thank the Senator.

I think both the Senator from Arkansas and the Senator from West Virginia are to be commended for raising this point and calling the Senate's attention to it. I think it is a valid point of concern worth looking at.

As I look on page 23 of the bill, the bill deals specifically with this provision and it is one of the three options that is laid out. These have already been noted by the distinguished Senators. One, the alternative of Congress that it has been paid for; two, the option of raising the funds and paying for them, the one you all have called our attention to; and the third alternative, where they authorized the spending and then developed options.

One of the things of great comfort to me is the specific language, because what it calls for is Congress itself to set out the procedures that the agency must follow. And let me quote, because I think it is the language that we will be concerned with.

Under (III), it says:

> Identifies the minimum amount that must be appropriated in each appropriations bill referred to in subclause (II), in order to provide for full Federal funding of the direct costs referred to in subclause (I); and
>
> (IV)(aa) designates a responsible Federal agency and establishes criteria and procedures under which such agency shall implement less costly programmatic and financial responsibilities of State.

And so on.

In other words, it is Congress specifically that is charged with and must set the procedures and set the guidelines. Under (bb), it says:

> Designates a responsible Federal agency and establishes criteria and procedures to direct that, if an appropriation Act does not provide for the estimated direct cost of such mandate as set forth under subclause (III), such agency shall declare such mandate to be ineffective . . .

An so on.

I think this is very comforting because it makes it clear here there is no delegation of power; that the decision as to what the procedures are is set forth by Congress, that the decision as to what the criteria are is set forth by Congress.

In the constitutional law on this area of improper delegation, I think it is very comforting and very reassuring to this Senator because, as long as Congress is the one that sets the procedure, as long as Congress is the one that sets the criteria, as long as Congress is the one that sets the standards, then the delegation is proper under the case law.

On the other hand, if this language should fail to be in there, if Congress had not taken on the responsibility of setting the criteria and procedure, then indeed we would have a constitutional question.

I, for one, appreciate the point being raised. If the Senators have further questions about it, I will be happy to respond with specific constitutional cases where the matter has been considered.

But I am at least reassured, as I look at the language on page 23 and page 24, that the fact that Congress specifically sets the procedures and criteria gives us the comfort level we need.

Mr. BIDEN. May I ask the Senator from Colorado a question on that point?

Mr. BYRD. Yes, I yield for that purpose.

Mr. BIDEN. As I read Morrison versus Olson and other separation of powers cases, the fact is that the judgment made by the Supreme Court as to whether we can or cannot delegate authority, any branch in the Federal Government may or may not delegate authority, relates not to whether they have set up procedures, but relates to whether or not the delegation of authority goes to the essence of the function of that branch.

For example, we could not set in motion here, even if we wanted to, by legislation, a proposal that said the President of the United States of America shall, under the following circumstances, not only nominate but in fact confirm a Federal judge. We could not do that. We could lay out in great detail the circumstances under which a President could take over the whole responsibility of putting someone on the bench, and that would be an unconstitutional delegation of power under the separation of powers doctrine.

Now, I would be very, very interested, because I know, and I mean this sincerely, how learned my friend is in the law. But I have made the serious mistake of teaching constitutional law on this subject for the last five semesters, and I have been forced to read all these cases. I am not suggesting that I have the book on this issue, but I am suggesting to you I have read no case where there is the ability for someone to conclude from reading the case that you can, if you set out proper procedures, delegate authority which is essentially legislative or for the President. The President could not turn around and say, "By the way, I, by Executive order, from now on am asking the U.S. Senate to name who will be nominated for the Court and also move forward and confirm those persons." He could not do that.

Now, again, I know everybody does not want to prolong the debate, but I think this is a critical question, and one that the Senator from Arkansas and the Senator from West Virginia, I believe, have suggested is easily reconcilable.

For example, as I read the Budget Act, you could, in fact, have done what they did in the Budget Act. The Budget Committee retains the judgment of whether or not they will, in fact, conclude that something is within or beyond the budget resolution. They do

not delegate it to an alphabet agency. They do not delegate it to another branch of Government.

So I would be very anxious—and I am not trying to put the Senator on the spot—but I would be very anxious to hear now the case law that he thinks sustains his position, or give him time to do that. And this is not meant by way of just trying to be obstreperous or to embarrass. I truly do not know of any cases that sustain the assertion made by the Senator from Colorado.

Mr. BROWN. Let me thank my distinguished friend from Delaware.

Mr. BYRD. Mr. President, I continue to hold the floor and I ask the Chair for that right.

I yield for the purpose of the colloquy.

Mr. BROWN. I thank the Senator for accommodating a dialog on this subject.

I want to mention that I think my distinguished friend from Delaware may sell himself short. He indicates he has taught constitutional law for only 5 semesters. I personally have served on the Judiciary Committee, where he has been chairman for eight semesters. I do not know how much other legal education he has engaged in, but I, at least, have found him quite informative and quite thoughtful in this area—occasionally correct, as well—in his judgments as we move forward, and I think always helpful as we look into this.

Let me suggest to my friend that if indeed what were suggested here would be to delegate a legislative function to these agencies, then I would be in wholehearted agreement with him. I think it is quite clear the intent of this bill and I think it is quite clear under the constraints we must follow that we can only delegate enforcement of policy decisions, not the function of legislating itself.

And while I hope the sponsors of this bill, which includes myself, will be open to any reasonable suggestions in this area, I must say, from looking at it, at least my conclusion is that the language we see on pages 23 and 24 is very helpful in that area, because it not only includes Congress being required to set forth procedures, as my distinguished friend referenced, it also includes specific language requiring Congress to set forth the criteria on which this judgment must be made.

So I think it is quite clear from the language that this is not a delegation of legislative authority. It is simply a requirement that they enforce criteria and procedures set down. I want to reiterate my hope that if there is an improvement in language we would consider it and look at it. I think the point is very valid. In terms of recitation of a constitutional law in this subject and specifically the cases, I think that is a valid request, a reasonable one, and I would be happy to include that in the RECORD.

Mr. President, I yield.

Mr. BIDEN. Mr. President, I know the Senator from West Virginia had the floor, and I would be guided by whatever he wishes. I can come back to this later or we could continue, whatever the Senator suggests. I have no preference in the normal order of things. I know there were other Senators here to speak on this and other issues, before me.

Maybe what I should do with the Senator's permission is gather up, since I just walked on the floor and did not anticipate being involved in this debate, some of the case law to which I refer and come back and maybe continue this debate if the Senator from West Virginia thinks that is appropriate.

Mr. BYRD. Mr. President, I hope the distinguished Senator will continue to elucidate on this point and enlighten the Senate so that we may better understand how to approach this matter.

I do not want to continue to hold the floor. The Senator from South Carolina is seeking the floor, also.

Mr. GLENN. Mr. President, will the Senator yield for a brief comment?

Mr. BYRD. I yield to the Senator.

Mr. GLENN. The agency will void the mandate, the red-flagged language, to the Senator from West Virginia. And rightly so, indicating we would be passing our authority off to an agency when we should not do that.

Now, if we come back and look at the actual language in the bill, it is not written quite that way. On page 24, in that second section, starting in the middle of the page, it says basically that the authorizing committee will designate a responsible Federal agency and establish criteria and procedures to direct that if an appropriations act does not provide for the estimated direct costs of such mandate as set forth under subclause 3, such agency shall declare such mandate to be ineffective.

It does not say it voids it. It does not pass legislative authority, the way I interpret that, but it just states the obvious. If there is not an appropriation to cover this, that the mandate becomes ineffective as of October of the fiscal year for which the appropriations is not equal to the direct costs of the mandate.

Mr. BYRD. Of course, this may be 5 years, may be 10 years.

Mr. LEVIN. Would the Senator yield just on that one issue?

Mr. BYRD. I yield.

Mr. LEVIN. The Senator from West Virginia is raising a number of questions including the constitutional delegation. But there is another problem here. If an appropriations committee as many as 5 years or 10 years later is not allowed under this language to determine that a lesser appropriation will do the job, it is bound by a previous authorization bill that could be 10 years earlier, which made an estimate which may be absolutely a wild estimate. Five years later, 10 years later. An appropriations committee does not allow under this bill to make a determination that a different amount, a lesser amount, would fully fund that mandate.

That is one of the many issues that is raised with this language. Now, there are other issues. There are specificity issues. And the Senator from West Virginia is also putting his finger on a critical constitutional issue here. I will say one other quick comment. This is the new language.

Mr. BYRD. It was not in the bill last year.

Mr. LEVIN. It was not in the bill last year. This was a language that was in a bill introduced on a Wednesday night, which went to a hearing on Thursday morning, which was intended to go to a markup on a Friday morning which we had to plead for a delay of over the weekend for the markup to a Monday morning. When we made an effort to get a committee report on this, we denied that committee report so that it could come to the floor the next day. This is the language that was not in last year's report which is very new, novel, significant language.

Now, I repeat: I am someone who supported last year's bill. But I think this goes too far and raises very significant questions which are worthy of real examination on the floor.

Mr. BYRD. Exactly, and we have a cloture motion which we are supposed to vote on tomorrow morning, which if adopted leaves us with 30 hours only. And the Senator from Michigan may have 1 hour. That is all he can have. This locks in, as the distinguished Senator from Michigan has stated, it locks in for the life of any new mandate, 5 years, 10 years, 20 years, or whatever the CBO estimates for every future year.

This means that even if we find in some future year—5 years down the road, 10 years down the road—the Senator from West Virginia may not be here if it is 20 years down the road—that a mandate can be met for less money, we nevertheless must appropriate the minimum contained in the bill that sets up the mandate for all future years.

If less is appropriated in any year, then the agency decides. We have an unelected bureaucrat who, perhaps, will make the decision under a different administration or perhaps under a different administration, last one or two administrations, different members of the Appropriations Committee, different members of the authorizations committee. We have an unelected bureaucrat making that decision.

I say that unelected bureaucrat is not only unaccountable to the people, but if we leave it in the hands of the Congress, that is where it ought to be. Then the American people know whom

to vote against. They at least know whom to vote against if they do not like a mandate being cut back.

But under this process this amendment would put in place, to whom do they complain if they do not like the mandate? To whom do they complain under this process? Why do we not leave it in the hands of the Congress? That is where the Constitution puts the power under article I, the power to legislate. Article I, section 1. Article I, section 9, power to appropriate.

I am very concerned about this language, Mr. President. I should think we ought to have more time to debate this point so that we can scrutinize it, focus on it, subject it to the microscope and be sure we make a correct decision. With the cloture motion pending here, I have an amendment prepared that would strike this. It would strike it, strike the language. If the cloture is invoked tomorrow, if we cannot reach a decision today, and cloture is invoked tomorrow, that is the only amendment I can offer. I cannot offer an amendment, then, to modify. I might be able to find a way but it would be very difficult to offer an amendment, then, that would modify and bring together language that was beside the point by a meeting of the minds on both sides of the aisle. We would be prohibited from doing that.

Why not eliminate all reference to appropriations committee here? Let the authorizing committees pay for it out of their allocation. Or let them, through the pay-go process, let them provide the money. Let them raise the taxes, or whatever is required, to meet the full funding. Strike all reference to appropriations. Let us out of it.

Mr. KEMPTHORNE. Would the Senator yield?

Mr. BYRD. Yes.

Mr. KEMPTHORNE. Again, there is a point I would like to make, Mr. President. The Senator stated that this locks us in.

There is nothing to preclude that in a subsequent year as we find that perhaps, now, based on actual cost, those costs have changed. It is no longer based on estimate but actual cost; that Congress can revisit that, because in keeping with the spirit of what the Senator from West Virginia has said, Congress speaks. We do not delegate. This might cause us to revisit the mandates a little more often than every 5, 10, 20 years, which is welcome news to our State and local partners.

Mr. BYRD. Well, strike out all reference to appropriations, and then the authorizing committees could review them every year if they want to.

Mr. KEMPTHORNE. Again, I know our friend from Utah has some good information on this issue that I hope he will be able to impart to the Senate.

Mr. BYRD. Mr. President, I ask unanimous consent that an editorial from today's New York Times be printed in the RECORD.

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

[From the New York Times, Jan. 18, 1995]

WHAT'S THE RUSH ON MANDATES?

Environmentalists and others whose interests are served by Federal regulation have a name for the three main elements of what promises to be a sustained Republican effort to deregulate American society: the "Unholy Trinity." The term connotes both respect and fear. There is merit in all three ideas. Yet critics fear that, taken together, they will cripple a quarter-century of Federal efforts to protect everything from the environment to worker safety.

The ideas grew out of Newt Gingrich's "Contract With America." One would require compensation when property values are diminished by Federal regulation. A second would subject regulations to independent cost-benefit analysis, otherwise known as "risk assessment," that could make it more difficult for Federal agencies to carry out rules. The third would make it harder for Congress to approve costly new "unfunded mandates"—obligations imposed on state and local governments without the Federal dollars to pay for them.

These are seductive notions with big consequences. All will need careful legislative handling. Unfortunately, that is not happening with the first of the three to take legislative form—an unfunded-mandates bill that began a fast-track trip through Congress last week. The bill which contains sensible suggestions and serious flaws, received only cursory inspection by two Senate committees. It is now on the Senate floor and will hit the House next week. That is much too fast.

Unfunded mandates have long been a sore point with mayors and governors, who say the cost of carrying out Washington's agenda denies them flexibility. Under the proposed legislation, any bill imposing a Federal mandate of more than $50 million must include an estimate by the Congressional Budget Office of its non-Federal costs. It must also include the money to pay for the mandate.

A single legislator could block any new mandate that does not meet these conditions. The objection could be overridden, but only after separate votes to override in both houses. Phil Gramm, Republican of Texas, would raise the threshold by requiring 60 votes to approve an unfunded mandate.

Forcing Congress to reach a higher level of accountability cannot be a bad idea. That is why a bill of some sort is certain to pass and why President Clinton is likely to sign it. So what's to complain about? There are at least two big flaws. First, the bill sets up a two-track system that would discriminate against the private sector. Private companies would still have to obey (and pay for) Federal mandates. Unless Congress gave governments the necessary funds, they could ignore them.

That could put private businesses at a competitive disadvantage. Laws governing waste disposal, for example, require expensive landfills to prevent contamination of the underlying water table. Private waste-disposal companies would still have to build and operate these landfills, but state and local governments would not unless Congress underwrote the costs. The U.S. Chamber of Commerce, which can usually be counted on to support Republican initiatives, have complained that the bill would severely skew the marketplace.

Some environmentalists suggest a compromise: Apply the unfunded-mandates prohibition to strictly governmental functions, like education and welfare; where mandates apply to both private and public entities, both should pay. The Clean Water Act, for example, imposes equally strict rules on the discharge of both industrial and municipal wastes. Would unfunded local governments now be free to pollute? That unthinkable outcome is a real possibility under the Republican bill.

Another big problem is that the bill applies to new law and does not address the billions in unfunded mandates from old law. That could have the perverse effect of discouraging efforts to fix outdated legislation; any new law that imposes unfunded mandates could run into a Congressional roadblock—even though the new law represents a vast improvement over its predecessor.

The bill before the Senate is a carelessly drafted answer to legitimate complaints. Senators Carl Levin of Michigan and Joseph Lieberman of Connecticut, Democrats who are sympathetic to the measure, are using every parliamentary tactic in the book to delay the bill until it is fixed. More power to them. A bill that could reshape basic relations between Federal and local governments, penalize the private sector and threaten the environment should not be railroaded.

Mr. BYRD. Mr. President, I yield the floor.

Several Senators addressed the Chair.

Mr. BYRD. Mr. President, I promised the majority leader I would suggest the absence of a quorum at the end of my statement. I want to keep my commitment. I suggest the absence of a quorum.

Mr. HOLLINGS. I do not want to forgo that.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. HOLLINGS. I ask unanimous consent—and then you can go ahead and object because I am not trying to stop that. Sometime, somewhere I would like to get recognized so I can speak. We will go ahead with the quorum call.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

Mr. KEMPTHORNE. I reserve the right to object.

Mr. BYRD. You cannot reserve the right to object.

Mr. KEMPTHORNE. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard. The clerk will continue to call the roll.

The assistant legislative clerk continued to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that I may retain my right to the floor and allow the colloquy to continue among Senators HOLLINGS and——

Mr. HOLLINGS. There is no colloquy. I want to be recognized in my own right.

Mr. BYRD. I was trying to find a way the Senator——

Mr. HOLLINGS. It is easy to do. Everybody else can be recognized. You all have been up here for days and weeks. I never have been recognized on this score, and I would like to be recognized, but I will await my turn.

Mr. BYRD. The Senator from South Carolina was here before I was and sought the floor. I hope that he would seek recognition and get the floor. But I had to keep my commitment to the majority leader. I yield the floor. I hope the Senator from South Carolina will seek the floor.

Mr. KEMPTHORNE addressed the Chair.

Mr. HOLLINGS. Mr. President, may I get recognized?

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. I thank the Chair. Mr. President, I was not privy to the discussion that the majority leader had with the distinguished Senator from West Virginia, but what I would like to do is make a unanimous-consent request that the Senator from South Carolina be allowed to now speak, no amendments would be in order; that following that, we could then allow a colloquy to continue on this issue raised by the Senator from West Virginia.

Mr. HOLLINGS. Mr. President, it is quite obvious I would like to talk and without restriction, like any other Senator, like 100 of us here. I do not have to get unanimous consent. I will await my turn after amendments and after all of your rigmarole takes place. I do not think I have to go through my courteous friend, the distinguished Senator from Idaho, to be recognized. I will await my time.

Mr. HARKIN. Will the Senator from Idaho yield for a question——

Mr. KEMPTHORNE. I will yield.

Mr. HARKIN. Without losing his right to the floor. I would like to ask the Senator from Idaho, we are here, we have amendments to offer. The bill is open for amendments. Why can I not offer my amendment?

Mr. KEMPTHORNE. I will be happy to respond to the Senator from Iowa. It is because we are trying to work out an issue that deals with an amendment from the Senator's side of the aisle. I have been told that we are close, but because of the fact that a number of Senators on his side of the aisle are very concerned to protect that issue for a Senator from the other side of the aisle, we have not been able to get other approval to move forward on some of these amendments. That is the reality.

So until I am told we have resolved the issue on the Senator's side of the aisle, I felt that it was very healthy to have this discussion about the bill itself. I think it helps all of us. So that is why, with all due respect. It is because we are concerned about a Senator on the other side of the aisle.

Mr. HARKIN. Might I further ask the Senator, is there an objection on this side of the aisle then to anyone offering an amendment? Is there an objection that has been raised on this side of the aisle? I would like to ask that question for the record, and if so, I would like to know who.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Is there objection?

Mr. KEMPTHORNE. I object.

The PRESIDING OFFICER. The clerk will continue to call the roll.

The assistant legislative clerk continued to call the roll.

Mr. BYRD. 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. BYRD. Mr. President, could we get some idea as to how much longer we are going to have to sit here without the ability to offer an amendment? Here time is running. It is 6 p.m. We have a cloture motion that is supposed to be voted on in the morning and there are several amendments. We have not had an opportunity to offer these amendments.

Mr. HARKIN. I have one.

Mr. KEMPTHORNE. Will the Senator yield?

Mr. BYRD. Yes.

Mr. KEMPTHORNE. In response to that, it is my hope that we are momentarily away from being allowed to go forward with an amendment, which is from the Democrat side. And, again, as floor manager, knowing the number of amendments that are there, waiting for action so we can finally have the sort of dialog that we had a few moments ago on this bill, and lay it out there—I would love nothing more. That is what I have been pushing for.

But again, I must say, with all due respect, because of legitimate concerns—and I respect this—from Senators on your side of the aisle, to protect a Senator from your side who will be offering an amendment, I assume very soon, we have not been able to move forward with some of the other amendments. That is the situation.

So I hope we are just moments away from a green light from the parties on both sides of the aisle on that amendment so we can proceed.

Mr. GLENN. Will the Senator yield?

Mr. BYRD. Mr. President, I hope this is not going to be charged up to Byrdlock.

I do not say this unkindly to the distinguished Senator.

Mr. HOLLINGS. Will the Senator yield?

Mr. BYRD. I have the floor.

Mr. HOLLINGS. Will the Senator yield?

Mr. BYRD. Yes.

Mr. HOLLINGS. The Senator knows the Senate is a continuing body, except for now. I have never seen, in my brief 28 years, this nonsense. What he wishes and hopes for and everything else—do not give me about our side of the aisle and everything else—everybody takes their turn. Things take time to work out. We cannot move forward with this amendment, or I could get recognized and talk.

Mr. KEMPTHORNE. I would suggest to my friend from South Carolina, with a great deal of respect, that I have throughout this day been floating and suggesting unanimous-consent agreements to bring these amendments to the floor. And there has been objection from your side.

So I think I have followed what is prescribed in the Senate rules, in the spirit of trying to get the amendments. I would like nothing more than to get these amendments out on the floor so we can debate them and vote on them.

Mr. BYRD. Mr. President, so the record may be clear, there have been no objections from this Senator today.

Mr. HOLLINGS. I do not find our side objecting. I find constantly the other side objecting. That is the whole point.

Mr. BYRD. This Senator is not objecting. I think the distinguished Senator from Idaho is doing the best he can. I think he is trying to follow some injunctions placed on him from higher up. I cannot fault him for that. But I wonder how much longer we are going to be remaining in this state of limbo. We cannot offer amendments. We cannot even get unanimous consent to set aside the pending amendment and take up an amendment by Mr. HOLLINGS. Where is the problem? Why all the rush? This is what I have been saying all along.

I have been rather amused to see a new term in the legislative lexicon, "Byrdlock."

But is this Byrdlock? I hope this delay is not charged against Byrdlock.

Why can we not debate the bill? Why can we not offer amendments? We have a cloture amendment that is going to be voted on in the morning and scores of amendments waiting here.

If this is not putting the boot heel on the neck of the minority, pray tell me what it is? What is this? Who has the lock on the Senate now? The Senator from South Carolina has been sitting in his seat for an hour—or longer. After the last vote, he stood and sought recognition. A quorum was begun and the effort to call it off was objected to.

Then the distinguished majority leader came into the Chamber. I said I

would like to call off the quorum call and make a statement. He said, "Well, will you put in a quorum—put us back in a quorum?"

I said yes. I did not know we were going to be locked out for the next half hour or hour, or whatever it is.

I hope that we can get some idea of how much longer we are going to have to sit here in a state of limbo, and not be able to offer an amendment.

Mr. GLENN. Will the Senator yield without losing his right to the floor?

Mr. BYRD. Yes. I do not want to keep the floor. I just want to make sure this delay is not charged up to Byrdlock.

Mr. GLENN. Let me explain this. About 5 hours ago, Senator BOXER sought the floor for an amendment. There was objection on the Republican side to her bringing that up.

And she has continually sought the floor on this and tried to work this out—tried to work out the differences with those who objected to her amendment on the other side.

It has to do with a statement and with legislation she wanted to make that basically deals with abortion clinics and some protection and so on into those areas. There were some people on the other side who had been negotiating this on behalf of five or six other Senators on the Republican side. Because we are in a situation here where the committee amendments are the things being considered, still technically on the floor, only amendments to that are permitted. So she has been frozen out, as this arrangement has not been able to be worked out. She has thought a number of times this afternoon they had this worked out. She was disappointed each time; it was not worked out.

We are told now, maybe after all, maybe it is now worked out so the language in her proposal, her amendment, will now be acceptable to those who disagreed with it on the other side.

In the meantime—because only one amendment could apply, under Senate rules, because it is the committee amendment en bloc that we have been working on all this time—there have been continual amendments put in to keep her frozen out by the leadership on the other side.

That just is an explanation of exactly what has happened.

She feels, I believe now, that they perhaps are within minutes of getting approval, I believe. I do not know whether that approval has been forthcoming or not. They were checking once again for about the sixth or seventh time in the last 4½ or 5 hours. That is how we got to where we were. I think we have been referring back and forth, one side to the other. I wanted to explain exactly what the situation was and how we got here.

Mrs. BOXER. Will the Senator yield?

Mr. GLENN. It is not my—Senator BYRD still has the right to the floor. He retains the right to the floor.

99-059 O—97 Vol. 141 (Pt. 2) 3

Mr. BYRD. No.

Mr. GLENN. I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

AMENDMENT NO. 141 TO AMENDMENT NO. 31

(Purpose: To express the sense of the Senate that States should not shift costs to local governments, and for other purposes)

Mr. BRADLEY. 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 New Jersey [Mr. BRADLEY], for himself, Mr. CHAFEE, and Mr. DORGAN, proposes an amendment numbered 141 to amendment No. 31.

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

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

The amendment is as follows:

At the end of the pending amendment inserted the following:

SEC. 107. IMPACT ON LOCAL GOVERNMENTS.

(a) FINDINGS.—The Senate finds that—

(1) the Congress should be concerned about shifting costs from Federal to State and local authorities and should be equally concerned about the growing tendency of States to shift costs to local governments;

(2) cost shifting from States to local governments has, in many instances, forced local governments to raise property taxes or curtail sometimes essential services; and

(3) increases in local property taxes and cuts in essential services threaten the ability of many citizens to attain and maintain the American dream of owning a home in a safe, secure community.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the Federal Government should not shift certain costs to the State, and States should end the practice of shifting costs to local governments, which forces many local governments to increase property taxes;

(2) States should end the imposition, in the absence of full consideration by their legislatures, of State issued mandates on local governments without adequate State funding, in a manner that may displace other essential government priorities; and

(3) one primary objective of this Act and other efforts to change the relationship among Federal, State, and local governments should be to reduce taxes and spending at all levels and to end the practice of shifting costs from one level of government to another with little or no benefit to taxpayers.

SEC. 108. EFFECTIVE DATE.

Mr. BRADLEY. Mr. President, the amendment I propose is an amendment I talked about both with the majority and the minority staff. They understand that it is a simple sense-of-the-Senate resolution. It says very simply that this is a bill that deals with unfunded mandates of the Federal Government on the State government, and it would be the sense of the Senate that States should not apply unfunded mandates on local governments that lead to increased property taxes.

Mr. President, so far in this debate, we have focused primarily on the unfunded mandates that the Federal Government is said to impose on the States. However, I would like to take a moment to draw the Senate's attention to an equally important set of mandates. I am referring to the unfunded mandates that Governors and State legislators impose on local governments and, more important, the burden that these mandates impose on taxpayers.

Taxpayers' main concern is their total tax burden, not how this burden is divided among Federal, State, and local governments. As elected officials at every level can attest, cutting taxes and expanding services are far preferable to the converse—especially if someone else picks up the tab. However, as we all know, the person who ultimately picks up this tab is the taxpayer.

Mr. President, in order to address the burden that this form of cost shifting imposes on taxpayers, I have sent to the desk a sense-of-the-Senate resolution in the form of an amendment to this bill. This resolution simply states that just as the Federal Government should not, in the absence of careful consideration, shift costs to the States, the States should end the practice of shifting costs to local governments, which frequently has the effect of raising local taxes.

When Governors and State legislators shift costs to local governments in an effort to cut taxes and balance their operating budgets, they are not reducing the overall tax burden; they are merely changing the collection point. Instead, what happens is that local authorities who have no other source of revenue are forced to either raise property taxes or cut services. As a practical matter, however, these services—such as fire, police, trash, and water services—are often essential to the safety and well-being of our communities. Therefore, the effect of cost shifting by State governments is, all too often, to increase local property taxes.

These State-imposed mandates and the impact they have on taxpayers are by no means inconsequential. In New Jersey, the State imposes no less than 36 separate unfunded mandates on local governments. These unfunded State mandates cost New Jersey taxpayers over $150 million each year. In my State, as in many others, the main source of local tax revenue is the property tax. In fact, local property taxes make up over 98 percent of all local tax revenue in New Jersey. Therefore, for every dollar in costs that the State shifts to local governments, these governments are forced to raise property taxes by an equal amount.

In 1991, the cost of New Jersey's property taxes was over $1,250 per person, not even per household. Since then, property taxes have only gone up. In fact, over the last 7 years, property tax

collections in New Jersey rose over 64 percent and, this last year, property taxes rose faster than during any year since 1990. The upshot is that in Orange, NJ, the average homeowner saw an $800 increase in property taxes in 1994. Sadly, these homeowners were not alone. In Mansfield, the average homeowner saw a $600 increase in her property taxes in 1994. In Teaneck, the increase was $237; in Lyndhurst, $479; in Lodi, $100; in Dumont, $139; and in Alpine, the average homeowner paid over $1,000 more in property taxes in 1994 than in 1993.

Property taxes affect everyone: while homeowners pay them directly, renters pay them indirectly. In addition, high property taxes disproportionately affect those who are often the most at risk in our society. For many older citizens, especially those who live on a fixed income, high property taxes threaten their ability to remain in their homes. For many younger, middle-class families, high property taxes often mean that they must defer or abandon their dreams of owning a home.

Ultimately, Mr. President, this resolution is about honesty and responsibility. It is about honesty in how governments fund the services that they provide. It's also about responsibility and the need for government at all levels to take responsibility for its actions.

Government officials are loath to raise taxes. Yet, we also see problems in our States that need to be addressed. The result, too often, is that we pass a law, and we pass the buck. Mr. President, I am not passing judgment on specific mandates, at either the State of Federal level. In fact, many of these mandates have helped to ensure the safety and well-being of our fellow citizens. Instead, I am simply stating that if government officials, at any level, intend to pass a new regulation, they should be honest about the cost that this regulation will impose on taxpayers. They should not attempt to hide the cost by shifting it downstream. Unfortunately, rather than being honest and taking responsibility for their actions, too many government officials appear to have signs on their desks that read, "The Buck Stops * * * Over There."

In order to call attention to the need for government officials at all levels to fully consider the impact that cost shifting has on taxpayers, I urge all of my colleagues to vote in favor of this amendment.

Mr. President, I am joined in sponsoring this amendment by Senator CHAFEE and others.

Mr. President, I hope we will be able to get a vote on this as the pending business before the Senate.

I am prepared to move to a vote at any time. A Senator has the right to the floor when he is recognized, and I certainly would like to respect the agreements that have been struck between the minority and the majority. At the same time, when there was an open slot in the amendment process, I took advantage of that amendment slot.

It is a very simple amendment, a sense-of-the-Senate resolution. I hope it will be adopted. I have checked with both the minority and the majority, and it deals simply with the issue of State unfunded mandates on local governments leading to higher property taxes.

Mr. GLENN. I will be glad to accept the amendment on our side of the aisle.

Mr. KEMPTHORNE. If the Senator will yield, we, too, will accept the amendment on our side.

Mr. BRADLEY. I ask for the yeas and nays. I want a rollcall vote on this.

The PRESIDING OFFICER. Is there a sufficient second?

There is not a sufficient second.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Republican leader.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UNANIMOUS-CONSENT AGREEMENT

Mr. DOLE. Mr. President, I think we have worked out an agreement. We will have two votes back to back beginning at 7:15. The first vote will be on the Bradley amendment. The second vote will be on the Boxer, et al., amendment. There will be 1 hour of debate on the Boxer amendment equally divided.

I ask unanimous consent that the Bradley amendment be temporarily set aside so the Senator from California may be recognized and that we have those votes back to back at 7:15.

The PRESIDING OFFICER. Is there objection?

Mr. BRADLEY. Reserving the right to object, Mr. President, I would simply like to make the point that it is the Bradley-Chafee amendment.

Mr. HARKIN. Mr. President, reserving the right to object, if I might inquire of the majority leader, I understand he asked unanimous consent that we have 1 hour of debate right now on the Boxer amendment and at 7:15 vote on the Bradley amendment, then vote on the Boxer amendment right after that, and that when we get back to the bill it will be open for amendments at that point in time?

Mr. DOLE. I think, in fact, I would rather have the votes start at 7:30, if there is no objection. The first vote will be at 7:30 on the Bradley-Chafee amendment and the second vote will be on the Boxer, et al., amendment. And then it is open for other amendments. There are numerous amendments.

Mr. HARKIN. Is it the majority leader's intention to continue the Senate in session so we may offer amendments at that point in time?

Mr. DOLE. Yes.

Mr. BRADLEY. Reserving the right to object further, I do not intend to object. Could we order the yeas and nays on the Bradley amendment? 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.

Mrs. BOXER. Reserving the right to object, I ask for the yeas and nays on the Boxer, et al., amendment.

The PRESIDING OFFICER. That is not in order at this time.

Mr. BYRD. Mr. President, I ask unanimous consent that it may be in order to order the yeas and nays on the Boxer amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BYRD. 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.

Mrs. BOXER. Would the majority leader yield for a question?

The PRESIDING OFFICER. Is there objection to the majority leader's request?

Mrs. BOXER. Reserving the right to object, I shall not. I ask the majority leader who is controlling the time on the Republican side on the Boxer amendment?

Mr. DOLE. The Senator from Oklahoma [Mr. NICKLES].

Mrs. BOXER. Then I will not object.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Bradley amendment is temporarily set aside.

The Senator from California is recognized.

AMENDMENT NO. 142 TO AMENDMENT NO. 31

(Purpose: To express the sense of the Senate that the Attorney General should act immediately to protect reproductive health care clinics)

Mrs. BOXER. Mr. President, I send an amendment to the desk and ask for its immediate consideration, pursuant to the unanimous consent request.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from California [Mrs. BOXER], for herself, Mrs. MURRAY, Mr. FEINGOLD, Mr. KENNEDY, Mr. CAMPBELL, Mr. SIMON, Mr. LAUTENBERG, Mr. DODD, Mr. BAUCUS, Mr. LEVIN, Mr. LIEBERMAN, Ms. MOSELEY-BRAUN, Mr. HARKIN, Mr. PELL, Mr. INOUYE, Ms. MIKULSKI, and Mrs. FEINSTEIN, proposes an

amendment numbered 142 to amendment No. 31.

At the end of the amendment add the following:

"SEC. 108. SENSE OF THE SENATE CONCERNING PROTECTION OF REPRODUCTIVE HEALTH CLINICS.

"(a) FINDINGS.—Congress finds that—

"(1) there are approximately 900 clinics in the United States providing reproductive health services;

"(2) violence directed at persons seeking to provide reproductive health services continues to increase in the United States, as demonstrated by the recent shootings at two reproductive health clinics in Massachusetts and another health care clinic in Virginia;

"(3) organizations monitoring clinic violence have recorded over 130 incidents of violence or harassment directed at reproductive health care clinics and their personnel in 1994 such as death threats, stalking, chemical attacks, bombings and arson;

"(4) there has been one attempted murder in Florida and four individuals killed at reproductive health care clinics in Florida and Massachusetts in 1994;

"(5) the Congress passed and the President signed the Freedom of Access to Clinic Entrances Act of 1994, a law establishing Federal criminal penalties and civil remedies for certain violent, threatening, obstructive and destructive conduct that is intended to injure, intimidate or interfere with persons seeking to obtain or provide reproductive health services;

"(6) violence is not a mode of free speech and should not be condoned as a method of expressing an opinion; and

"(7) the President has instructed the Attorney General to order—

"(A) the United States Attorneys to create task forces of Federal, State and local law enforcement officials and develop plans to address security for reproductive health care clinics located within their jurisdictions; and

"(B) the United States Marshals Service to ensure coordination between clinics and Federal, State and local law enforcement officials regarding potential threats of violence.

"(b) SENSE OF THE SENATE.—It is the sense of the Senate that the United States Attorney General should fully enforce the law and protect persons seeking to provide or obtain, or assist in providing or obtaining, reproductive health services from violent attack.

"(c) Nothing in this resolution shall be construed to prohibit any expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the First Amendment to the Constitution."

Mrs. BOXER. Mr. President, I took the unusual step of having the clerk read this resolution in full because I think that it very clearly says more than anyone could express, because it took a lot of time and a lot of people's help, that there is no place for violence in our society and that we must come together as a U.S. Senate when such violence occurs and speak with one voice.

The reason I have been so persistent for these past 2 weeks is because I feel it is essential that this U.S. Senate, the most deliberative body in the world, the one with the most magnificent traditions of debate, thought, of deliberation, that we take the time, even if it means setting aside some other business, to deal with an immediate issue.

We are working on the unfunded mandates bill. It is very complicated. It is very complicated. I happen to like the notion behind it. But as I look at some of the bureaucracy that may be created as a result of it, I have some pause. As I look at whether or not illegal immigration might be covered in it, I have some pause. As I look at its impact on children and pregnant women, the frail and elderly, on child pornography laws, child abuse laws and child labor law, I have some pause.

So it is a very complicated piece of legislation. But what is not complicated, Mr. President, to understand is that there is violence in our land and it takes many forms. If there is one area in which I believe I should make a contribution, it would be in the area of violence in America—whether it is on our streets, whether it is in the homes, whether it is in schools, wherever it occurs, including reproductive health care clinics. I have made many statements throughout this day and last week and before that on the history of violence at clinics. And so I have been pursuing a very clear sense of the Senate that the Attorney General should act fully and enforce the law and protect the decent, law-abiding citizens of this land, who happen to be in or around health care clinics.

I want to say that the manager of the bill, the Senator from Idaho, has been most gracious to me. I want to say that he has understood quite clearly how deeply I felt about this issue, and he has made every effort to bring about a resolution to my problem which, clearly stated, was I could not find a way, Mr. President, to bring this up before the body until an agreement was worked out.

The majority leader, Senator DOLE, was very straightforward with me. He said, "You need to work this out and then we will bring it up. But if you do not have an agreement with my side, we are not going to bring it up." Obviously, that set up somewhat of a problem for me.

I want to thank the Senator from Oklahoma [Mr. NICKLES] and I want to thank the Senator from Indiana [Mr. COATS] for working with me, with Senator MURRAY, and with many of the people who wrote the FACE bill, to come up with an acceptable resolution, which has just been read to the U.S. Senate.

I want to particularly thank the cosponsors of my bill. The bill that I introduced was one of the first pieces of legislation condemning this violence, which included three Republican Senators—Senators SNOWE, CHAFEE and JEFFORDS. I want to thank them very much. And I thank my original cosponsors who were there the day I introduced the bill, Senator MURRAY and Senator FEINGOLD. The other Senators who are cosponsors are Senators KENNEDY, CAMPBELL, SIMON, LAUTENBERG, DODD, BAUCUS, LEVIN, LIEBERMAN, MOSELEY-BRAUN, HARKIN, PELL, INOUYE, MIKULSKI, FEINSTEIN, KERRY, and BRADLEY. And today Senator REID and Senator WELLSTONE were added to that list.

I am very proud that we have reached an agreement so that the will of 25 Senators who believed in this enough to go on this bill will get some attention.

At this time, I will yield to the Senator from Washington, Senator MURRAY, 10 minutes.

Mrs. MURRAY. Mr. President, I thank my colleague from California, who has been very persistent on this issue and deserves a great deal of gratitude and credit from all of us for insisting that we bring before us this very important sense of the Senate that speaks to the violence that has been occurring at reproductive health care clinics in this Nation.

We are all aware of the violence that has ravaged neighborhoods throughout our Nation. And I have to tell you every time kids gather in my kitchen or I talk to my next door neighbors or my parents, the first words out of their mouths is not unfunded mandates or line-item veto, it is: "What are you going to do about the issue of violence in this country?" They tell me they fear walking in their neighborhoods, fear going to their schools, and they want to know what we are going to do.

Well, the campaign of terror that is being perpetrated against doctors and patients in reproductive health clinics is a frightening example of this violence. The message that this violence sends to our children—that the world is a frightening place—is intolerable. When they see a gunman at a clinic, it reinforces in their minds that this world is not a safe place. It is incumbent upon us as the elected leaders in this Nation to tell our children that we will do all we can to make sure that their world is safe.

I read yesterday's Washington Post and was very struck by the article that appeared. I ask unanimous consent that 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 Washington Post, Jan. 17, 1995]

CLINIC KILLINGS FOLLOW YEARS OF ANTIABORTION VIOLENCE

(By Laurie Goodstein and Pierre Thomas)

Militant antiabortion activists have been waging a protracted campaign of violence against women's health clinics and the people who work in them over the past decade, creating a climate of terror long before a gunman opened fire last month at clinics in Massachusetts and Virginia.

The killings of two doctors, two clinic staff members and a voluntary escort over the past 22 months have captured national attention. But the tally of violence over the past 12 years includes 123 cases of arson and 37 bombings in 33 states, and more than 1,500

cases of stalking, assault, sabotage and burglary, according to records compiled by the Bureau of Alcohol, Tobacco and Firearms (ATF) and the clinics themselves.

"We have seen a consistent pattern, acknowledging the fact that people are willing to go to any means for their cause," said Ralph Ostrowski, chief of ATF's arson and explosives division. "In the past we would have acts of violence directed at property. Now we see acts of violence directed at people."

Nearly all antiabortion leaders say they are aware of the scope of the violence and have condemned it, and say no one in their groups is associated with such tactics. They describe the violence as an aberration.

"There is not this collective soul-searching on the part of our movement because we have been responsible and we have been nonviolent," said the Rev. Patrick Mahoney, director of the Christian Defense Coalition. There are "extremists in every movement. . . . I think that extremists opposed to abortion got frustrated, felt they were losing the battle and felt it was incumbent upon themselves to resort to violence."

The Rev. Flip Benham, director of Operation Rescue, went further and accused "those in the abortion-providing industry" of committing most of the violence in an attempt to discredit the antiabortion movement. He said he would soon bring evidence to Washington that would undermine the government's statistics.

However, ATF spokeswoman Susan McCarron said of the 49 people prosecuted so far, "We found that all expressed antiabortion views. There is nothing in our cases that would show it's providers or supporters of abortion that are doing these acts, but we investigate all leads."

Immediately after hearing the news of the killings last month in Brookline, Mass., Cardinal Bernard Law, archbishop of Boston, issued a statement asking for a moratorium on protests at abortion facilities. But his plea has been rejected by other prominent figures across the spectrum in the antiabortion movement—including Benham, Cardinal John J. O'Connor of New York and Judie Brown of the American Life League.

Like many other antiabortion leaders interviewed, Benham said he sees no connection between angry rhetoric and violent action. "This whole thing isn't about violence. It's all about silence—silencing the Christian message. That's what they want," Benham said of abortion rights leaders. "They screech and scream about us crying fire in a crowded theater. And I agree it is wrong, unless there is a fire. If there's a fire in that theater, we better call it that. Our inflammatory rhetoric is only revealing a far more inflammatory truth."

In most cases, the violence has disrupted clinics where a large portion of staff time is devoted not to abortions but to routine women's reproductive health care—pap smears, teaching and supplying birth control methods, and treating sexually transmitted diseases. Phone calls to a dozen clinics targeted by the violence found that six of them did not even provide abortion services.

At the Women's Pavilion Clinic in South Bend, Ind., which does perform abortions, in recent years somebody has hacked holes in the roof with an ax, shot out the windows and sent repeated death threats to gynecologist Ulrich Klopfer by phone and mail, said Marni Greening, the clinic's director. Meanwhile, protesters with a group called the Lambs of Christ have regularly barricaded the doors and blockaded the driveway, undeterred by repeated arrests.

In the early hours of Mother's Day 1993, someone connected a hose to the clinic's outdoor spigot and fed it through the door's mail slot, flooding the clinic's entry room. The person or persons then poured in butyric acid, a nearly indelible substance that smells like feces and vomit and becomes more potent in water. The clinic had to shut down for 7½ weeks to get rid of the smell, Greening said.

The unrelenting and unpredictable nature of the violence has produced a resolute fatalism among the staff. Klopfer said he was shot at last week as he drove home from work. He reported it to federal marshals, but, he said: "If it's going to happen, it's going to happen. I'm realistic enough. Look at all the people shooting up the White House, and that has a hell of a lot better security than I do."

Owners of the Hillcrest Clinic in Norfolk, where John C. Salvi III allegedly fired about 23 shots, sustained $250,000 worth of damage in an arson case in 1984 and another $1,000 in damage in a bombing in the next year. Staff members there have stopped commenting about attacks.

At the Planned Parenthood clinic in Lancaster, Pa., clinic director Nancy Osgood remembers a 3 a.m. phone call in September 1993 when she rushed to the clinic in time to see the brick building smoldering, gutted by fire. The Lancaster facility does not perform abortions, although other Planned Parenthood clinics do.

No suspects have been arrested in that arson, although national abortion rights groups offered a $100,000 reward for tips on this and other crimes. "Finally we have national leadership talking about this being domestic terrorism. We've said that for years," Osgood said.

ATF agents have arrested 49 people in 77 of the bombing and arson cases. Thirty-three cases have been closed because they have exceeded the statute of limitations. The 50 cases still under investigation include an arson at the Commonwealth Women's Clinic in Falls Church last July 31.

Damages range from $150 at a Brooklyn N.Y., clinic that was the target of two Molotov cocktails in 1993, to $1.4 million caused by an arson fire at Family Planning Associates in Bakersfield, Calif., in September of the same year. The total damage to property amounts to more than $12 million.

A federal task force of officials with the ATF, FBI, U.S. marshals and lawyers from the Justice Department's criminal and civil divisions was created in 1993, and stepped up its efforts after Paul D. Hill shot to death two people at a Pensacola, Fla., clinic last July. A grand jury is currently hearing evidence in Alexandria.

Authorities are focusing on whether there is a national conspiracy, although some officials privately note they have not found evidence to support that at this stage in the investigation. Several law enforcement officials say it is more likely they will find separate conspiracies conducted by small cadres of activists, as well as campaigns carried out by individuals.

Some of the incidents match the description of tactics in "The Army of God" manual that law enforcement officers found buried in the yard of Rochelle "Shelly" Shannon, an Oregon activist convicted of shooting Wichita doctor George Tiller, and awaiting trial on eight counts of arson at clinics in several states.

"Annihilating abortuaries is our purest form of worship," the manual says. It gives explicit instructions for home-brewing plastic explosives, fashioning detonators, deactivating alarm systems, and cutting phone, gas and water lines.

Some federal investigators suspect that there is no organized "Army of God." They believe the manual has not been widely distributed, but may have provided guidance in several cases of arson, bombing and sabotage. The butyric acid attack on the Women's Pavilion in South Bend precisely matches tactics described in the manual.

After the recent shootings in Massachusetts, in which two clinic receptionists were killed and five people wounded, the Justice Department ordered federal officials to record every threat against clinics and their staffs, and began to enforce the civil provisions of the Freedom of Access to Clinic Entrances (FACE) law. Enacted last year, the law makes it a federal crime to physically block access to clinics, damage their property or injure, interfere with or intimidate their staff or patients.

Last week a federal judge in Kansas City, Mo., used the civil provisions of the FACE law to issue a temporary restraining order against Regina Rene Dinwiddie for threatening and intimidating staff and clients at the Planned Parenthood of Greater Kansas City clinic.

Antiabortion protesters say the law is being used to limit their freedom of speech. But federal officials are beginning to crack down on the death threats that have become increasingly common. There were about 400 death threats and bomb threats logged in 1994 alone.

On Jan. 7, signs were found posted at four clinics in Long Island saying, "Danger: This is a War Zone. People are being killed here like in Boston. You risk injury or death if you are caught on or near these premises," said Karen Pearl, executive director of Planned Parenthood of Nassau County.

The threats follow clinic staff members to their homes and neighborhoods. Carolyn Izard, a nurse and clinic director at Little Rock Family Planning Services in Arkansas, arrived home one day to find her neighborhood was papered with fliers calling her a "death camp worker."

"It backfired on them," Izard recalled. "I got calls from neighbors that told me that they supported me 100 percent and they were furious that this kind of brochure was left on their doors for their children to see."

Curtis Stover has seen a dramatic change in the protesters' behavior in the 21 years he's performed abortions in Little Rock. "Before, all they would do is quietly carry placards around and not do much," Stover said. Now, "every other sentence is full of the word 'murder.' Patients come in and they yell at them not to murder their babies. I've had picketers tell me I was going to die by a certain date."

Mrs. MURRAY. In the first paragraph it says:

Militant antiabortion activists have been waging a protracted campaign of violence against women's health clinics and the people who work in them over the past decade * * * The tally of violence over the pass 12 years includes 123 cases of arson and 37 bombings in 33 States, and more than 1,500 cases of stalking, assault, sabotage and burglary, according to records compiled by the * * * ATF and the clinics themselves.

I think it is high time this Senate goes on record that we do not condone these acts of violence.

Women's health care providers across the Nation are facing bombings, arson,

kidnappings, and assaults. As they go to work each day, these health care providers must contemplate the possibility that an antichoice extremist will try to kill them. The shootings at clinics in Massachusetts and Virginia are only the most recent examples.

One doctor in my State of Washington wrote to me recently and said:

> Every time I walked toward the building, I thought to myself that some antichoice terrorist could have set a bomb and that my life could be on the line. Fortunately, so far I have been able to work unimpeded, but with every assault on a clinic around the country, I worry about the safety of my staff as well as that of my patients. The next time a gun is fired, it could well hit a patient or staff member. The psychological toll all this takes on clinic staff is enormous, as you can well imagine.

I ask my colleagues to step back and view this issue as a parent. That is how I view it. I have a young daughter and I cannot express the fear that I have that perhaps some day if the horrible should happen and my daughter is raped, that not only should she have to go through the trauma of an abortion, but she would have to fear for her life when she attempts to get access to safe health care.

The same article that appeared in the Washington Post yesterday has an important paragraph that we must also remember.

It says:

> In most cases, the violence has disrupted clinics where a large portion of staff time is devoted not to abortions but to routine women's reproductive health care—pap smears, teaching and supplying birth control methods, and treating sexually transmitted diseases.

Let us remember that women go to these clinics for pap smears as well. Their lives have been endangered, and we need to protect them.

Last year, Congress passed the Freedom of Access to Clinic Entrances Act and the President signed it into law. The law outlaws clinic violence while protecting lawful picketing and lawful protests not accompanied by force, threat of force, or physical obstruction.

Mr. President, I fully support our first amendment rights under the U.S. Constitution. However, with the Freedom of Access to Clinic Entrances Act we properly acknowledged that violence is not a mode of free speech. It is time for all of us, no matter how we feel about the issue of abortion, to let our Nation know that we will not tolerate violence as a means of protest.

I am proud to cosponsor this sense-of-the-Senate resolution urging the Attorney General to fully enforce the law. And I urge my colleagues to support it as well. Again, I thank my colleague from California, Senator BOXER, and I yield back my time to the Senator from California.

Mr. KEMPTHORNE. Mr. President, I would like to yield 10 minutes to the Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I thank my colleague from Idaho for yielding me 10 minutes.

This is an important amendment, Mr. President, because it is a forceful condemnation against violence. It might be thought unnecessary to condemn violence because it is so obvious that violence is the major problem in the United States today, with the crime wave, and the major problem in the world with conflicts and wars going on all around the world. But it is important to have this forceful condemnation against violence, because people are standing up and saying that these acts of violence, these acts of murder, are justifiable homicide, which is an absolute absurdity under the law.

The distinguished Presiding Officer has been a law enforcement officer, an attorney general of Missouri. This Senator spent 12 years in the Philadelphia District Attorney's Office—4 years as an assistant, trying murder cases, robbery, rape, and arson cases, and then 8 years as district attorney of an office which handled 30,000 criminal trials a year and some 500 homicide cases.

There is no justification whatsoever for saying that murder is justifiable homicide when it is related to someone who performs an abortion.

Under the laws of the United States, Roe versus Wade and Casey versus Planned Parenthood, there is a period during which this is lawful conduct, and how anyone can say that it is justifiable homicide is an absolute absurdity.

I thank the Chair for nodding in agreement, because I make a point which is very obvious to anyone who has had any experience in law enforcement and, beyond that, to any thinking American. But in newsprint today, stories are carried about people who make this contention. And some of the public opinion polls show a response —one poll showed 3 percent of the people have this idea. It should be labeled as emphatically as possible that it is an absurdity.

When the Senate of the United States speaks out, as I am confident the Senate of the United States will speak out tonight, in condemning this kind of violence, it will make an impact. This condemnation should ring from every speaker in America who has an opportunity to speak out, from the President of the United States, to Members of the House, to Members of the Senate, ministers, priests, and rabbis from the pulpit, and anywhere anyone can make a speech.

It is atrocious when you think of 130 incidents of death threats, stalking, chemical attacks, bombings, arsons, attempted murder, to say nothing of the four murders which have been perpetrated and the fear that is being created at 900 health clinics around the country.

The point has been made, but it is worth reinforcing, that the majority of activities at these clinics do not involve abortion at all. The Appropriations Subcommittee on Health and Human Services, which I chair, will have a hearing on the range of medical services which are performed. As already mentioned: Pap smears, mammograms, other health services for women. These women are being terrified.

The resolution calls for the creation of task forces and coordination by U.S. Marshals Service; that is fundamental to help law enforcement, to have the agencies of the law work together.

There are substantial funds available at the present time; more than $1 billion available to local prosecutors on applications which would be made. I think that the Department of Justice would look very favorably upon applications which were made along this line.

There is also considerable funding in the crime bill to protect women against violence. So funds are available in additional amounts.

The final part of resolution, stating that, "It is the sense of the Senate that the United States Attorney General should fully enforce the law and protect persons seeking to provide or obtain, or assist in providing or obtaining, reproductive health services from violent attack," is just very, very fundamental.

Not that it is necessary, but there is an additional clause which protects first amendment freedoms of expression.

I think Cardinal Law in Boston was right on target when he made a plea to desist from any conduct which could be remotely connected with inciting violence at these clinics. First amendment freedoms have to be protected so that people can speak up.

I think that it is a very, very important statement to have this kind of a forceful condemnation against violence, especially in the context where so many people are absurdly talking about justifiable homicide.

I urge my colleagues to have the strongest conceivable vote in support of this important resolution.

I thank the Chair and yield the floor.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I yield as much time as she may consume to the Senator from Maryland [Ms. MIKULSKI] who was a very early sponsor of this resolution.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Ms. MIKULSKI. I thank the Chair.

I thank Senator BOXER for yielding me time.

Mr. President, I rise today to speak in favor of the Boxer sense-of-the-Senate resolution. I join Senator BOXER and the other cosponsors in expressing our outrage at the recent killings of clinic workers in Massachusetts.

I wish to thank my colleague from California for offering this sense-of-the-Senate resolution. I am only sorry that we were not able to bring this to the floor in a more timely fashion. But her steadfastness in pursuing our right to speak up, speak out, and vote on this issue is really to be a source of kudos to her.

When we come to the content of this resolution, we have to say that, sadly, this is not the first time we have come to the floor to express our outrage at senseless killing of health care providers. That is what we are talking about—health care providers. We came to the floor when the antiabortion extremist Paul Hill shot and killed Dr. Gunn. We were here when Dr. John Britton and Lt. Col. James Barrett were brutally murdered in Pensacola. And we are here again tonight to decry the deaths of Shannon Lowney and Leanne Nichols and the five other individuals who were seriously injured earlier this month.

The killing must stop, and it must stop now.

It is no longer simply a protest against abortion. Peaceful protests have given away to extremism. Protest has turned to violence. This is not the American way. The United States of America, through its Constitution, provides people the opportunity to speak out, to have dissenting views, and to do it in an atmosphere that is protected by law. But, unfortunately, that is not where we are now.

For those physicians and other people who work at the Planned Parenthood clinics, doctors are being forced to wear bulletproof vests. This is the United States of America. A doctor, instead of putting on a white lab coat, must put on a bulletproof vest to meet the compelling needs of his patients; clinics are being forced to build fortresses to protect their staff; patients are being forced to use escorts to get into the clinics. And even with all of these precautions, the killings continue.

I cannot tell you how saddened I am by this. Women in this country are being sent a message that they risk their lives if they seek reproductive health care. Let me repeat that. In the United States of America, women risk their lives if they seek reproductive health care. That is an injustice.

Last year, this body adopted a rule of law—it was called the Freedom of Access to Clinic Entrances Act—to put an end to this violence. But the success of this law now rests with the Attorney General. I believe she has taken important steps to enforce this bill.

But the Attorney General must take all necessary steps to ensure that not one more health care worker loses his or her life in a facility that happens to perform abortions. The Attorney General must do all that can be done to see that no more individuals are injured, maimed or murdered. She must enforce the law so that individuals are protected from violent attack. Every effort must be made to stop the terrorism that reproductive health clinics and their staffs endure. The message must be clear: That these attacks will be met with the harshest response. And the message must be clear to the opponents of the freedom to choose, that this type of extremism will not be tolerated, and it is not American.

The violence has gone too far. It is time to return to civility, to decency, to the principles on which this country were founded. A woman should not be at risk of losing her life to get the health care she needs.

Let me say this about protests. In the United States of America people can protest. When we passed the Freedom of Access to Clinic legislation, we ensured that nonviolent peaceful protests be allowed to occur. Mr. President, I am in politics because I was a protester, a nonviolent protester who organized her community out of the basement of St. Stanislaus Church to protest the highway, a 16-lane highway, that was going to sweep through my neighborhood, taking the homes of older European ethnics, and the first black home ownership neighborhood in Baltimore.

So I know what it is like to be a nonviolent protester, to organize people in a way that is joyful, exciting, creative. Know what we did? We did not go out and beat a mayor up. We did not bomb the Secretary of Transportation. We held a festival. We held a festival to show what our neighborhoods were. And in that neighborhood where I now live and commute from Baltimore every day, stands the neighborhood that I helped save.

And by being a protester the people did not punish me. They rewarded me and sent me to the Baltimore City Council, from there, the House of Representatives, and then to be here in the U.S. Senate.

For everyone in the United States of America whose views I either agree or disagree with, I want to guarantee them the right of continued nonviolent protest. So the words of Gandhi, Martin Luther King, and that methodology is there. We are acting like these are the Bull Connors of reproductive freedom. In the old days those who were against civil rights bombed churches, killed children; Bull Connor turns the fire hoses on them. This is the same thing.

So, now, we have to stop that. We have to stop it with the law. Why do women go to these clinics? Who goes? They are ordinary women, many of whom who have no health insurance. They have bad backs, they have varicose veins, and they want to see a doctor. And their GYN is their primary care physician. That is what they want to go there for, general primary care, information about reproductive freedom, and some, because of either medical necessity or medical appropriateness, will have an abortion. That is why they go.

I call upon the religious leaders of this country to speak out against this. I call upon the Attorney General of the United States to enforce the law. Tonight I call upon the U.S. Senate to pass the Boxer resolution. Let us make sure that America is the land of the free.

Mr. KEMPTHORNE. Mr. President, I yield 5 minutes to the Senator from Maine.

Ms. SNOWE. I thank the Senator for yielding.

Mr. President, as someone who is deeply committed to ensuring choice and quality of women's health I certainly rise in strong support of the amendment that has been offered by the Senator from California. I, first of all, want to also thank and commend the Senate majority leader for ensuring the consideration of this amendment during the deliberations of unfunded mandates. This issue is very timely. It is a matter of life and death, when we consider what has happened in abortion clinics all over America. I am pleased we are able to consider this resolution. I am sorry it is under the circumstances under which we are considering it in light of what happened in Brookline, MA, with the recent killings.

This amendment is appropriate because it expresses the sense of the Senate that the U.S. Attorney General should fully enforce the law. The Attorney General must use all the tools at her disposal to protect persons seeking to obtain or provide reproductive health services from violent attacks. We have seen in recent months, regrettably and tragically, an alarming trend toward violence and terrorism against reproductive health clinics. Too often, those extremists who oppose a woman's right to reproductive health have resorted to intimidation and even violence in order to prove their point. Peaceful civil disobedience is one thing, but these acts have far crossed the line of acceptable behavior.

We are a nation that prides ourselves on our diversity, diversities of views, ideas, and values. As a nation of laws we simply cannot and we simply will not tolerate cold-blooded murder. Nor can we tolerate bombings, vandalism, assault, bombings, arson, destruction of property, and the physical prevention of people from entering medical clinics.

Yes, we are a nation of diversity, and that diversity depends first and foremost on our adherence to the laws made by our elected representatives of the people. It is this fact that distinguishes our democracy from other forms of government and that has contributed over time to our Nation's peace and prosperity.

Last year, as we all know in response to many of these tragic incidents, the 103d Congress considered, deliberated, and enacted the freedom of access to clinic legislation. As a Member of the House of Representatives, I was an original cosponsor and worked with many of my colleagues on both sides of the aisle in both bodies in this institution, in order to ensure that it became the law of the land.

This new law makes it a Federal offense to block the entrance to a medical clinic offering reproductive services, and to use force or the threat of force to intentionally interfere with or injure anyone attempting to obtain or provide reproductive services. The Supreme Court has made clear that these rights of peaceful protest do not extend to threats and violence, as made clear in recent decisions. In a 6 to 3 ruling last June the Supreme Court ruled in the case of Madsen versus Women's Health Center that restrictions of protesters were constitutional, including the establishment of a buffer zone between the clinic entrance and elsewhere.

In 1993, the court filed a unanimous opinion in the case of Wisconsin versus Mitchell, a hate crimes case. The Court held that physical assault was not among the forms of allowable "expressive conduct," and decried violence as a form of civil disobedience. But the terrorist acts at medical clinics in the past months have crossed the lines of peaceful disobedience, and they mark the beginning of an alarming trend.

According to the National Abortion Federation, 61 percent of nonhospital abortion providers report being the target of some form of harassment including personal harassment of themselves and of their families away from the facility. From 1977 to 1983 there were 149 incidents of violence against health clinics. Since then, reproductive health providers have reported almost 1,500 acts of violence. Not always shootings, not only in Norfolk and Brookline, but also kidnapping, burglary, arson, telephone threats, stalking, invasion, and vandalism.

In 1994 there were over 130 incidents nationwide of violence or harassment directed at clinics and the people who work there. In the horrifying shootings of Brookline, MA, which resulted in the tragic deaths of two women are clear indication that the violence is continuing. As many others have indicated here this evening, what kind of clinics have been targeted for the terrorist tactics? Clinics which provide not just reproductive health services, but clinics which provide essential pediatric care, prenatal care, childhood immunization, diagnosis and treatments of STD's, contraceptive services, mammograms, Pap smears and other forms of counseling for women. In fact, more than 90 percent of clinics provide these health services in addition to reproductive health services.

In my home State of Maine, Mr. President, medical clinics and physicians have been targeted. So far, thankfully, without the life-threatening violence that occurred in Brookline.

The PRESIDING OFFICER. The 5 minutes allotted have expired.

Mr. KEMPTHORNE. Mr. President, I would be happy to yield 3 additional minutes.

Ms. SNOWE. Three physicians at the Penobscot Bay Women's Health Center in Rockport, ME, decided to cease offering full services because of concern for the safety of patients and the staff after 3 years of protests.

After a week of picketing and threats, Dr. Gregory Luck chose to close the medical clinic in Falmouth, ME, offering a full range of women's health services that has been opened for more than 10 years, rather than risk violence against his patients and staff. Dr. Luck, in closing his practice, said he could not guarantee the safety of his patients. Women, he said "have been subjected to harassment irrespective of whether they planned to visit my office or any other office and irrespective of what medical service they required," he said in announcing the decision.

As we have seen in U.S. News & World Report this week, it says "physicians under fire," having to wear bullet-proof vests, and carrying guns and weapons to protect themselves, to provide for the safety of their employees. It is regrettable in this country we have reached this point in time.

Mr. President, safe, affordable and accessible reproductive health services are crucial to the well-being of women. We must send a message to would-be terrorists that violence and threats of violence and vandalism at these centers will not be tolerated and will be punished under the fullest extent of the law.

Congress needs to act on behalf of the families and friends of those who have tragically died because of their belief in a woman's right to decent medical services. Congress needs to act on behalf of low-income women who depend on such clinics for their personal health needs, the rural woman who already faces burdens and barriers to access, but most importantly, for all women and their families who depend on safe access to the health care that they need and that they deserve.

So I urge my colleagues to support this very important amendment. Again, I want to thank the Senator from California and the Senator from Idaho for yielding me this time.

I yield the floor, Mr. President.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, will you inform me as to how much time I have remaining on my side?

The PRESIDING OFFICER. The Senator has 17 remaining minutes.

Mrs. BOXER. If the Senator from Illinois is interested, I can yield her 5 minutes at this time. I yield the Senator from Illinois up to 5 minutes at this time.

The PRESIDING OFFICER. The Senator from Illinois.

Ms. MOSELEY-BRAUN. Mr. President, I want to commend and congratulate Senator BOXER for this initiative, and I hope this body, in a resounding unanimous vote, makes it clear that we condemn in the strongest terms the violence that has occurred, the extremism that has occurred, and the taking of innocent life as a form of protest by any group in this country.

The Congress, I believe, must send a clear, unequivocal signal that this country will not tolerate the use of terror, violence, and murder to express disagreement with the current laws relating to abortion.

Whether one supports abortion or not—and I have made it clear and, in fact, my colleagues and I sometimes have a minor disagreement on this point, that I do not personally support abortion. I do, however, in the strongest terms support the right of a woman to choose to have an abortion. I do not believe that it is the Government's role to intervene itself and interpose itself in so personal and private a moral decision as to whether or not to carry a child to term. I believe that that is an issue that women, of whatever stripe, have to maintain as a matter of fundamental constitutional liberty, and the Supreme Court of the United States, in Roe versus Wade in 1973, agreed with that point of view.

Within the parameters, it recognized a woman's right under the Constitution to control her body, a woman's right to choose to have an abortion. For those of us who are not pro-abortion but rather are pro-choice, it becomes a distinction that is a very important one. It means that Government must, on the one hand, keep its hands off women's bodies; Government must, on the one hand, continue to preserve the liberties and freedoms that women have to decide whether or not to be parents. But at the same time, Government has an obligation and a responsibility to protect people in the exercise of their legitimate rights under the Constitution of this country.

That is what is at issue here: That we have legitimate rights that have been established under the law in this country, and the question is whether or not in these United States the rule of law will predominate or whether or not we will allow ourselves to be dictated to and controlled by extremists and, indeed, extremists who become murderers.

The murders that occurred most recently are horrendous, horrendous acts. I believe every person of conscience should, in the strongest terms,

condemn that violence and condemn murder, certainly as a way of expression. That is not an expression of one's free speech. That is not anything but plain—it is what it is, which is murder. We must always be clear that if we are concerned about life, if we celebrate and want to protect life, then we have to stand four square with those who are exercising their right to live and exercising their rights under this Constitution.

And so since this country has the rule of law and not the rule of individuals who will enforce their point of view from the barrel of a gun, since that is the rule of law in this country, I believe that in this Senate it is appropriate to stand up for that right and for this Senate to express in the clearest terms that we condemn extremism, we certainly condemn murder, and we condemn any effort to interfere with someone's exercise of rights they enjoy under the Constitution of this country.

Local police must make the enforcement of the Freedom of Access to Clinic Entrances Act, which we passed last year in a bipartisan vote, an absolute priority of theirs. Our Justice Department, I believe, has every obligation to look into the network of individuals who are extremists in this area and who could deprive Americans, and particularly women, of their rights not only to choose abortion, but to choose appropriate health care, to choose to get counseling, to choose to go to places where they can receive physical care for their condition.

These clinics provide a lot of different services, as has been pointed out by previous speakers. It is not simply a place where one might go for abortion services. Indeed, if anything, one of the real concerns is that these clinics may be less capable of providing counseling against the transmission of AIDS, against the transmission of disease; that they will not be able to play the public health role that they are uniquely situated to play because of the intimidation, because of the violence, and because of the extremism.

When that extremism reaches the fever-pitch point that it has now, I think it is altogether appropriate for those of us in this body to stand up for the rule of law, to stand up for the right of women to choose and to make their own decisions about their private health care, and to make it very clear that we condemn in the strongest terms the violence that has occurred.

That is the purpose of the sense-of-the-Senate resolution that has been filed by Senator BOXER and of which I am a cosponsor, and that is certainly the initiative behind this sense-of-the-Senate resolution. I call on all of my colleagues, whether you are pro-choice or pro-life, to support the BOXER amendment. Thank you.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mr. KENNEDY. Mr. President, I strongly support this amendment. The Senate must go on record unequivocally to condemn the use of violence against abortion providers, and to call on law enforcement authorities to do everything in their power to prevent such violence and protect citizens from it.

The most recent deadly assaults occurred at two clinics in Brookline, MA, on December 30. Two women who worked as receptionists at the Brookline clinics had their lives brutally cut short. Five other people were seriously wounded. My heart goes out to these victims and their families.

This kind of vicious, hateful assault against women and health care providers cannot be tolerated in any community in America. No effort can be spared to make sure that these despicable crimes are not repeated anywhere else.

Women must be able to seek reproductive health care without fear of violent assault. Doctors should be able to practice their profession without wearing bullet-proof vests. Clinic staff should be able to go to work each day in safety.

Abortion is a constitutionally protected right, and it must be safe and accessible. Last year, Congress passed the Freedom of Access to Clinic Entrances Act with broad, bipartisan support, and President Clinton signed it into law.

That law gives the Attorney General the tools she needs to prevent violence and obstruction and to punish such acts whenever and wherever they occur with the full force of Federal law.

The Justice Department has already brought several enforcement actions under this law, and it is actively investigating other possible violations. In addition, the Attorney General has directed U.S. attorneys around the country to coordinate a joint effort by Federal, State, and local law enforcement authorities to ensure that clinics and providers in every community are adequately protected.

Some have suggested that the new Federal law is somehow responsible for fomenting violence at abortion clinics, because it allegedly closes off peaceful picketing as an outlet for those with strongly held views against abortion. Any such suggestion is nonsense.

The clinic access law does not prohibit or punish peaceful picketing or any other expression protected by the first amendment. On the contrary, it specifically permits it. What the act prohibits is violent, threatening, obstructive, or destructive conduct—none of which has ever been protected by the Constitution. For that reason, all of the Federal courts that have reviewed the law since President Clinton signed it last year have upheld it. Tough laws against clinic blockades and clinic violence are not the problem. They are the solution.

I commend President Clinton and Attorney General Reno for their vigorous enforcement of the new Federal law, and for their commitment to work with State and local law enforcement authorities to protect clinics throughout the country. We must do everything in our power to guarantee public safety and prevent the use of violence against patients and providers.

It is a privilege to join Senator BOXER in urging adoption of this amendment. I hope that every Member of the Senate will vote in favor of this important measure.

Mr. KERRY. Mr. President, I am honored to join my colleague from California in proposing this important piece of legislation expressing the outrage of this body over abortion clinic violence.

No matter what our views on abortion might be, I am sure that every decent American mourns the senseless murders that have been committed at abortion clinics.

On the first day of this session, I rose to discuss the broad implications of abortion clinic violence. I would like to reiterate some of the points that I made at that time.

I am deeply saddened that my State has joined others that have seen the horror and felt the pain of this senseless violence.

The Friday morning before New Years Eve, at 10 a.m., Shannon Lowney, a 25-year-old activist working as a receptionist at a clinic in Brookline, MA, looked up and smiled at a man who had just walked into her office. It was John Salvi.

He pulled a collapsible Ruger rifle from his bag—aimed it at Shannon—and fired at point blank range. He killed Shannon and wounded three others.

And now, in mourning her death, we ask ourselves: Who was Shannon Lowney and what did her life show us?

Her friends called her "Shanny" and she was a caring, committed young woman who represents the best of her generation. She cared about people. She tutored Spanish-speaking children in Cambridge, helped poor villagers in Ecuador, worked with abused children in Maine, and last week she finished her application to Boston University for a masters in social work.

She was one of those rare people who confronted injustice and acted on her deep and abiding belief that we are all in this together—we are community and each of us must accept our personal responsibility within that community.

The irony and the tragedy is that—to John Salvi—Shannon's life meant nothing—the good and decent life of someone who truly cared about others was taken in the name of "life".

Mr. President, no matter what our views on abortion might be, I am sure that every decent American mourns the senseless murder of Shannon

Lowney and is touched by the loss of someone so young and so committed to working with others.

Contrast Shannon's life and her motives with the life and motives of a man like John Salvi—A man who killed one person and wounded five others and then left Planned Parenthood and walked a few blocks to the Preterm Health Services Clinic. He asked Lee Ann Nicols, a 38-year-old receptionist engaged to be married this year, whether this was the preterm clinic.

She said yes and he shot her from less than one yard away—killing her on the spot.

He then said, "in the name of the mother of God", aimed at Richard Seron, a lawyer working as a security guard, and shot him once in each arm. He shot one other person, 29-year-old June Sauer once in the pelvis and once in the back, and then he left.

Five people injured—two people killed.

And now we must ask: Who is John Salvi and what does his life show us?

On Christmas Eve Salvi delivered a sermon about the Catholic Church and its failure to see the true meaning of Christ. But what was his motivation for cold-blooded murder?

Paul Hill, the Minister currently on Florida's Death Row, gives us some insight into John Salvi's motivations. Hill gave us a chilling reason for killing a doctor and his assistant in Pensacola. He said that "the bible teaches us to do unto others as you would have them do unto you.

"Therefore, killing a man who is about to kill an unborn child constitutes killing in self-defense."

To Paul Hill the murder was a justifiable homicide.

Mr. President, this syllogism lies at the heart of one of the most corrosive dangers the world faces today.

There are religious teachings that offer justifiable reasons for killing, but mainstream religions have always promoted tolerance over intolerance, and the only people who use religion to justify cold-blooded murder are religious fanatics.

But what happened in Brookline—what happened to Shannon Lowney and Lee Ann Nicols—and the tragedy of their deaths—tells us that we can no longer dismiss these fringe elements of our society. We can no longer let the good people fall victim to intolerance and fanaticism.

Yes, John Salvi read from the same Bible that Shannon and Lee Ann did. The teachings and the words were the same, but their lives could not have been more different. It is our task to remember that commitment and dedication can be manifest in kindness and concern or they can take the hideous form of fanaticism and hatred that motivated John Salvi to play God.

Mr. President. It is incumbent on all of us as a society to understand the danger that can be wrought by those who would interpret religious teachings as a crusade against others and a justification for cold-blooded murder.

It is our task to understand that we live in dangerous times, and that the easy availability of weapons in this society to people like John Salvi and Paul Hill has increased that danger, and increased the threat to those who chose to show their commitment and their faith by helping others build a better life for themselves and for their families.

I believe it is time for both sides in the abortion issue to find a way to express their views without increasing the level of the rhetoric or the level of violence.

It is our task to sit down and talk to each other, and I commend my friend and constituent, Cardinal Bernard Law, of the Archdiocese of Boston, for his efforts to bring both sides together. He has shown himself to be an individual of courage in this regard. Even though he is strongly pro-life, he has called for an end to anti-abortion protests in Boston.

And he is trying to bring everyone together in an unprecedented series of negotiations. Cardinal Law is a leader whose tolerance, and deep faith serves as an example to all of us.

What we achieve together can send a loud and clear message—to those who would use their beliefs as justification for murder—that, though we may not agree, we are still one people bound together not only by our faith and our commitments to our beliefs, but by the expression of our common interests through tolerance for our differences and a mutual respect and understanding for each other.

But, make no mistake. The wrong response to these shootings would be to turn clinics into armed fortresses on the fringes of our medical delivery system, further from those who choose to have the procedure.

Yes, we must protect workers, medical personnel, and patients, but we cannot allow an accepted medical procedure to be limited by the blind intolerance of a fanatical fringe.

So, Mr. President, if this constitutionally protected right is to be preserved, and if we are to truly pay tribute to women like Shannon Lowney, then we need to protect the safety of those who seek the services of these clinics.

When those shots rang out in Brookline, John Salvi took something very precious from us. He took our freedom to believe and to express our beliefs as we choose. He took our freedom to act on our beliefs without fear of violence. We can never let that happen.

Mr. President, perhaps the most eloquent tribute to Shannon Lowney came from the president of the Planned Parenthood League of Massachusetts. Nicki Nichols Gamble said, "Shannon gave her life so that others would be able to have better lives. She was an essential link in the chain of women helping women. We will miss her desperately, and we will remember her, and we will see to it that her death will not be in vain."

Today and for many days to come we will mourn the deaths of Shannon Lowney and Lee Ann Nicols. The people of my state are shocked and outraged at this senseless act of violence that took them from us, and I know that I speak for every member of the Senate in extending our deepest condolences to their families and friends and to all the victims of this tragedy.

The lesson, Mr. President, is "tolerance" and it is a lesson we would do well to learn; and—if we do not learn it—we will have dishonored the memory of two young women from Massachusetts who lost their lives to intolerance in the name of God.

Thank you, Mr. President. I yield the floor.

Mrs. BOXER. Mr. President, I ask my colleague if there are any other speakers that he knows of at this time on his side, and if there are not, I will take about 5 minutes at this time.

Mr. KEMPTHORNE. Mr. President, yes, I do believe that we have at least one more Senator who will be coming to speak on the issue.

Mrs. BOXER. Mr. President, I will yield myself 5 minutes, and then I will yield back to my colleague so we can continue the debate.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I want to thank the Senator from Illinois for being here; for, yes, being one of the early cosponsors of this amendment. I, frankly, do not know of any Senator who is pro-abortion. I do know many Senators who are pro-choice on both sides of this aisle. That is why it is so important for reasonable people to come together around this issue, by the way, people who are pro-choice and people who are not, as the Senator from Illinois pointed out. There are times when we can all come together. This is one of those times.

When I was asked about what life in the new Senate would mean for me, I responded to one reporter in this way. I said:

"I think there will be many issues where reasonable Senators will come together from both sides of the aisle, and it will not be a partisan issue in every case."

And that reporter said: "Give me an example."

I said: "Clinic violence, the gag rule, a woman's right to choose."

This is something that cuts across our party. This is about the dignity of women and, therefore, the dignity of all of us, because all of us have mothers. Many of us have sisters, wives, and daughters, and their dignity is our dignity.

I am so pleased that after much discussion and debate, we were able to reach agreement on a very sensible resolution, I think one that each and every Member of this Senate can be proud to vote for.

I want to use a little time to go back to what is really happening in some of the streets of our Nation. And I want to refer to a document called "No Place to Hide," which is a campaign being launched by a group that calls themselves "pro-life." And I would leave it up to others to decide if that is an appropriate term.

They put out this leaflet, and I am going to read to you from part of it. It says in part, this is the "No Place to Hide" campaign.

And it is supposed to go after workers in reproductive health care clinics. It says:

Try to reason with the doctors, speaking from your heart about the unborn child and the pain and anguish their mothers go through. If they agree—

The doctors.

If they agree to stop killing children, ask them to put it in writing.

Mr. President, when you use terms like this: Ask the doctors to stop killing children, what is the message? Then they say:

Creative fliers similar to the enclosed wanted poster to hand out to people entering the building where the doctors have their practices.

Here is one of these wanted posters, showing the faces of these doctors, and on the top it says, "Wanted For Killing Unborn Babies."

Now, it seems to me it is time for all Americans to come together and listen to the words we are using.

I ask unanimous consent to place in the RECORD an article from the Oakland Tribune dated January 6 at the end of my statement.

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

(See exhibit 1.)

Mrs. BOXER. I thank the Chair.

This is what they say in this article:

When you tell someone unstable, like Paul Hill—

Who killed two people in a clinic in Florida—

When you tell someone unstable, like Paul Hill, that doctors at Planned Parenthood are murderers who destroy innocent babies, you just can't wash your hands of it when that unstable person kills someone. When your supporters distribute posters saying, "wanted dead or alive," with doctors' names on them, you can't say it has nothing to do with you when someone ends up dead. When you liken abortion to the Holocaust, you are inviting your followers to take the law into their own hands.

And then they quote one of the gentlemen involved in these organizations, and he said,

Anyone in the war zone has got to expect to be part of the war that's going on.

The PRESIDING OFFICER. The time of the Senator has expired.

Mrs. BOXER. I ask for 2 additional minutes.

Anyone in the war zone has got to expect to be part of the war that's going on.

Said this gentleman about the dead woman in Brookline.

So I say to you, Mr. President and my colleagues, I thank so much the Senator from Oklahoma working on the words of this resolution so we protect everybody's rights—yes, the rights of the peaceful protesters to express themselves fully and completely as we point out in the FACE bill they have a right to do, and, yes, the rights of people seeking reproductive health care to have their lives protected. I say that we cannot ignore the words that are being used, and that, yes, in this amendment we are calling on the Attorney General to fully enforce this law, to do everything she has to do.

In essence, I hope that by our speaking out tonight in a bipartisan fashion, the word will go out to the people in these organizations to think very carefully, Mr. President, of the words they use and the things that they print up showing doctors as killers.

The PRESIDING OFFICER. The Senator's additional 2 minutes have expired.

Mrs. BOXER. And to change their tactics.

I would at this time save the remainder of my time, which, if I am correct, is approximately 5 minutes.

The PRESIDING OFFICER. Five minutes.

Mrs. BOXER. I would reserve that 5 minutes.

EXHIBIT 1

[From the Oakland Tribune]

ANTI-ABORTION LEADERS MUST REIN IN TROOPS

The president can send a regiment of soldiers to guard abortion clinics, and the women and men who work there can arm themselves to the eyeballs. But violence at clinics is not going to stop until leaders of the anti-abortion movement exert strong moral leadership over their flock.

It sounds odd, doesn't it—telling anti-abortionists to show morality. After all, isn't that what the anti-abortion movement is all about? Its adherents hold the bedrock belief that a fetus is an independent human being. When they stop an abortion they believe they are saving life.

But you can't be "pro-life" and condone murder. Two murders took place in Brookline, Mass. last week—the victims were receptionists at places where abortions take place. An anti-abortion activist from New Hampshire, John Salvi, has been accused of the crimes.

Another anti-abortion crusader, Paul Hill, was convicted last year of similar murders in Florida. There has been violence at other clinics across the country.

Too many leaders of the anti-abortion movement have washed their hands of these murders emanating from their midst. They say, "Tsk tsk. Isn't that a shame? But those people are extremists. They have nothing to do with the mainstream anti-abortion movement."

FRANKENSTEIN

We have news for anti-abortion leaders: Paul Hill, John Salvi and the others like them in your movement have everything to do with you. You create and nourish them with your language and tactics.

When you tell someone unstable, like Paul Hill, that doctors at Planned Parenthood are murderers who destroy innocent babies, you can't just wash your hands of it when that unstable person kills someone. When you supporters distribute posters saying, "wanted, dead or alive," with doctors' names on them, you can't say it has nothing to do with you when someone ends up dead. When you liken abortion to the Holocaust, you are inviting your followers to take the law into their own hands.

When the movement accepts people like Salvi, Hill or the Rev. David Trosch in its midst then it has to accept responsibility for their actions and their speech. Trosch is the Roman Catholic priest suspended for declaring it "justifiable homicide" to kill a doctor who commits abortions.

A man like Trosch incites men like Hill to kill. "Anyone in the war zone has to expect to be part of the war that's going on," Trosch said of the dead women in Brookline.

Not everyone in the anti-abortion movement is like Trosch, of course. The bulk of people are sincere and well-meaning. The Rev. Flip Benham of Operation Rescue National condemned the attacks in Brookline. "An eye for an eye, it doesn't work that way," Benham said. But to an apparently increasing number of anti-abortionists it does work that way. These movement members see things as Trosch sees them. They see those dead receptionists as grounds troops in a larger war who have no meaning of their own.

Cardinal Bernard Law of the Boston Archdiocese wants the killing to stop. After the Brookline shootings, he called for an end to the violence and the demonstrations. He told those who protest to search their souls.

TRUE LEADERSHIP

That is moral leadership. Anti-abortion leaders should search their souls indeed. Are they inciting people to Kill? Is their language too provocative? Are their actions going to lead to violence? Is there a better way to get where they want to go without confrontation? Can they identify people on the fringe before they harm others? Can they isolate those people and get them counseling?

This is a time for leaders and everyone else in the anti-abortion movement to take careful stock of what they stand for. They got into this crusade to save lives. Their cohorts are now taking lives. This is not the way it was supposed to be.

Paul Hill said that one day soon his behavior—murder—would be viewed as normal in the abortion wars, rather than an aberration.

The only ones who can keep that ghastly reverie from becoming reality are the men and women who lead the movement that created Paul Hill. They need to take their considerable moral energy and turn it inward, for now. It is time to begin, today.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I ask to be recognized for such time as necessary, not to exceed 7 minutes.

The PRESIDING OFFICER. The Senator is recognized.

Mr. NICKLES. Mr. President, on this resolution, I have been working with the Senator from California, and I appreciate her cooperation as well as the

cooperation of the Senator from Washington, Senator MURRAY, in trying to come up with a resolution that we can support. I am talking about people of different views on different sides of the abortion question. I think we have come to agreement, and I appreciate their cooperation.

When we originally looked at the resolution as introduced, it left a lot to be desired, and my original thought was that we could not support it. Since then, I think we have made some improvements, and I might just mention those. Originally the resolution stated that "persons exercising their constitutional rights and acting completely within the law are entitled to full protection from the Federal Government."

Now, that might sound good. But we have left that out because it can be misleading. Some people might misinterpret that, so now that is not included in the resolution. We offered to say that they would be entitled to "equal protection," we did not reach an agreement on that. So now that particular segment is not included.

Also, the original resolution stated that "the Freedom of Access to Clinic Entrances Act of 1994 imposes a mandate on the Federal Government to protect individuals seeking to obtain or provide reproductive health services."

That is now deleted. It was deleted, in my opinion, for a good reason—because it is not correct. That is not what the original act stated.

In addition, we made a couple of other changes, and I think these as well are positive changes. The sense-of-the-Senate resolution, as mentioned by the Senator from California, now deletes language that says that "the Attorney General should fully enforce the law and take any further necessary measures to" protect persons, and so forth. And we have eliminated that part—"and take any further necessary measures"—in addition to enforcing the law. I think that is an improvement.

I appreciate also the Senator from California agreeing to the following addition that was recommended by the Senator from Indiana, Senator COATS, which added the following. It says:

> Nothing in this resolution shall be construed to prohibit any expressive conduct (including peaceful picketing, or other peaceful demonstration) protected from legal prohibition by the First Amendment to the Constitution.

In other words, people still have the right of peaceful demonstration, whether it be in front of an abortion clinic or other areas.

Mr. President, let me just state that I will support this resolution. My original concern was that we were only condemning one type of violence, the type of violence as it concerns abortion clinics. I happen to be against all violence. I am not interested in the reason—in people murdering someone down at the convenience store or in front of a night club in the streets of Washington, DC or New York City or Oklahoma or in California or in front of abortion clinics. I condemn those people who committed the atrocities including killing or murdering abortionists or someone murdering a 15-year old on the street because they want to wear his jacket.

I thought the resolution was inappropriate because it only condemned violence against abortion clinics. I want to condemn that violence. I happen to be on the pro-life side of this debate. But I think people who are breaking the law by murdering other individuals are going too far and they are actually hurting the cause that they supposedly are trying to help, so I think we should condemn that violence. But I also think we should condemn violence such as occurred in Alabama in 1993. A pro-life minister and talk show host Jerry Simon was shot and killed by a self-described Satan worshiper, Eileen Janezic, stating she did it "to please Satan." That case received almost no publicity. We have seen a lot of publicity concerning the murder where Paul Hill murdered an abortionist in Florida, and maybe rightfully so; it needed some attention. He was certainly wrong.

I might mention, Mr. President, he was convicted. He was convicted under State law for murder and has now been sentenced to death. Some people wanted to federalize all crimes, but I might mention murder is against the law in every single State in the Nation, as it should be, and States have the primary responsibility to enforce those laws, as it should be. His trial has been completed, and he was found guilty. And his sentence is the death penalty under State law. So again I wish to condemn violence, but I also want to make sure that we do not federalize so many cases.

It was also originally stated that there was so many thousand FBI agents and U.S. marshals and that they should do all they can to protect abortion clinics. I might mention—and I think the resolution states there are something like 900 clinics. They are called—well, they are called clinics in the United States providing reproductive health services. They are abortion clinics. If you took the number of U.S. marshals—I think there is stated to be about 2,000 marshals and I guess their deputies—then each clinic could have a little over 2 marshals per clinic. The marshals have something else to do. So I objected to that section, as well.

So I appreciate the Senator from California deleting this. I appreciate the willingness of the Senator from California to modify the resolution. I think it is acceptable. I think it is important for the Congress to speak out and condemn violence but I think it is also important for us to speak out and condemn all violence. When we see teenagers killing teenagers; when we see drug epidemics run rampant throughout this country; when we see the number of women who are being abused, the number of children who are being abused; when we see so many significant crime problems throughout this country, I think we need to do something, as well. Not just a sense-of-the-Senate resolution.

So I am hopeful that this Congress will move and move expeditiously on a significant crime enforcement package, one that will strengthen the penalties that some of us tried to enact a year ago, one that will have habeas corpus reform so we can have an end to the endless appeals.

So I hope this Congress will move and make some real, significant change in order to limit crime this year, this Congress.

I thank my colleague and I yield the floor.

Mrs. BOXER. Mr. President, I yield 3 minutes to the Senator from New Jersey, Senator LAUTENBERG.

Mr. LAUTENBERG. I thank the Senator from California.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I rise today in support of the sense-of-the-Senate amendment introduced by Senator BOXER.

Since 1984, there have been more than 1,500 acts of violence near abortion critics.

In the last 22 months, five innocent people have been shot to death at abortion clinics. Five men and women heartlessly slain by murderers who call themselves pro-life.

In the past year, we have already seen two tragedies at abortion clinics. Less than 6 months ago, a doctor and his escort were shot to death on their way to work in Pensacola, FL.

Most recently, a 22-year-old man allegedly went on a violent spree, attacking abortion clinics in Massachusetts and Virginia, and killing two clinic workers in the process.

Mr. President, how many more innocent people must die before we as a society put a stop to this terror?

How many doctors will be gunned down for performing a legal medical procedure?

How many receptionists will lose their lives simply because they work in the line of extremist gunfire?

Last year, President Clinton signed the Freedom of Access to Clinic Entrances Act, known as FACE. This law made it a Federal crime to block, obstruct or intimidate a woman seeking reproductive health services, or a doctor trying to perform them.

But it is now clear that the clinic access law alone will not be enough to protect our Nation's doctors and women.

Attorney General Reno announced in August that she would post U.S. marshals outside of threatened clinics. That is also a step in the right direction, and I urge the Justice Department to review its efforts in this area.

I applaud the President's announcement earlier this month directing all U.S. attorneys around the country to form an immediate task force of Federal, State, and local officials to coordinate plans for security at all clinics in their jurisdictions.

And I applaud the President's efforts to improve communication between U.S. marshals and reproductive clinics to make sure they are prepared to inform the authorities of any potential threats.

But I ask the administration to continue pursuing a hard line against the purveyors of violence and to take further protective measures until each and every reproductive clinic in the United States is safe for doctors, for employees, and for patients.

The women of this country deserve to go to the doctor without fearing that they may never come home.

They deserve to receive reproductive services without harassment, intimidation or even worse, bodily harm.

And they have a right to undergo legal medical procedures without putting themselves, their families or their doctors in such unfair jeopardy.

Let us send a strong message to all those who would use guns to express their views, a message that we are going to stand up for the women, doctors, escorts, and health care workers across the country until all Americans are safe, and all murderers are behind bars.

Mr. President, I will just take a couple of minutes to summarize what, I sense, is an attitudinal problem. We can talk all we want about standing up against violence. But very often, the people who talk most about violence and getting rid of it are those who support the proliferation of guns across our society. It is pretty hard to do away with violence when there is almost a gun everyplace that you look, and a failure to register those things.

When we talk about standing up against violence, there is an intimation that those who have the right to choose under our Constitution, confirmed by the Supreme Court, are themselves committing an act of violence, and that is where the process starts. The process, not just of killing and assault, but intimidation, is one designed to threaten people who decide that they want to make a different decision than those on the other side.

In New Jersey, we have a doctor who offers abortion as part of his obstetrical practice, offers abortion if people want it. He has been shot at. He has been threatened. His family is constantly under threat. He is so frightened by doing what he feels is right professionally, and yet he is unable to offer the kinds of services for which he has been licensed by the State and by the profession.

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. LAUTENBERG. Can I have 1 more minute, or if my colleague is out of time, I will conclude.

Mrs. BOXER. I will yield 30 seconds.

Mr. LAUTENBERG. Just to say this. If we are going to talk against violence, it has to start when people violate the law, the law very clearly stated. I implore the President and the Attorney General to stand up and protect those institutions that offer people a choice in how they want to conduct their lives. It is very simple.

Mr. President, I yield the floor and thank the Senator from California for her courage and for letting me participate.

I yield the floor.

Mrs. BOXER. Mr. President, I have a minute and a half remaining. I wonder if the Senator from Idaho would like to yield some time. I will retain that minute and a half just to close off debate at the end, if I might.

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

The PRESIDING OFFICER. It is 14 minutes for the Senator from Oklahoma, and a minute and a half for the Senator from California.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded for a parliamentary question.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Ms. MIKULSKI. Mr. President, to whose time is the time being charged for the quorum?

The PRESIDING OFFICER. The Senator from Oklahoma.

Ms. MIKULSKI. I see. I thank the Chair. I yield the floor and, Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Ms. MIKULSKI. On the time of the Senator from Oklahoma.

The PRESIDING OFFICER. Is there objection? Is there objection? Without objection, the clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

The Senator from New Jersey.

AMENDMENT NO. 141

Mr. BRADLEY. Mr. President, I ask unanimous consent that Senator DORGAN, Senator DOLE, and Senator NICKLES be added as cosponsors to the amendment, the BRADLEY amendment.

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

Mr. BRADLEY. Mr. President, as I said earlier, this is a very simple amendment.

The PRESIDING OFFICER. Who yields time to the Senator?

Mr. BRADLEY. Mr. President, I think the unanimous consent agreement allotted 1 hour for debate of the underlying amendment.

The PRESIDING OFFICER. It was controlled by Senator NICKLES of Oklahoma and Senator BOXER of California.

Mr. BRADLEY. Mr. President, I ask unanimous consent I be able to proceed for 2 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BRADLEY. Mr. President, the amendment we are going to be voting on at 7:30 is an amendment that simply says while we are debating Federal unfunded mandates on States, it is the sense of the Senate that there should not be unfunded mandates from the States to the local governments of this country requiring increases in property taxes.

The fact is the property taxes are much too high in most States, and there is a significant reason for that involving unfunded mandates from the State government to the local government.

This simply allows the Senate to go on record saying that we do not want high property taxes from unfunded mandates. There are many Governors in the country who do not want any mandates from the Federal Government but they are not reluctant to apply unfunded mandates to the local governments. They are very clear on that.

I am very pleased to have Senator CHAFEE as a key cosponsor.

I yield the floor. If Senator CHAFEE wants to speak, I hope he will come over for the remaining 30 seconds of my 2 minutes.

Mr. President, I ask unanimous consent that Senator ROBB be added as a cosponsor.

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

Mr. ABRAHAM. Mr. President, I must rise in opposition to the amendment offered by the Senator from New Jersey. It is true that I strongly support the idea that mandate costs should not be forced upon subordinate units of government, and that the constitution of my home State of Michigan prohibits the imposition of unfunded mandates upon local units of government. My inability to support the amendment accordingly does not arise from any disagreement with the principle it expresses. Rather, my opposition is grounded in larger principles of federalism. A core principle of

that doctrine is that certain matters simply are beyond the ken of the Federal Government. To my mind, the proper allocation of mandate costs between State and local governments is one such matter. Thus, while I agree with the general principle expressed in the Senator's amendment, I think we overstep our proper bounds when we tell State and local governments how to structure their relationship.

Mr. President, I yield the floor.

Mr. CHAFEE. Mr. President, let me comment very briefly on the Sense-of-the-Senate resolution offered by Senator BRADLEY and me.

The resolution is, of course, not binding to the States. The last thing we want to do is attach a mandate to an unfunded mandates reform bill. Instead, we say plainly here that the States should given full consideration to mandates they might pass onto their cities and towns. That is all.

I mentioned last week on the floor how ironic it is that Governors have asked us to provide relief in this area—while they themselves frequently impose unfunded mandates on their counties, cities, and towns. As we know, cities and towns have no one to pass costs down to.

S. 1 introduces a clear mechanism for accountability at the Federal level. It would be inappropriate and unconstitutional for the Congress to install these same restrictions at the State level—yet—the theme underlying S. 1 of increased accountability for mandates seems applicable.

Although my plan is to support S. 1, I have concerns about the lack of information in certain areas. for instance, do we know how many of the mandates imposed upon cities and towns actually originate from the Federal Government? To my knowledge, there is no data base or tracking system to make this important distinction. However, we have clear evidence that State-issued unfunded mandates exist.

Mr. President, many States have exercised their authority to adopt laws which are more stringent than what the Federal Government requires.

For example, my own State of Rhode Island requires every city and town to have an adult monitor on every school bus that carries children in the fourth grade and below. Did the Federal Government issue this mandate? No. Does the State provide the funds for this? No. The cities and towns must find the money in their own budgets.

I will conclude by noting that the Governmental Affairs Committee report accompanying S. 1 states on page 3 that, "* * * local officials decry unfunded State mandates as much as they do unfunded Federal ones." Since we cannot take direct action to remedy this, Mr. President, I would hope that the Senate could at least send the message that we must be held accountable at all levels.

I am told that language similar to this was to be included in a managers amendment last year on S. 993. It is my view that the need for this resolution still exists and so I urge its adoption.

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that the remaining committee amendments be laid aside in order to consider a Levin-Kempthorne amendment regarding feasibility and that no other amendment be in order prior to the disposition of the Levin-Kempthorne amendment and no call for the regular order serve in place of the Levin Kempthorne amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

AMENDMENT NO. 143

(Purpose: To provide for the infeasibility of the Congressional Budget Office making a cost estimate for Federal intergovernmental mandates, and for other purposes)

Mr. LEVIN. Mr. President, I send an amendment to the desk in behalf of myself, Mr. KEMPTHORNE, and Mr. GLENN, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for himself, Mr. KEMPTHORNE, and Mr. GLENN, proposes an amendment numbered 143.

The amendment is as follows:

On page 19, insert between lines 10 and 11 the following new clause:

"(iii) If the Director determines that it is not required under clauses (i) and (ii), the Director shall not make the estimate, but shall report in the statement that the reasonable estimate cannot be made and shall include the reasons for that determination in the statement. If such determination is made by the Director, a point of order shall lie only under (c)(1)(A) and as if the requirement of (c)(1)(A) had not been met.

Mrs. BOXER. Mr. President, may I make a parliamentary inquiry?

The PRESIDING OFFICER. The Senator will state it.

Mrs. BOXER. I wonder, since I have 1½ minutes remaining before the vote at 7:30, I would like to protect that right to be able to give that 1½ minutes closing of my argument if I might.

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

Mr. LEVIN. Mr. President, this amendment responds to a lengthy discussion that we had yesterday about whether the bill should allow the Congressional Budget Office to state when it honestly cannot estimate the direct cost of an intergovernmental mandate. The bill contains a provision that allows the CBO to be honest with respect to its ability or inability to estimate private sector mandates. However, there is no comparable language with respect to CBO's estimates for State and local governments. That was not inadvertent, as the committee reports indicate. But it was wrong. We made an effort in committee to correct it. We had no success.

The amendment we have before us adds such language, and it clarifies in those situations where the CBO cannot make an estimate that it may say so, and that that will be true for intergovernmental estimates, not just for private sector estimates.

This amendment is important for a number of reasons. I commend the managers as well as my cosponsors for agreeing to it and thank them for their efforts in working this out.

This amendment would first provide for truth in legislating by allowing the CBO to tell us if they cannot estimate the cost of an intergovernmental mandate. This amendment retains a point of order in the situation where the estimate cannot be made. The inability to estimate direct costs would continue to be a failure to provide a statement on the estimated cost for purposes of subsection (c)(1)(A).

That was the situation that existed in last year's bill. The point of order which would remain where an estimate is impossible to be made is a point of order which was allowed in last year's bill. The point of order, however, lies only with respect to the absence of a cost estimate. The point of order with respect to an authorization of appropriations would not lie because, practically speaking, it cannot lie. Without a CBO estimate, the mechanism in the point of order that addresses the authorization of appropriation and the subsequent appropriation process does not make sense.

This amendment, therefore, makes it clear that that portion of the point of order in the bill in section (c)(1)(B) does not apply where CBO cannot make an estimate.

Section (c)(1)(B) includes that new point of order which was added in this year's bill which was not in last year's bill. That point of order would not lie in the event of an inability of the CBO to make the estimate.

I want to again thank Senator GLENN, Senator KEMPTHORNE, Senator EXON, and Senator DOMENICI for their help in making it possible for us to have this amendment offered and to hopefully succeed either tonight or tomorrow morning to have it adopted.

I thank the Chair. Again, I thank the managers of the bill.

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

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

Mr. President, yesterday we did a colloquy on the CBO's inability to make a reliable estimate of mandate costs. Senator LEVIN was concerned

primarily that the CBO be given the freedom to not make an estimate. I was concerned that the Congress not provide a loophole which would frustrate the very intent of this bill, which is accountability and informed decisionmaking.

The purpose of the Levin-Kempthorne-Glenn amendment will be to accommodate both interests. If the CBO director cannot make an estimate, he or she shall so state it. But the failure of the CBO Director to make an estimate will still trigger the point of order.

This will provide the Senate with the opportunity to debate issues concerning the estimate and the funding decisions. It will be the will of the Senate at that point to either waive a point or not.

Mr. President, I believe that this addresses what we were discussing yesterday in a thorough discussion and it accomplishes what both of us needed to have accomplished. So I appreciate the floor manager and Senator LEVIN.

Mr. LEVIN. Mr. President, if I could quickly ask the Senator from Idaho to yield for a question, I hope he would agree that the amendment expressly states that the section (c)(1)(B) point of order would not lie in such an instance, only the (c)(1)(A) point of order.

Mr. KEMPTHORNE. In response to that, Mr. President, there is only one point of order, and it has two parts.

Mr. LEVIN. The first part would lie and the second part would not lie. Is that correct?

Mr. KEMPTHORNE. As a result of the Director making that statement; that is correct.

Mr. LEVIN. I thank the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from California is recognized for 1½ minutes.

Mr. LEVIN. I ask unanimous consent, Mr. President, that the vote occur at 7:32 so that the Senator retains 1½ minutes and so that the manager on the Democratic side would have an opportunity for a 1-minute statement, or whatever he needs.

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

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, I will be very brief.

I agree completely with Senator LEVIN. I think he has taken care of a problem that we discussed at great length on the floor yesterday. We went on and on about this. I will not try to repeat all of those same arguments we made yesterday. I think it is ridiculous to require a report where they can say they cannot make a report. Senator LEVIN has very properly moved this amendment to take care of that problem. I support it fully. I urge my colleagues to vote for it.

It is my understanding that Senator LEVIN will want a rollcall vote on this but that it will be put off until morning, and as part of the wrap-up by unanimous consent this evening.

I yield the floor so that our distinguished colleague from California can get her time.

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Thank you very much.

Mr. President, based on that, I ask unanimous consent that there be a rollcall vote on this amendment, that it occur tomorrow prior to cloture vote, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Without objection, the rollcall vote will be ordered tomorrow.

The Senator from California is recognized for 1½ minutes.

Mrs. BOXER. Thank you very much, Mr. President. After 2 weeks of trying to do this, it comes down to a minute and a half. I want to use that time to thank my colleague from Oklahoma for working so hard to get an agreement. I thank the majority leader. He was very direct with me from day one. I knew exactly where I stood. Sometimes it was not in such a great situation, but it turned out that we were able to air this issue.

I want to say that I agree with the Senator from Oklahoma that all violence must be condemned. I have been on this floor condemning gun violence, violence in the workplace, and domestic violence. I was one of the authors of the Violence Against Women Act and worked with my colleague, JOE BIDEN, to make sure it became the law of the land.

Today I am here to talk about the violence to clinics. On December 30, two young, innocent women that worked as receptionists in women's health care clinics were shot to death. The same killer shot up a clinic in Virginia. The President expressed outrage. The Attorney General has instructed the U.S. attorney and the U.S. marshals to work with clinics, and we say to the law enforcement officials it is the Senate's turn to act.

The resolution we propose is straightforward. The resolution, as it was amended by the Senator from Oklahoma, expresses the sense of the Senate that the Attorney General shall fully enforce the law and protect persons seeking to provide or obtain, or assist in providing or obtaining reproductive health services, from violent attack.

We did compromise on this legislation. I urge my colleagues on both sides of the aisle to send a very clear statement from this Senate that we abhor the violence. It will stop; it must stop. We are a country of laws.

I yield the floor.

Mr. DOLE. Mr. President, I ask unanimous consent to speak for 1 minute.

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

Mr. DOLE. I thank the Senator from California and the Senator from Oklahoma for coming together on a very important resolution. There is a vast difference between nonviolence and violence, and that is the purpose of this resolution. In my view, it seems to me something that we should all vote for. When someone violates the law, they violate the law. That is precisely what is being addressed.

The Attorney General should enforce the law. We should not expect any less. I have even gone so far as to say in public comments that I understand peaceful demonstration and I understand nonviolence. I support each. But some of these actions almost come out to terrorism.

I hope we will have a broad bipartisan vote for this special issue.

Mr. President, there will be no more votes after the second vote.

The PRESIDING OFFICER. The question is on agreeing to the Bradley amendment.

The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

Mr. LOTT. I announce that the Senator from New York [Mr. D'AMATO] and the Senator from North Carolina [Mr. HELMS] are necessarily absent.

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

The result was announced—yeas 93, nays 5, as follows:

[Rollcall Vote No. 24 Leg.]

YEAS—93

Akaka	Feingold	Lugar
Ashcroft	Feinstein	Mack
Baucus	Ford	McConnell
Bennett	Frist	Mikulski
Biden	Glenn	Moseley-Braun
Bingaman	Graham	Moynihan
Bond	Gramm	Murkowski
Boxer	Grams	Murray
Bradley	Grassley	Nickles
Breaux	Gregg	Nunn
Brown	Harkin	Packwood
Bryan	Hatch	Pell
Bumpers	Hatfield	Pressler
Burns	Heflin	Pryor
Byrd	Hollings	Reid
Campbell	Inhofe	Robb
Chafee	Inouye	Rockefeller
Coats	Jeffords	Roth
Cochran	Johnston	Santorum
Cohen	Kassebaum	Sarbanes
Conrad	Kempthorne	Shelby
Coverdell	Kennedy	Simon
Craig	Kerrey	Simpson
Daschle	Kerry	Smith
DeWine	Kohl	Snowe
Dodd	Kyl	Specter
Dole	Lautenberg	Stevens
Domenici	Leahy	Thomas
Dorgan	Levin	Thompson
Exon	Lieberman	Thurmond
Faircloth	Lott	Wellstone

NAYS—5

Abraham	Hutchison	Warner
Gorton	McCain	

NOT VOTING—2

D'Amato	Helms

So the amendment (No. 141) was agreed to.

Mr. GLENN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. INOUYE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 142

The PRESIDING OFFICER. The question is on agreeing to the Boxer amendment No. 142. The yeas and nays have been ordered. The Clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from North Carolina [Mr. HELMS] is necessarily absent.

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

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 25 Leg.]

YEAS—99

Abraham	Feingold	Lugar
Akaka	Feinstein	Mack
Ashcroft	Ford	McCain
Baucus	Frist	McConnell
Bennett	Glenn	Mikulski
Biden	Gorton	Moseley-Braun
Bingaman	Graham	Moynihan
Bond	Gramm	Murkowski
Boxer	Grams	Murray
Bradley	Grassley	Nickles
Breaux	Gregg	Nunn
Brown	Harkin	Packwood
Bryan	Hatch	Pell
Bumpers	Hatfield	Pressler
Burns	Heflin	Pryor
Byrd	Hollings	Reid
Campbell	Hutchison	Robb
Chafee	Inhofe	Rockefeller
Coats	Inouye	Roth
Cochran	Jeffords	Santorum
Cohen	Johnston	Sarbanes
Conrad	Kassebaum	Shelby
Coverdell	Kempthorne	Simon
Craig	Kennedy	Simpson
D'Amato	Kerrey	Smith
Daschle	Kerry	Snowe
DeWine	Kohl	Specter
Dodd	Kyl	Stevens
Dole	Lautenberg	Thomas
Domenici	Leahy	Thompson
Dorgan	Levin	Thurmond
Exon	Lieberman	Warner
Faircloth	Lott	Wellstone

NOT VOTING—1

Helms

So the amendment (No. 142) was agreed to.

Mrs. BOXER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. BUMPERS. Now, Mr. President, what is the present parliamentary situation? What is the pending business?

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

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Without losing his right to the floor.

Mr. BUMPERS. Mr. President, I yield without losing my right to the floor.

Mr. GLENN. Without losing his right to the floor, fine.

What we were doing, we had an amendment that would be voice voted. We are trying to work out the agreement on it, so it will not knock out some of the earlier agreements today. And that is being worked on right now. If we cannot do that tonight expeditiously, we may put that off until tomorrow.

That is the reason I had the quorum call in.

Mr. BUMPERS. I ask the Senator, is that the Gorton amendment you are working on?

Mr. GLENN. I am sorry.

Mr. BUMPERS. What is the pending amendment?

The PRESIDING OFFICER. The Gorton amendment is the pending amendment.

Mr. BUMPERS. Is that the amendment the Senator is alluding to?

Mr. GLENN. No. Mine would be a separate amendment.

Mr. BUMPERS. So, Mr. President, the Gorton amendment is open to amendment, is it not?

The PRESIDING OFFICER. That is correct.

AMENDMENT NO. 144

(Purpose: To authorize collection of certain State and local taxes with respect to the sale, delivery, and use of tangible personal property)

Mr. BUMPERS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS] proposes an amendment numbered 144.

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

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

The amendment is as follows:

In lieu of the matter proposed to be inserted by the pending amendment insert the following new title:

TITLE ___—COLLECTION OF STATE AND LOCAL SALES TAXES

SEC. ___01. SHORT TITLE.

This title may be cited as the "Consumer and Main Street Business Protection Act of 1995".

SEC. ___02. FINDINGS.

The Congress finds that—

(1) merchandise purchased from out-of-State firms is subject to State and local sales taxes in the same manner as merchandise purchased from in-State firms,

(2) State and local governments generally are unable to compel out-of-State firms to collect and remit such taxes, and consequently, many out-of-State firms choose not to collect State and local taxes on merchandise delivered across State lines,

(3) moreover, many out-of-State firms fail to inform their customers that such taxes exist, with some firms even falsely claiming that merchandise purchased out-of-State is tax-free, and consequently, many consumers unknowingly incur tax liabilities, including interest and penalty charges,

(4) Congress has a duty to protect consumers from explicit or implicit misrepresentations of State and local sales tax obligations,

(5) small businesses, which are compelled to collect State and local sales taxes, are subject to unfair competition when out-of-State firms cannot be compelled to collect and remit such taxes on their sales to residents of the State,

(6) State and local governments provide a number of resources to out-of-State firms including government services relating to disposal of tons of catalogs, mail delivery, communications, and bank and court systems,

(7) the inability of State and local governments to require out-of-State firms to collect and remit sales taxes deprives State and local governments of needed revenue and forces such State and local governments to raise taxes on taxpayers, including consumers and small businesses, in such State,

(8) the Supreme Court ruled in Quill Corporation v. North Dakota, 112 S. Ct. 1904 (1992) that the due process clause of the Constitution does not prohibit a State government from imposing personal jurisdiction and tax obligations on out-of-State firms that purposefully solicit sales from residents therein, and that the Congress has the power to authorize State governments to require out-of-State firms to collect State and local sales taxes, and

(9) as a matter of federalism, the Federal Government has a duty to assist State and local governments in collecting sales taxes on sales from out-of-State firms.

SEC. ___03. AUTHORITY FOR COLLECTION OF SALES TAX.

(a) IN GENERAL.—A State is authorized to require a person who is subject to the personal jurisdiction of the State to collect and remit a State sales tax, a local sales tax, or both, with respect to tangible personal property if—

(1) the destination of the tangible personal property is in the State,

(2) during the 1-year period ending on September 30 of the calendar year preceding the calendar year in which the taxable event occurs, the person has gross receipts from sales of such tangible personal property—

(A) in the United States exceeding $3,000,000, or

(B) in the State exceeding $100,000, and

(3) the State, on behalf of its local jurisdictions, collects and administers all local sales taxes imposed pursuant to this title.

(b) STATES MUST COLLECT LOCAL SALES TAXES.—Except as provided in section ___04(d), a State in which both State and local sales taxes are imposed may not require State sales taxes to be collected and remitted under subsection (a) unless the State also requires the local sales taxes to be collected and remitted under subsection (a).

(c) AGGREGATION RULES.—All persons that would be treated as a single employer under section 52 (a) or (b) of the Internal Revenue Code of 1986 shall be treated as one person for purposes of subsection (a).

(d) DESTINATION.—For purposes of subsection (a), the destination of tangible personal property is the State or local jurisdiction which is the final location to which the seller ships or delivers the property, or to which the seller causes the property to be shipped or delivered, regardless of the means of shipment or delivery or the location of the buyer.

SEC.___04. TREATMENT OF LOCAL SALES TAXES.

(a) UNIFORM LOCAL SALES TAXES.—

(1) IN GENERAL.—Sales taxes imposed by local jurisdictions of a State shall be deemed to be uniform for purposes of this title and shall be collected under this title in the same manner as State sales taxes if—

(A) such local sales taxes are imposed at the same rate and on identical transactions in all geographic areas in the State, and

(B) such local sales taxes imposed on sales by out-of-State persons are collected and administered by the State.

(2) APPLICATION TO BORDER JURISDICTION TAX RATES.—A State shall not be treated as failing to meet the requirements of paragraph (1)(A) if, with respect to a local jurisdiction which borders on another State, such State or local jurisdiction—

(A) either reduces or increases the local sales tax in order to achieve a rate of tax equal to that imposed by the bordering State on identical transactions, or

(B) exempts from the tax transactions which are exempt from tax in the bordering State.

(b) NONUNIFORM LOCAL SALES TAXES.—

(1) IN GENERAL.—Except as provided in subsection (d), nonuniform local sales taxes required to be collected pursuant to this title shall be collected under one of the options provided under paragraph (2).

(2) ELECTION.—For purposes of paragraph (1), any person required under authority of this title to collect nonuniform local sales taxes shall elect to collect either—

(A) all nonuniform local sales taxes applicable to transactions in the State, or

(B) a fee (at the rate determined under paragraph (3)) which shall be in lieu of the nonuniform local sales taxes described in subparagraph (A).

Such election shall require the person to use the method elected for all transactions in the State while the election is in effect.

(3) RATE OF IN-LIEU FEE.—For purposes of paragraph (2)(B), the rate of the in-lieu fee for any calendar year shall be an amount equal to the product of—

(A) the amount determined by dividing total nonuniform local sales tax revenues collected in the State for the most recently completed State fiscal year for which data is available by total State sales tax revenues for the same year, and

(B) the State sales tax rate.

Such amount shall be rounded to the nearest 0.25 percent.

(4) NONUNIFORM LOCAL SALES TAXES.—For purposes of this title, nonuniform local sales taxes are local sales taxes which do not meet the requirements of subsection (a).

(c) DISTRIBUTION OF LOCAL SALES TAXES.—

(1) IN GENERAL.—Except as provided in subsection (d), a State shall distribute to local jurisdictions a portion of the amounts collected pursuant to this title determined on the basis of—

(A) in the case of uniform local sales taxes, the proportion which each local jurisdiction receives of uniform local sales taxes not collected pursuant to this title,

(B) in the case of in-lieu fees described in subsection (b)(2)(B), the proportion which each local jurisdiction's nonuniform local sales tax receipts bears to the total nonuniform local sales tax receipts in the State, and

(C) in the case of any nonuniform local sales tax collected pursuant to this title, the geographical location of the transaction on which the tax was imposed.

The amounts determined under subparagraphs (A) and (B) shall be calculated on the basis of data for the most recently completed State fiscal year for which the data is available.

(2) TIMING.—Amounts described in paragraph (1) (B) or (C) shall be distributed by a State to its local jurisdictions in accordance with State timetables for distributing local sales taxes, but not less frequently than every calendar quarter. Amounts described in paragraph (1)(A) shall be distributed by a State as provided under State law.

(3) TRANSITION RULE.—If, upon the effective date of this title, a State has a State law in effect providing a method for distributing local sales taxes other than the method under this subsection, then this subsection shall not apply to that State until the 91st day following the adjournment sine die of that State's next regular legislative session which convenes after the effective date of this title (or such earlier date as State law may provide). Local sales taxes collected pursuant to this title prior to the application of this subsection shall be distributed as provided by State law.

(d) EXCEPTION WHERE STATE BOARD COLLECTS TAXES.—Notwithstanding section ___03(b) and subsections (b) and (c) of this section, if a State had in effect on January 1, 1995, a State law which provides that local sales taxes are collected and remitted by a board of elected States officers, then for any period during which such law continues in effect—

(1) the State may require the collection and remittance under this title of only the State sales taxes and the uniform portion of local sales taxes, and

(2) the State may distribute any local sales taxes collected pursuant to this title in accordance with State law.

SEC.___05. RETURN AND REMITTANCE REQUIREMENTS.

(a) IN GENERAL.—A State may not require any person subject to this title—

(1) to file a return reporting the amount of any tax collected or required to be collected under this title, or to remit the receipts of such tax, more frequently than once with respect to sales in a calendar quarter, or

(2) to file the initial such return, or to make the initial such remittance, before the 90th day after the person's first taxable transaction under this Act.

(b) LOCAL TAXES.—The provisions of subsection (a) shall also apply to any person required by a State acting under authority of this title to collect a local sales tax or in-lieu fee.

SEC.___06. NONDISCRIMINATION AND EXEMPTIONS.

Any State which exercises any authority granted under this title shall allow to all persons subject to this title all exemptions or other exceptions to State and local sales taxes which are allowed to persons located within the State or local jurisdiction.

SEC.___07. APPLICATION OF STATE LAW.

(a) PERSONS REQUIRED TO COLLECT STATE OR LOCAL SALES TAX.—Any person required by section ___03 to collect a State or local sales tax shall be subject to the laws of such State relating to such sales tax to the extent that such laws are consistent with the limitations contained in this title.

(b) LIMITATIONS.—Except as provided in subsection (a), nothing in this title shall be construed to permit a State—

(1) to license or regulate any person,

(2) to require any person to qualify to transact intrastate business, or

(3) to subject any person to State taxes not related to the sales of tangible personnel property.

(c) PREEMPTION.—Except as otherwise provided in this title, this title shall not be construed to preempt or limit any power exercised or to be exercised by a State or local jurisdiction under the law of such State or local jurisdiction or under any other Federal law.

SEC.___08. TOLL-FREE INFORMATION SERVICE.

A State shall not have power under this title to require any person to collect a State or local sales tax on any sale unless, at the time of such sale, such State has a toll-free telephone service available to provide such person information relating to collection of such State or local sales tax. Such information shall include, at a minimum, all applicable tax rates, return and remittance addresses and deadlines, and penalty and interest information. As part of the service, the State shall also provide all necessary forms and instructions at no cost to any person using the service. The State shall prominently display the toll-free telephone number on all correspondence with any person using the service. This service may be provided jointly with other States.

SEC.___09. DEFINITIONS.

For the purposes of this title—

(1) the term "compensating use tax" means a tax imposed on or incident to the use, storage, consumption, distribution, or other use within a State or local jurisdiction or other area of a State, of tangible personal property;

(2) the term "local sales tax" means a sales tax imposed in a local jurisdiction or area of a State and includes, but is not limited to—

(A) a sales tax or in-lieu fee imposed in a local jurisdiction or area of a State by the State on behalf of such jurisdiction or area, and

(B) a sales tax imposed by a local jurisdiction or other State-authorized entity pursuant to the authority of State law, local law, or both;

(3) the term "person" means an individual, a trust, estate, partnership, society, association, company (including a limited liability company) or corporation, whether or not acting in a fiduciary or representative capacity, and any combination of the foregoing;

(4) the term "sales tax" means a tax, including a compensating use tax, that is—

(A) imposed on or incident to the sale, purchase, storage, consumption, distribution, or other use of tangible personal property as may be defined or specified under the laws imposing such tax, and

(B) measured by the amount of the sales price, cost, charge or other value of or for such property; and

(5) the term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

SEC.___ 10. EFFECTIVE DATE.

This title shall take effect 180 days after the date of the enactment of this Act. In no event shall this title apply to any sale occurring before such effective date.

Mr. BUMPERS. Mr. President, I understand the majority leader has said there will not be any more rollcall votes tonight. Certainly, I am not going to try to keep the Senate for any prolonged period of time, but I think it would be appropriate to begin debate on this amendment, about which I feel very strongly and which I think is a very important measure for the Senate to consider. But at some point I will discontinue the debate, and it is my understanding that tomorrow, if cloture should fail, this would be the pending amendment. So I do not want to delay the Senate in getting out of here this evening.

I just want to say to my colleagues this is an amendment that will do more for the States, frankly, in the short term than this entire piece of legislation.

In 1967, the Supreme Court said that the States could not impose a tax on a mail order catalog house because it would be a violation of due process and the commerce clause. So that was the law of the land until 1992, when a case called Quill versus North Dakota was decided by the Supreme Court.

That decision reversed the 1967 decision. It said, No. 1, we are changing our mind about due process. It is no longer a violation of the due process clause if the States elect to require out-of-State companies which send goods into their State to collect the applicable sales tax, or use tax. A use tax is effectively the same thing as a sales tax, but they call it a use tax because it is a tax on the use of the product, not the sale of the product. No. 2, although imposing this tax collection burden on an out-of-State company constitutes a burden on interstate commerce that is impermissible under current law, the Congress has the right to determine if that burden should be allowed.

So the primary problem that prohibited States in the past from levying a sales tax or a use tax on mail order houses—due process—was removed.

Now, I cannot say this often enough, for anybody who is hesitant about the thrust of this amendment, that it does not impose a tax on anybody. The tax is already there. This amendment simply allows the States the discretion of saying to the mail order houses: If you are going to ship goods into this State, you are going to have to collect the use tax on those goods.

Now, Mr. President, I do not know how many States will do it. Five States do not have a sales tax so this amendment would have no impact on those States. They would not levy a use tax on mail order products because they do not levy sales taxes on their own in-State products.

The reason this legislation is important is because virtually every State in the Union—45 of them to be precise—have a use tax now. It is levied not on the mail order house but on the buyer of goods from the mail order house. If you order a sweater from L.L. Bean and you ship it into Arkansas, even though L.L. Bean doesn't collect the applicable use tax, the State of Arkansas says that the purchaser of that sweater shall remit a use tax in the exact amount of the sales tax to the State revenue department of my State.

So what you have is a lot of people who are getting a rude surprise because the States are beginning, more and more, to find these people who are buying big ticket items. People are buying these big ticket items and suddenly somebody from the State revenue department in Florida or North Carolina knocks on the door and says, "Friend, that boat you bought for $250,000, you owe us $12,000." We have letters galore in our files from people who have had that rude surprise.

Now, admittedly, the States collect very little revenue out of this. And you know the reason they do not is because the people of your respective States of West Virginia, Ohio, Idaho, and the rest of you, do not know there is a use tax on the books.

Mr. President, what do you think mail order sales in this country amount to? Just figure it out in your own mind. You open your mail every day, and you are getting two, three, four times as many catalogs at your house every week as you used to get.

I will be happy to yield to the majority leader.

Mr. DOLE. Mr. President, I wonder if the Senator will permit us to conclude a couple of things and then, if he wants to continue, I have no problem with that. I would like to conclude a couple of things and then give the floor back to the Senator. They want to adopt one unanimous-consent request. I would like to file a cloture motion, and I think the Democratic leader wants to have a colloquy. Then I need to make a statement with reference to rule XIX.

The PRESIDING OFFICER. Is there objection?

Mr. DOLE. Is that all right with the Senator from Arkansas?

Mr. BUMPERS. Absolutely, Senator.

MODIFICATION TO COMMITTEE AMENDMENT ON PAGE 25, LINE 10

Mr. GLENN. Mr. President, I thank my friend from Arkansas very much. We had this amendment worked out over a period of time here. It addresses a problem we had yesterday on the floor about committee jurisdiction. It has been agreed to on both sides of the aisle. We are happy to do it with a voice vote.

I send an amendment to the desk to modify the committee amendment on page 25, line 10, that the previous amendments offered to the language proposed to be stricken by the committee amendment be added to the modification.

The PRESIDING OFFICER. Is there objection? Without objection, the amendment is so modified

The modification to the amendment is as follows:

On page 25, strike all after line 10 and insert the following:

"(4) DETERMINATIONS OF APPLICABILITY TO PENDING LEGISLATION.—For purposes of this subsection, in the Senate, the presiding officer of the Senate shall consult with the Committee on Governmental Affairs, to the extent practicable, on questions concuring the applicability of this section to a pending bill, joint resolution, amendment, motion, or conference report.

"(5) DETERMINATIONS OF FEDERAL MANDATE LEVELS.—For purposes of this subsection, in the Senate, the levels of Federal mandates for a fiscal year shall be determined based on the estimates made by the Committee on the Budget.".

Mr. GLENN. Mr. President, I have submitted this. I believe it is acceptable on both sides of the aisle. It takes care of a problem we debated at long length yesterday on the floor. Does my colleague have any comment?

Mr. KEMPTHORNE. Mr. President I wish to thank the Senator from Ohio, the distinguished floor manager. He is correct.

This is an issue that was of concern between the Governmental Affairs Committee and the Budget Committee. Through the evening hours and this morning, language has been worked out. I hope this is another clear evidence that we are finally moving forward on S. 1, so we can deliver unfunded mandate relief to the cities and States. The public sector realizes the private sectors are partners on this.

We agree to this amendment.

Mr. GLENN. I urge acceptance of the amendment.

VOTE ON COMMITTEE AMENDMENT ON PAGE 25, LINE 10, AS MODIFIED

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the committee amendment, as modified.

The committee amendment on page 25, line 10, as modified, was agreed to.

Mr. GLENN. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

REMARKS EXPUNGED FROM THE RECORD

Mr. DOLE. Mr. President, earlier today there was a statement made on the Senate floor. I will not repeat the statement, which I think violated rule XIX. So I would pose the following question, Mr. President:

If I had called the Senator from South Carolina to order for his remarks regarding the Senator from Idaho, was rule XIX violated?

The PRESIDING OFFICER. The Chair will read from Riddick's, page 738:

A Senator in debate, who "in the opinion of the Presiding Officer" refers offensively to any State of the Union, or who impugns the motives or integrity of a Senator, or reflects on other Senators, may be called to order under Rule XIX.

It is therefore the opinion of the Chair that the rule was violated, rule XIX was violated.

Mr. DOLE. Mr. President, I therefore ask unanimous consent the offending remarks be expunged from the RECORD.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. DOLE. Mr. President, I thank the Senator from Arkansas. I will just take another minute. I think the Senator from South Dakota, the Democratic leader, may want to have a discussion here.

I wanted to file another cloture motion. Before I did that, I wanted to recite precisely what has happened so the record will be made.

We began debate on S. 1 at 10:30 a.m. on Thursday, January 12. There were 14 committee amendments reported. The normal process is to adopt the committee amendments en bloc after opening statements.

We have never been able to adopt the committee amendments. In fact, we have had to resort to tabling a few just to get the Senate moving. We are now only on committee amendment No. 11 out of 14.

Cloture was filed Tuesday, January 17, with the hope we could still work out a unanimous consent agreement that would provide for an exclusive list of amendments. After that, the list has gone up since yesterday—on the Democratic side from 30-some to 78, and it is climbing; and I must say it has gone up on the Republican side, up to 30. That is 108 amendments. Yesterday, we were talking about 40-some.

Our proposed agreement asks that all amendments must be offered by 6 p.m. tomorrow, and my colleague, Senator DASCHLE, counteroffered that it be offered by 12 noon on Wednesday, January 25. Obviously, when you agree on anything that has to be offered, you have to have a pretty good relationship or one person will offer an amendment and that will be it, and no other amendment can be offered. It has worked in the past, and it still may. It has worked out.

But it seems to me if we are going to complete action on this bill anytime next week, I hope my colleagues will help invoke cloture when the cloture vote occurs tomorrow morning.

There was some discussion earlier that if we did not adopt—or deal with the so-called Boxer amendment, that might prevent cloture from being invoked. That amendment has been disposed of. It was a unanimous vote. It was worked out with Senator BOXER and Senator NICKLES and supported by every Senator who is present.

I hope we can invoke cloture tomorrow and get on with the amendments that should be debated on each side. And, having said that, I am happy to yield to the Senator from South Dakota before I send the cloture motion to the desk.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, let me say I am disappointed that the cloture motion will be filed. I respect the decision of the distinguished majority leader, but I remind our colleagues that only three Democratic amendments have been considered. One amendment offered by the majority was debated by the body for over 3 hours this afternoon. And I might add it was a nonrelevant nongermane amendment. So we have really not had much of an opportunity to debate many of the very relevant, germane amendments that reflect the legitimate concerns expressed by our colleagues over the course of the last several days.

Let me just go back, if I may for just a moment, to remind my colleagues that this bill was introduced on Wednesday, January 4, with very significant and important differences from S. 993, the unfunded mandates bill that was reported last year.

The Governmental Affairs Committee held a hearing the next day, on January 5. There was a markup in Governmental Affairs scheduled for Friday, January 6. Senator GLENN, the ranking member, on behalf of several Democrats, asked for time to prepare amendments and consider issues raised at the hearing. The chairman, Senator ROTH, subsequently agreed to put the markup over to Monday, the following week, with the requirement that all amendments be filed by Friday, January 6, at 10 o'clock.

Our committee members complied with that request in good faith.

The Governmental Affairs Committee then had a markup on Monday, January 9, at 10 o'clock. Members were originally told the chairman would oppose all amendments because the majority leader wanted to take them up on the floor. So our committee members again, in good faith, cooperated and delayed offering many of the amendments in committee, because they had the expectation that these amendments would be properly debated and considered on the floor. Democrats objected to eliminating the committee from the legislative process. A markup was held, and amendments were offered. All Democratic amendments were defeated as a result of this dictate on a partisan vote, except for three that were accepted by the chairman.

At the markup, members were told that there would be no committee report. There were strong objections at the time, and, of course, the whole controversy relating to the committee report has been very much a part of the debate on the floor over the last several days.

The Budget Committee held its markup at 2:30 that same Monday. At the request of the chairman, several Democratic members of the Budget Committee agreed to withhold offering their amendments until the bill was to be considered on the floor.

Committee members were then told there would be ample opportunity to offer these amendments on the floor, and Democratic members asked that a Budget Committee report on S. 1 be filed. It was our understanding that there would be a report filed. Of course, that did not happen as it was promised.

So, Mr. President, in summary, let me just emphasize, we have dealt in good faith all the way through this process. We had hoped that we could have ample consideration of the bill in both the Budget Committee and the Governmental Affairs Committee—and that did not happen. We were hoping that we could have a report before the bill came to the floor—that did not happen. We were told we would have an opportunity to consider amendments on the floor—germane amendments in many cases—and that has not happened.

In good faith, I think, Senator DOLE and I have attempted over the last day to find an agreement—and that has not happened, either.

There is no filibuster going on here. In my view, and I think in the view of many of our colleagues, there are very legitimate concerns about many of these issues.

The concerns have to be addressed prior to the time many of us feel comfortable voting on final passage. It is my hope and expectation that, if we had ample consideration of some of these legislative issues, there could be a favorable vote. But certainly, that is going to take a reasonable amount of time. I would hope that we could oppose the cloture motion tomorrow morning.

Mr. DOLE. Mr. President, I think one example is today we spent nearly 4 hours during a recess to try to work out the Boxer amendment which had to do with violence in women's clinics. It is a very important issue. It has nothing to do with this bill. And we spent the last 2 or 3 days not discussing the amendments but discussing parliamentary procedure and whether or not we can adopt the committee amendments, which generally is a matter of course.

This is a bill that has not changed a lot since last year. It has not changed much since last year. Unless something happened across the countryside that this Senator is not aware of, it is supported by the Governors, the mayors, the city officials, township and county officials, and all the others, as has been indicated by the Senator from Idaho in the debate.

The House will start action on this bill on tomorrow. They will probably demonstrate, as they did in the congressional coverage, that they can pass the same bill in an hour and 20 minutes that took us 5 days because of so many amendments that were not germane. I would not suggest that we want to be

like the House. I am very happy to be the U.S. Senate, and am very happy to have been in the House years ago, too.

But it seems to me that we can bring this matter to a close. If cloture is invoked, all the germane amendments are going to be there. They can be a debated, adopted and disposed of in one way or the other.

So I hope that tomorrow we can move on this bill. We may not. We have one Senator with five relevant amendments; another three, relevant; two relevant. We have the same on the Republican side; one Member with one or two relevant amendments, whatever they may be. But they add up to 180 amendments. It is much like the tax bill. I have had a few tax bills on the Senate floor.

So I certainly will continue to work with the distinguished Democratic leader. We want to accommodate our colleagues wherever we can on both sides of the aisle. And we will continue to work to do that.

I would be willing to ask right now that all the committee amendments that have not yet been disposed of be agreed to en bloc. I ask unanimous consent that all committee amendments that have not yet been disposed of be agreed to en bloc.

The PRESIDING OFFICER. Is there objection?

Mr. DASCHLE. We object.

The PRESIDING OFFICER. Objection is heard.

Mr. DOLE. It is an indication that we are not making progress.

THE EASTER RECESS

Mr. DOLE. Mr. President, I wanted to make one correction. We have had great difficulty with the Easter recess. I will take the blame for most of it. But a letter went out today saying thanks for the extra week. What extra week? It is not an extra week. We are not getting 3 weeks off. We are getting a week before Easter and a week after.

By the time the letter went out it had almost the entire month of April. It is not going to happen. We will be out April 7 to April 24. That is 17 days. We are going to be way behind the House. The House has 3 weeks. We will be about 2 months behind the House by then at the rate we are going.

So I hope we do not have to put out anymore. If we want a fine letter on the Easter recess, we have already put out the hotline.

CLOTURE MOTION

Mr. DOLE. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The 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, do hereby move to bring to a close debate on S. 1, the unfunded mandates bill:

Bob Dole, William Roth, Dirk Kempthorne, Bill Frist, Trent Lott, Chuck Grassley, Craig Thomas, Judd Gregg, John Ashcroft, Ted Stevens, Conrad Burns, James Inhofe, Paul Coverdell, Spencer Abraham, Christopher S. Bond, Bob Smith, Rod Grams, Don Nickles, Alfonse D'Amato, Larry Craig.

Mr. DOLE. Mr. President, when will that motion ripen?

The PRESIDING OFFICER. One hour after the Senate convenes after 1 day of session.

Mr. DOLE. Mr. President, I apologize to the Senator from Arkansas for taking so long.

I say to my colleagues that at 11 o'clock tomorrow we will be back on S. 1. There will be 30 minutes equally divided between the Senator from Michigan and Senator KEMPTHORNE and Senator BYRD. At the hour of 11:30 the Senate will proceed to vote on the Levin amendment regarding feasibility, and immediately thereafter we will proceed to a cloture vote on S. 1; and, we will waive the mandatory quorum under rule XXII B.

Mr. President, I yield the floor. I thank my colleague from Arkansas.

Mr. BUMPERS addressed the Chair.

Mr. DASCHLE. Mr. President, if I might just take 1 more minute to comment about the importance of the vote tomorrow, I think it is very important that Senators understand the difference between germaneness and relevance. We have a lot of amendments pending that are very relevant and that, under the strict rules of parliamentary definition, may not be germane.

The distinguished Senator from Michigan has raised his point on a number of occasions during the debate over the course of the last several days. Senators need to be aware that in many cases, while an amendment in question may directly affect this legislation, may be directly relevant, it may be ruled not germane.

So this is a very important vote tomorrow morning, and I hope Senators will take care as we consider the importance of our opportunity to raise these issues in a constructive way as we have been doing the last several days.

With that, I yield the floor.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, the question was how much business is the catalog industry doing in this country? The answer is almost $100 billion a year and growing at a rate of 6 percent a year.

To judge by the number of catalogs coming into my house, they are growing much faster than that. So you might ask, No. 1, why should these people bother with collecting a tax on behalf of the States where they sell merchandise?

I used to be a small town merchant. I had a hardware, furniture, and appliance store. I even had a cemetery and practiced law as well. I did anything to try to feed my wife and three children.

My biggest competitor was not the guy down the street. It was the Sears & Roebuck catalog. They do not do much catalog business anymore; I think maybe Sears does no catalog business now. But I can tell you that offices of every Senator in the U.S. Senate has received communique after communique in the last 3 days saying, please support Senator BUMPERS' amendment. They are from small town, main street retailers all across America because it is not just Wal-Mart and K-Mart that are putting them out of business; it is the catalog business which enjoys a competitive advantage because they do not have to collect that 5 to 8 percent sales tax.

What would this mean to your State? In my State of Arkansas, it would mean $19.6 million a year. In Illinois, $233 million a year; Pennsylvania, $145 million; New York, $359 million; and California, $482 million.

Call our former colleague, Governor Wilson in California, and ask him how he feels about this legislation. It is supported by the National Conference of Mayors, the National Governors Conference, the National Conference of County Executives. Who are we trying to help with S. 1? The Governors, the mayors, and the county executives.

Mr. President, I used to be Governor of my State. These mandates drove me crazy. It was a big issue with me 24 years ago when I first became Governor of my State.

I am not too crazy about this particular unfunded mandates bill, even though I was a cosponsor of it last year, and I am not at all sure I am going to vote for this one. But be that as it may, if you were to ask some Governors in their State, "Would you rather have the right you would get under the Bumpers amendment or the mandates bill?" they would take this legislation, because they are scared to death that this mandate legislation will never amount to anything.

And you might say, "These people do not do business in your State, so why should they collect a sales tax there?" But they do impose a burden on the States—they send 3.3 million tons of catalogs and solicitations into the landfills of this country every year. And what is one of the biggest problems every mayor has? Why, the local landfill. In a lot of jurisdictions in this country it costs $100 a ton to dispose of garbage. But it is not just the 3.3 million tons of catalogs which mail-order companies send into the States. All the packaging that their merchandise comes in has to be disposed of, too.

How much are the catalog houses contributing to the mayors to help them dispose of these millions of tons of garbage? Not one red dime.

Mr. President, this is not designed to be punitive. It is designed to be fair. In order to be fair, I want to say this: There are a few mail order houses in this country which collect sales taxes in every State where they send products. There is one very notable case of such a company—essentially an office supply house which does over $200 million in business a year. When they formed the company, they sat down in the boardroom and said, "Shall we or shall we not collect sales taxes on our sales and remit to the States?" They decided, as good citizens, they would collect a sales tax and remit it back to every State they shipped into. Do you know who the founder of that company was? It was Senator ROBERT BENNETT of the great State of Utah. He said to the Small Business Committee during a hearing last year that "We thought it was the right thing to do."

Mr. President, we have made this bill as simple and fair as we know how to make it. No. 1, we only require mail order companies to file a return with the States every 3 months. No. 2, we set up a toll-free telephone number at the State level so that any questions the catalog houses have can be resolved free of charge. And we have exempted all but 875 of the 7,500 mail order houses in the country, because we exempt every company which does less than $3 million in business a year. Of the 7,500 mail order companies in this country, 6,675 of them do not do $3 million a year. The mayors did not like it because I exempted them. But we thought it was fair to do so because this amendment could create a slight administrative burden on small companies. So only 825 of the 7,500 catalog sales houses in this country are going to be affected by this bill.

Mr. President, sometimes the mail order houses say this is too complicated. I am not going to belabor it tonight, but tomorrow I am going to bring about a week's supply of catalogs that came into my home, and I am going to show you why that argument that this is too complicated on us will not fly. The reason it will not fly is because a lot of them already collect use taxes in as many as 25 or 30 States. Senator BENNETT's company says, "Include sales tax unless you are from Alaska, Delaware, Montana, New Hampshire or Oregon, which do not have sales taxes." And then look at what they say: "If your order is less than $10, include $2 for shipping charge. If your order is $10 to $25, include $2.50," and here is another chart that you have to look at when you order. So they themselves have very complicated catalogs sometimes. And it would be immensely less cumbersome if you simply said: "Send with your order the local sales tax."

Mr. President, main street merchants are suffering because they are at such a competitive disadvantage. Let me tell you one other thing. There are some out-of-State companies that really drive local retailers up the wall. There are out-of-State companies which say, "Go down to the local store, get the model number of the product you want, and call us toll free at this 800 number." You think they do not say that? Look at this advertisement: "Discount Wallcovering. Shop the phone way. All brands, first quality, free delivery. No sales tax (outside Pennsylvania)." But here is the real clincher: "Shop in your neighborhood. Write down the pattern number book and then call Wallcovering, Inc."

How would you like to be a wallcovering retailer and somebody comes in and goes through all your merchandise, picks out the number of the wallcovering they like and they said, "Adios, see you later." They go home, get on a 1-800 line and call this outfit and they say, "Here is the pattern I want, ship it to me with no sales tax."

There are going to be a lot of Senators that vote against this amendment. But there is not one Senator in the U.S. Senate in his heart of hearts that would not tell you that such a practice is grossly unfair.

Here is an ad by an outfit that is too small for anybody to read unless you are right on top of it, so I will tell you what it says. It is a company that sells boats, motors, fuel, water pump kits, everything from the world of boats to everything that makes a boat run. What do they do? They say, "Nobody beats our deal." Up here in red it says, "No sales tax added outside of North Carolina."

Mr. President, I hate to belabor the RECORD, and I am not going to do the whole thing, but I want to read you a letter that I got from a person in the state of California that was in the boat business, Long Beach Yacht Sales, Long Beach, CA.

JANUARY 18, 1994.

Hon. SENATOR BUMPERS,
Chairman, Committee on Small Business, Russell Senate Office Building, Washington, DC.

ATTENTION: MR. STAN FENDLEY, TAX COUNCIL: Thank you, in advance, for your sponsorship of legislation regarding the collection of interstate sales tax. This week we lost a $240,000 deal as a result of a sales tax issue. The buyer bought a boat in Oregon to avoid our local and state sales tax. The vessel will be kept out of state for the required period of time and will be subsequently brought into California after the waiting period has elapsed. Based on our local tax rate of 8.25% the resulting tax would have been $19,800.

Not only did we (and the State) lose this deal, but we also lost the time and expenses involved in upselling the customer to a more expensive boat (from $140,000 to $240,000), sea trialing the boat and providing extensive consultation regarding the product. The customer thanked us but basically said for $19,800 he would have to make an economic choice to buy elsewhere.

Sincerely,

RAY JONES, *Owner.*

He told them, "I can buy it in another State and bring it into this State and save myself almost $20,000."

Who in their heart of hearts in the U.S. Senate thinks that is fair?

So I say, this is not punitive, and I am not just pointing the finger at all of these people. Fingerhut out in Minnesota said they do not think this would be much of a burden on them. L.L. Bean, in the State of Maine, said they did not think this would be much of a burden on them, either. So I applaud them. I applaud them for their generous statements and their citizenship. I do not blame them for not collecting the applicable taxes. I would not collect them either if I did not have to.

Mr. President, the thrust of this amendment is to give the States the discretion. This does not impose one single thing on the States. It says to the States, "You have the discretion of requiring the collection of use tax on merchandise being shipped into your State so that retailers in your State are competing on a level playing field with out-of-State companies."

Mr. President, until that fateful November 8, 1994, I was chairman of the Small Business Committee. As chairman of the Small Business Committee, and as a former small businessman, I have always championed the rights of people to start a business, make Government as unobtrusive as possible, reduce the paperwork burden, reduce the regulatory burden, everything to give people an opportunity to grow and prosper.

When we held hearings on this bill last year, we had retailers from all over the country come and testify. We had a music store owner in my State talk about how many people came into his store, got the model number off the instrument they wanted, and went back home and ordered it.

The retail Main Street jewelry stores left in this country, you can count them on one hand, because they cannot compete. Yet these are the people we look to organize the Christmas parades in rural America. They are the people that every State depends on to pay sales taxes to educate their children. They are losing billions of dollars of sales every year to this absolutely burgeoning catalog sales business and it is time we give the States an opportunity to do something about it.

Mr. President, in the morning I am going to do two things: I am going to read you some additional letters from retailers as to what they are putting up with out there. Second, I have a whole stack of catalogs. I am going to go through some of them and show you how complicated it is now and how, if you adopt this amendment, you not only curry favor of the mayors and

Governors of this country, you probably lighten the administrative burden on some catalog companies because they will only have one tax rate to worry about in each State instead of many different local rates.

Mr. President, before I yield the floor, I ask unanimous consent that this amendment be set aside until we return to S. 1 tomorrow morning. I am not sure what the hour is.

Mr. President, when are we scheduled to return to S. 1 in the morning?

Mr. President, I will withdraw that request.

Mr. COHEN addressed the Chair.

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

Mr. COHEN. Mr. President, I was home when I learned that the Senator from Arkansas was going to take the floor this evening and offer this amendment. I had no prior notification that it was coming up this evening.

I can perhaps understand why the Senator from Arkansas would want to file this amendment prior to the cloture vote tomorrow. This is precisely what the majority leader was just talking about.

Here we have a bill dealing with unfunded mandates, and we have the minority leader saying, "Well, we just want to amend it in a substantive way dealing with relevant and germane issues pertaining to unfunded mandates," and the first thing that happens is the Senator from Arkansas gets up and offers this amendment which has no particular relevance to this bill.

It is an example of what I mentioned on the floor the other day. We are back at it again. No sooner do we go into a new session with a new Congress, with new hopes of perhaps moving legislation at a much more expeditious fashion, at least, than we just have a series of amendments and more amendments that have nothing to do with the bill under consideration.

Now that is consistent with the Senate rules. And the majority leader said he does not want to see a change in the Senate rules; keep the Senate as the Senate and not as the House.

But the American people ought to understand why it is we cannot move forward with legislation: because every individual Member has his or her particular amendment that they want to offer.

With respect to this particular amendment, this would reflect a major change in existing law. There is no mistake about it. This would be a major change in existing law.

It is being offered without any hearings having been held in the Finance Committee—not one. And yet on the floor of the Senate, the Senator from Arkansas wishes to make this rather significant change. The Small Business Committee, I am told, held one hearing on the issue. But none in Finance which is the committee of jurisdiction.

Now the supporters of the amendment argue this is a matter of fairness for local retailers.

It is grossly unfair to ask mail order companies to collect taxes for over 6,000 jurisdictions. Do you really want to talk about putting burdens on people? Ask a mail order company to collect taxes for 46 States. There are some 6,000—just count them, 6,000—different taxes in this country that would have to be considered.

But the Senator from Arkansas says, "Well, that is just too bad. We are going to impose that burden on these mail order companies."

We have a Maine snack tax, to give you an example. It is virtually indecipherable to most Maine companies. I think it would be absurd—absurd—to expect every fruitcake vendor in this country to understand it. But that is what the Senator's amendment would do.

Second, about 30 percent of all of the mail orders are paid not by credit cards, but by check. So if the check is made out in the wrong amount, any mail order company, L.L. Bean or any other company in the country-would have a difficult time collecting this particular tax if the calculation is wrong.

Now the Home Shopping Network collects State and local taxes. They are made via credit cards, where the seller simply adds an appropriate tax to it.

The Senator from Arkansas has talked about the great advantage that is being held by these mail order companies over the local retailer. The fact is, the local retailers also pay taxes to enjoy benefits that out-of-State companies do not.

As a matter of fact the out-of-State companies are not at a competitive advantage. They have to add the shipping cost. These are costs that are added to the product. They have to do it on a single item basis rather than in bulk, because when people call up and say, "Can we have the product?" they have to order and pay the shipping and mailing costs, which far exceed the sales tax in many cases. That is an added expense the local retailer does not have to bear. So Senator BUMPERS may talk about competitive advantage, but it does not exist. Mail order companies do not, let me repeat, do not enjoy a competitive advantage by not having to collect these taxes.

The States have numerous ways to handle the collection of their taxes? In Maine, for instance, we assume that people in each income category have purchased a number of goods from out of State, and the State imposes a presumptive use tax. Maine has devised its own means of collecting taxes for goods purchased across State lines through mail order. Why not let the States handle it without the Senator from Arkansas mandating another rule, where no hearings have been held by the committee on jurisdiction. It is an extensive change. We ought not to undertake it on this particular bill.

Mr. President, as I indicated, I was not aware that this was going to be brought up this evening. But I understand why it was. Last year an agreement was nearly reached involving the voluntary collection of State use taxes. This was negotiated by the direct marketing association and the multistate taxes commission, federation of tax administers, and small businesses. They tried to reach an agreement to reduce the 6,000 taxes down to maybe 46 so that within each State there would be only one rate. Unfortunately, the agreement fell apart in the end.

This amendment is very significant and should not be offered to this bill. I support the majority leader, where he says it is time to file cloture. I hope that we do invoke cloture tomorrow. And to eliminate those amendments including these types of amendments that are being offered tonight on the Senate floor.

Mr. President, I will have more to say tomorrow, but for the moment I will yield the floor.

Mr. BUMPERS. Mr. President, I just want to comment for a minute or two, because I know the other Senator from Maine wishes to be heard.

No. 1, if I were a Senator from Maine I would be making the same speech I just heard. The second biggest catalog sales house in the United States is L.L. Bean from the great State of Maine.

But there is another very cogent point I neglected to make in my opening comments, and that is the State of Maine collects the sales taxes for every dime's worth of goods that L.L. Bean sells in the State of Maine. They do not collect 1 penny for the other 49 States. They are probably in the half billion dollar range now, maybe much more than that. They are the second biggest. I believe Lands' End in Wisconsin is the biggest in the country.

So, No. 1, everybody should understand that under current law, law established in various Supreme Court decisions, any mail order house that maintains a retail outlet in another State has to collect the sales tax for that State. J. Crew, they have retail outlets in Maryland and Virginia. Eddie Bauer has retail outlets in about 15 States. So those companies must collect use taxes when their mail order merchandise goes into States where they maintain retail outlets. It is only when they do not have a retail outlet in a particular State that they do not have to collect use taxes on the mail order goods sent into that State.

To suggest that this does not give mail order houses a competitive advantage when I just got through reading a letter about how this company in Long Beach, CA, lost a $250,000 sale because of a $20,000 savings in the sales tax. Why, of course people price shop. I will

fill the record up tomorrow with cases just like it where people tried their very best to make a sale, and they say thank you very much for telling us about it, we will go across the State line and buy the merchandise and bring it back in and save the money.

Mr. President, to say that this amendment is not germane to the Unfunded Mandates bill is something that defies imagination. With the Unfunded Mandates bill, we are talking about the burden that Congress has been putting on the States of this Nation, ordering them how to build their landfills, how to fill the landfill, what their municipal water supplies must do, every kind of environmental regulation we could put on them. They say "we want you to start paying for it."

The thrust of that idea is legitimate. I believe in it. It is a very complex issue. But this amendment says to the States, "Those burdens we have already placed on you, we will help you pay for that." And to say that principle is not germane to this bill makes no sense. We are simply saying we will help you pay for your landfill, if you, State and local government, want us to.

Let me repeat what I started off saying in the beginning: Maine, since it already collects the sales tax from all the sales made off of L.L. Bean—and I misspoke earlier, Senator—it was Lands' End that said they do not think this would be a burden. L.L. Bean has not said that, to my knowledge.

But Maine has the best of all worlds. And I love Maine. I have the utmost respect for my colleagues from Maine. But they are collecting sales taxes on all the sales they make in Maine, but they do not collect a red cent for the merchandise they send into other States through catalog sales. They do not pay for disposing of the catalogs in the local landfill or the packaging they send the merchandise in. The Senator says that is not germane. That is what this bill is all about, trying to help the States.

So, Mr. President, I cannot say it often enough, this amendment gives the States the discretion. It does not require the States to do one blessed thing. It says if the States want to require out-of-State companies to collect use taxes, just as retail outlets in your State have to collect sales taxes, the States can do it. It has only been since 1992 when the Supreme Court ruled in Quill versus North Dakota, that we could even debate this issue here.

Now, Mr. President, this is an idea that will not go away. It will happen, sure as God made little apples. Maybe not on this bill, but it will happen. And the sooner the people in this business understand that, the better off we will all be. I yield the floor.

Ms. SNOWE. Mr. President, I rise in opposition to the amendment that has been offered by the Senator from Arkansas, and I want to associate myself with the remarks made by the Senator from Maine, [Mr. COHEN].

I guess in hearing the arguments presented by the Senator from Arkansas tonight one would think this is a very simple matter. In fact, it would put national marketers and mail order companies as well as consumers at a disadvantage, and certainly would hurt the thousands of jobs that are provided by these companies.

There is no tax advantage for mail order companies, as the Senator from Maine indicated. They have to charge for postal rates, and many times these charges exceed the cost of local taxes or State taxes. Also, mail order companies do not derive the benefits from having their presence in a local community like many of the local merchants and, therefore, do not create additional costs do a local community.

In a State like Maine, we have taken a very reasonable approach. What we have done is require the taxpayer to play a flat rate on their tax return when they file it in April for the amount of the taxes they owe in out-of-State purchases. That is the requirement. Granted, it requires a good-faith effort on the part of the taxpayers in Maine, but it has worked and it is a far better approach than applying this kind of a tax through a bill that has no relation to the issue before us in the Senate.

This amendment would impose a major new burden on many companies throughout the country without the benefit of hearings to explore the ramifications of such a tax on mail order companies. We are not only talking about the imposition of a tax, we are talking about compliance costs, and those are not minimal, if you consider the fact that mail order companies would be required to cope with no less than 46 types of procedures and exemptions from over 6,000 State and local tax rates. The compliance tax alone would be 6.5 times greater for mail order companies than for local retailers who must only contend with one tax rate and one set of exemptions.

The Senator from Arkansas mentioned L.L. Bean. For L.L. Bean, that would cost $500,000 per year for compliance, just in the administrative accounting and legal fees that would be involved, not to mention the fact that, of course, a blended tax rate would mean that for many customers, in fact, for probably half the customers, they would pay more tax than they actually owe. So, of course, that would contribute to a loss of confidence and erode sales for the company. I suspect the 100 million Americans who shop by mail order today would also find such an unfair tax scheme unjustifiable.

This amendment would have an economic impact on everyone. Jobs would be lost in Maine and elsewhere in the country.

This is an unfair imposition, it is an unreasonable administrative burden when there are other approaches that can be taken and, in fact, are being pursued.

As Senator COHEN mentioned, there has been an approach taken by the industry to look at resolving this matter in a way which could be fair to the industry without creating additional and onerous burdens, as well as excessive costs far beyond the local taxes that they would be required to collect, and they are working on such an agreement.

I think we ought to encourage a negotiated settlement that would satisfy both parties without unnecessarily burdening companies or consumers and costing thousands of jobs all across this country.

The revenues raised under this proposal, according to the Senator from Arkansas, would be about $1.6 billion. But, in fact, it would be far less than that when you deduct compliance costs. This amendment would require States to audit out-of-State firms. It would certainly add costs to the States as well as to the mail order companies.

The Senator from Arkansas mentioned that this would benefit local merchants and small businesses, but it is interesting to note that the one organization that represents thousands of small businesses and merchants all across America undertook a survey last year asking their clients whether or not they support such a collection by mail order companies. Only 25 percent said yes and 67 percent said no to such a mandate.

It is because they recognize that it would hurt many local economies across America. It would cost jobs, and the administrative burden would be a nightmare. It would be very difficult to comply with such a mandate and that the tax structure would be so complex that there would be many mistakes in the process of calculation.

I hope that my colleagues in the Senate will oppose the amendment offered by the Senator from Arkansas because, clearly, it would not result in the kind of benefits that he mentioned this evening and certainly would result in the loss of thousands of jobs and additional regulatory costs. Now is not at a time when we can afford these economic losses.

I thank my colleagues and yield the floor.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, Senator HATCH, the chairman of the Judiciary Committee, has provided a statement which addresses constitutional issues raised earlier today by Senator BYRD with regard to the unfunded mandates legislation. He states in this statement that he is "unpersuaded that there would be any constitutional problem" with the issues raised.

(At the request of Mr. LOTT, the following statement was ordered to be printed in the RECORD:)

Mr. HATCH. Mr. President, I have listened with care to what Senator BYRD has said regarding what he sees as a constitutional question raised by one provision of this unfunded mandates legislation. I appreciate his thoughts on this issue. I am unpersuaded, however, that he has identified a serious constitutional problem. Indeed, I am convinced that a careful analysis will show that his concern is unwarranted.

In the first place, Senator BYRD's concern is not that a provision of S. 1 is facially unconstitutional but merely that it might possibly be applied in an unconstitutional manner. This same objection could be raised against virtually every law. The mere possibility that a provision might be applied in an unconstitutional manner has never been regarded as sufficient to invalidate it. Otherwise, Congress could never enact anything. In any event, if a problem with a possible application of this provision were to arise in the future, that problem would be raised by an implementing bill. It is that future implementing bill that would require reconsideration, not the bill currently before us. In other words, since the concern raised by Senator BYRD relates to one manner in which the provision might be applied, that concern should be raised if and when a later bill adopts that manner. In short, the concerns raised by Senator BYRD are not suited to a facial challenge to the provisions of this unfunded mandates legislation.

Second, even under the speculative possibility raised by Senator BYRD, I am unpersuaded that there would be any constitutional problem with the possibility that he raises. It is noteworthy that Senator BYRD is unable to cite even a single Supreme Court case—or any case from any court, for that matter—in support of his argument that the provision he is concerned about presents constitutional problems. This is not surprising, for his argument is, I believe, unsustainable. Congress can act to sunset legislation through a variety of means. That it might do so through a mechanism that involves administrative agencies does not make that mechanism ipso facto constitutionally suspect. In short, I see nothing in the provision at issue that involves any delegation of legislative powers to agencies, much less any unconstitutional delegation.

Third, it seems clear to me that Senator BYRD misunderstands the provision that he is worried about. This provision specifies a requirement that must under some circumstances be satisfied in order to avoid having a point of order lie. Let's assume for the sake of argument that the requirement was constitutionally defective. All that would mean is that the requirement could not be lawfully satisfied and that a point of order would therefore lie. Were this the case, the Senate could decide whether or not to overrule the point of order.

Mr. President, some people will look for any excuse, however flimsy, to continue imposing burdensome unfunded mandates on States and localities. It is especially amusing that my colleagues on the other side of the aisle who have championed a massive Federal bureaucracy are now invoking an exaggerated, hyperrestrictive version of the doctrine that Congress is limited in the powers that it can delegate to administrative agencies. There is no merit to the argument, and no one should hide behind it.

Ms. MIKULSKI. Mr. President, I rise today to discuss S. 1, the Unfunded Mandate Reform Act. Mr. President, in traveling throughout the State of Maryland, I have heard complaints of local officials who have been forced to balance the needs of their community against compliance with Federal regulations.

These local officials have raised valid concerns over the pressure to implement mandates imposed by Washington with no funds to back it up. I believe we need to work as a partner with our cities, towns, and counties—not as their adversary.

I support the validity of their concerns. I am on their side.

We need to have a better understanding about the costs of Federal mandates—on the public sector and private sector—and help our local partners meet those costs.

I am glad the Senate has finally begun the debate on this important issue. I believe the Unfunded Mandate Reform Act takes an important step toward correcting many of the problems of the past.

This legislation will make Congress estimate the costs of new legislation and regulations on State and local governments and the private sector, specify the means to pay for it, and reduce or eliminate a mandate if adequate funding is not provided.

This bill applies only to new legislation. It does not effect any existing law or program. Furthermore, this legislation exempts any law or regulation that enforces constitutional rights, establishes or enforces laws that prohibit discrimination, provides emergency assistance to State and local governments, pertains to national security or treaty ratification and any bill designated as an emergency by the President and Congress.

While I wholeheartedly support these exemptions, as well as the overall intent of this legislation, I have a number of questions regarding its impact and applicability.

I am very concerned about this bill's impact on laws that are designed to protect public health and safety. Will this bill diminish the Government's ability to protect public health and provide essential public safety?

I am concerned about how this bill defines public and private and how it impacts future laws and programs. Could a mandate exempt the public sector while applying to the private sector? Could public schools be exempt from a mandate while Catholic or other religious day schools would be forced to comply?

Would future emissions standards apply to UPS trucks but not MTA buses?

I am concerned about how Federal agencies will have to implement the complex provisions of this legislation. For example, will Federal agencies be forced to rewrite regulations every year if funding levels change?

I am concerned about confusion this bill may generate to State and local governments and the private sector.

I believe we need laws and regulations that are clear, enforceable, and universally applicable. I support the intent of this legislation and many of its provisions; at the same time I remain concerned over the issues I have outlined. I believe these questions need to be answered before the Senate adopts any unfunded mandates legislation.

REGARDING RELATIONSHIP BETWEEN UNFUNDED MANDATES AND SOUND RISK REGULATION

Mr. JOHNSTON. Mr. President, I want to point out to my colleagues the connection between S. 1, the unfunded mandates bill, and a matter that is close to my heart—the risk assessment and cost-benefit provision that passed the Senate twice on the last Congress, only to die in the House. As my colleagues may recall, it passed by a vote of 95 to 3 on the EPA Cabinet bill in 1993, and then, after significant revision, passed again on the safe drinking water bill in 1994 by a vote of 90 to 8.

One of the best ways to reduce unfunded mandates—whether it be on State and local governments or the private sector—is to set aside the issue of funding and examine whether the mandate itself is sound. Federal regulations that do not address a significant risk in a cost-effective manner must be avoided, regardless of who pays. Put another way, the argument over who should pay for a mandate will be much easier to resolve if the mandate itself is as lean as possible to do the job.

Section 202 of S. 1 begins to get at this idea when it requires the Federal agency, when promulgating a regulation that will cost $100 million or more, to prepare a written statement providing "a qualitative, and if possible, a quantitative assessment of costs and benefits anticipated from the Federal intergovernmental mandate, such as the enhancement of health and safety and the protection of the natural environment * * *." This is a certainly a good provision as far as it goes.

But this problem will not be fully addressed until the Senate turns once

again to the subject of risk-based regulatory reform. I was initially inclined to offer last year's risk amendment to this bill, but I have been convinced to withhold so that we can consider possible improvements to last year's risk provision.

Right now, Chairman MURKOWSKI and I are working on legislation that will build on last year's provision. We intend to introduce the bill soon, hold hearings in the Energy Committee soon thereafter, and move to consideration of the bill on the Senate floor at the earliest opportunity.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Zaroff, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting a nomination which were referred to the Committee on Governmental Affairs.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mrs. KASSEBAUM, from the Committee on Labor and Human Resources, without amendment:

S. Res. 62. An original resolution authorizing expenditures by the Committee on Labor and Human Resources.

By Mr. SIMPSON, from the Committee on Veterans Affairs, without amendment:

S. Res. 64. An original resolution authorizing expenditures by the Committee on Veterans' Affairs.

By Mr. SPECTER, from the Select Committee on Intelligence.

Special Report entitled "Committee Activities of the Select Committee on Intelligence for the period January 4, 1993 through December 1, 1994" (Rept. No. 104–4).

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on January 18, 1995, she had presented to the President of the United States, the following enrolled bill:

S. 2. An act to make certain laws applicable to the legislative branch of the Federal Government.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–131. A communication from the Chairman of the Federal Maritime Commission, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–132. A communication from the Chairman of the National Endowment for the Humanities, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–133. A communication from the Administrator of the National Aeronautics and Space Administration, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–134. A communication from the Administrator of the General Services Administration, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–135. A communication from the Director of the Arms Control and Disarmament Agency, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–136. A communication from the President of the Inter-American Foundation, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–137. A communication from the Executive Director of the State Justice Institute, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–138. A communication from the Director of the Woodrow Wilson Center, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–139. A communication from the Executive Director of the Office of Navajo and Hopi Indian Relocation, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–140. A communication from the Chief of Staff of the Office of the Nuclear Waste Negotiator, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

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. McCAIN:

S. 233. A bill to provide for the termination of reporting requirements of certain executive reports submitted to the Congress, and for other purposes; to the Committee on Governmental Affairs.

By Mr. CAMPBELL (for himself, Mr. GRASSLEY, and Mr. KOHL):

S. 234. A bill to amend title 23, United States Code, to exempt a State from certain penalties for failing to meet requirements relating to motorcycle helmet laws if the State has in effect a motorcycle safety program, and to delay the effective date of certain penalties for States that fail to meet certain requirements for motorcycle safety laws, and for other purposes; to the Committee on Environment and Public Works.

By Mrs. HUTCHISON:

S. 235. A bill to amend the Clean Air Act to prohibit the Federal government from requiring State plans to mandate trip reduction measures; to the Committee on Environment and Public Works.

S. 236. A bill to amend the Clean Air Act to repeal the mandatory requirement for State motor vehicle inspection and maintenance programs for ozone nonattainment areas; to the Committee on Environment and Public Works.

By Mr. HOLLINGS:

S. 237. A bill to amend the Internal Revenue Code of 1986 to impose a value added tax and to use the receipts from the tax to reduce the Federal budget deficit and Federal debt and to finance health care reform; to the Committee on Finance.

S. 238. A bill to create a legislative line item veto by requiring separate enrollment of items in appropriations bills; to the Committee on Rules and Administration.

By Mr. SHELBY (for himself, Mr. NICKLES, Mr. BURNS, Mrs. HUTCHISON, Mr. LOTT, Mr. PACKWOOD, Mr. PRESSLER, Mr. INHOFE, Mr. THOMAS, and Mr. BROWN):

S. 239. A bill to require certain Federal agencies to protect the right of private property owners, and for other purposes; to the Committee on Governmental Affairs.

By Mr. DOMENICI (for himself, Mr. DODD, Mr. HATCH, Ms. MIKULSKI, Mr. BENNETT, Ms. MOSELEY-BRAUN, Mr. LOTT, Mrs. MURRAY, Mr. MACK, Mr. JOHNSTON, Mr. FAIRCLOTH, Mr. CONRAD, Mr. BURNS, Mr. CHAFEE, Mr. GORTON, Mr. HELMS, Mr. KYL, Mr. THOMAS, Mrs. HUTCHISON, Mr. SANTORUM, and Mr. PELL):

S. 240. A bill to amend the Securities Exchange Act of 1934 to establish a filing deadline and to provide certain safeguards to ensure that the interests of investors are well protected under the implied private action provisions of the Act; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. D'AMATO:

S. 241. A bill to increase the penalties for sexual exploitation of children, and for other purposes; to the Committee on the Judiciary.

By Mr. DASCHLE (for himself, Mr. BREAUX, Mr. KENNEDY, Mr. REID, Mr. ROCKEFELLER, Ms. MIKULSKI, Mr. FORD, Mr. DODD, and Mr. KERRY):

S. 242. A bill to amend the Internal Revenue Code of 1986 to allow a deduction for the payment of tuition for higher education and interest on student loans; to the Committee on Finance.

By Mr. SARBANES (for himself, Mr. BYRD, Mr. ROCKEFELLER, and Ms. MIKULSKI):

S.J. Res. 20. A joint resolution granting the consent of Congress to the compact to provide for joint natural resource management and enforcement of laws and regulations pertaining to natural resources and boating at the Jennings Randolph Lake Project lying in Garrett County, Maryland and Mineral County, West Virginia, entered into between the States of West Virginia and Maryland; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mrs. KASSEBAUM:

S. Res. 62. An original resolution authorizing expenditures by the Committee on Labor and Human Resources; from the Committee on Labor and Human Resources; to the Committee on Rules and Administration.

By Mr. DORGAN (for himself, Mr. DODD, and Mr. HARKIN):

S. Res. 63. A resolution to express the sense of the Senate regarding calculation of the Consumer Price Index; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SIMPSON:

S. Res. 64. An original resolution authorizing expenditures by the Committee on Veterans' Affairs; from the Committee on Veterans Affairs; to the Committee on Rules and Administration.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MCCAIN:

S. 233. A bill to provide for the termination of reporting requirements of certain executive reports submitted to the Congress, and for other purposes; to the Committee on Governmental Affairs.

THE REPORTING REQUIREMENTS SUNSET ACT

Mr. MCCAIN. Mr. President, I introduce legislation that would terminate the statutory requirement for all congressionally mandated reports, except for those required under the Inspector Generals Act and the Chief Financial Officers Act, 5 years after its enactment. The Reporting Requirements Sunset Act of 1995 is almost identical to legislation (S. 1971) that I introduced in the last Congress. This bill would also require the President to identify which reports he feels are unnecessary or wasteful in his next budget submission to Congress, a measure which will hopefully spur the Congress to swiftly dispose of those specific reports.

This proposal is intended to address the growing problem of the thousands of reports the Congress is burdening the executive branch with each year. Each year, Members of Congress add layer upon layer of onerous paperwork requirements upon executive branch agencies by mandating various reports. This problem has a very real and substantive cost to taxpayers in terms of wasting hundreds of millions of dollars, in addition to taking up untold number of work-hours by Federal employees, and draining vast amounts of other agency resources that could be far better utilized in more worthy endeavors.

The Vice President's National Performance Review determined that in 1993 alone the Congress mandated that the Office of the President and executive branch agencies to prepare over 5,300 reports. This is a problem that is reaching truly epic proportions of unnecessary and wasteful papershuffling.

I have based this legislation upon the official list of congressionally mandated reports which is published each Congress by the Clerk of the House of Representatives. It is the most comprehensive compilation available. Let me give just a few examples of the type of reports I am talking about. Each year, the following are required to be sent to the Congress from Federal agencies: a report on activities involving electric and hybrid vehicle research; a report on the United States-Japan Cooperative Medical Science Program; another on the number of customs service undercover operations commenced, pending, and closed; and finally, a report on the transportation, sale, and handling of animals for research and pets.

Is the continued research, preparation, and production of these types of reports—and thousands more, all at taxpayers' expense—really necessary? I think the answer is likely no, Mr. President, and I am confident most people determined to reduce the size and cost of Government will agree.

This problem of foisting massive reporting requirements on Federal agencies is extremely expensive. The Department of Agriculture alone spent over $40 million in taxpayers money in 1993 to produce the 280 reports it was required to submit to the Congress. That is astounding, Mr. President—$40 million in taxpayer dollars spent by a single department on reports mandated by the Congress. At a time when our country is struggling to alleviate the burdens of the middle class and also address the urgent needs of our citizenry, this is an especially egregious waste of money.

Furthermore, this problem is getting worse with each passing year. The GAO stated that in 1970, the Congress mandated only 750 recurring reports from Federal agencies. Now we have spiraled well past 5,300, and the GAO determined that "Congress imposes about 300 new requirements on Federal agencies each year." Clearly, Mr. President, the wasteful blizzard of paperwork that Vice President GORE criticized is becoming an avalanche, and it's time for the Senate to take decisive action to remedy it.

This legislation would terminate the statutory requirement for all congressionally mandated reports 5 years after it is signed into law, with two specific exceptions. The reports to be exempted are those required under the Inspector Generals Act of 1978 and the Chief Financial Officers Act of 1990. The Inspector Generals Act requires the Congress to be advised of activities regarding investigations into waste, fraud, and abuse in Federal agencies; and the CFO Act requires agencies to provide financial information about their short- and long-term management of agency resources.

I believe the reports required by these two laws are very important and merit continuation, and I also recognize that there are many other reports that my colleagues feel have great value because of the information they provide to the Congress. Such reports can simply be reauthorized at any time in the 5 years before this amendment would sunset them.

Mr. President, it's time we put an end to this cycle of waste and misspent resources. The adoption of this legislation would be a strong contribution toward downsizing Government as the American people are calling on us to do. I urge my colleagues to support this legislation and remove the millstone of unnecessary and costly paperwork that Congress has hung around the neck of the Federal Government for too long.

By Mr. CAMPBELL (for himself, Mr. GRASSLEY, and Mr. KOHL):

S. 234. A bill to amend title 23, United States Code, to exempt a State from certain penalties for failing to meet requirements relating to motorcycle helmet laws if the State has in effect a motorcycle safety program, and to delay the effective date of certain penalties for States that fail to meet certain requirements for motorcycle safety laws, and for other purposes; to the Committee on Environment and Public Works.

MOTORCYCLE SAFETY LEGISLATION

Mr. CAMPBELL. Mr. President, today, I rise to introduce legislation which will provide relief to 25 of those States that have been penalized by one such mandate. The Intermodal Transportation Act of 1991 penalized States which did not pass laws mandating seatbelt and helmet usage by October 1, 1993. The penalties involve a required transfer of scarce transportation and construction dollars to section 402 safety programs. The penalties are assessed regardless of whether the State already has the funds dedicated to safety programs and regardless of the State's individual safety record.

Like many of my colleagues, Mr. President, I am not opposed to safety programs and I certainly support them. I am not opposed to the use of helmets. On the contrary, I am opposed to the Federal Government blackmailing States, as many other Senators are. It is not a good policy to force States to channel funds from one transportation activity to another, using threats of withholding Federal money for these programs.

This bill would give States the option of implementing their own safety programs, which they can tailor to the specific needs of their individual States. If they choose to design a safety program or already have such a program in place, it would not be subject to the section 153 penalties. They still would have the option of passing such laws if they want it. In fact, it would not mandate that any States repeal existing laws.

I believe encouraging and providing support to States and local communities to establish training programs would be a much more effective means of improving motorcycle safety on the roads and the highways. The Federal Government should redirect their role to establishing basic guidelines regarding the programs, rather than forcing States to dip from one transportation fund to another.

Mr. President, as the Senate has been debating the issue of unfunded mandates, I am introducing legislation that will provide options and relief to the 25 States which have been financially penalized under the Intermodal Surface Transportation Act of 1991 for not having passed laws mandating helmet use by the deadline of October 1, 1993. This is not only a burdensome Federal mandate placed on the backs of State legislatures, but also an erosion of civil liberties and personal freedom.

Twenty-five States face penalties in fiscal years 1995, 1996, and 1997. In accordance with ISTEA, they are required to transfer scarce transportation and construction dollars to section 402 safety programs.

This shift will force States to spend 10 to 20 times the amount they are currently spending on section 402 safety programs. These penalties are assessed regardless of whether the State already has funds dedicated to helmet safety programs and regardless of the State's individual safety record.

Initially, these States are being forced to shift 1.5 percent of their Federal highway dollars. This transfer effects three programs: the National Highway System, the Surface Transportation Program, and the Congestion Mitigation and Air Quality Improvement Program. Those States which did not enact helmet laws by September 30, 1994, are required to shift 3 percent of their Federal highway funds from these important programs into safety programs.

My bill would repeal the section 153 penalties and, upon enactment of this legislation, gives States until fiscal year 1996 to either pass helmet laws, or establish motor safety programs, exempting those States which already have safety programs in place.

Mr. President, let me be clear. I am not opposed to people wearing helmets. Quite the contrary. What I am opposed to is the Federal Government blackmailing States to pass laws. It simply is not good policy to force States to funnel funds from one State transportation activity to another. It should be pointed out that the money the Federal Government wants to redirect, is tax revenue already paid by State residents.

Safety education programs are desirable. That is the point of my bill. I firmly believe, and I'm sure my colleagues would agree, that we must do everything we can to make our roads and highways safer.

My bill would give States the option of implementing safety programs, instead of mandating the use of helmets and remove the section 153 penalties.

My own State of Colorado has no helmet law. The Colorado Legislature has repeatedly shot down any attempt to implement one.

Colorado, however, has a motorcycle fatality rate almost 30 percent below the average for States with mandatory helmet laws. Of the top 12 States with the best motorcycle safety records, only one has a helmet law. On the other hand, half of the 12 States with the worst safety records have helmet laws.

Comparing States with and without mandatory helmet laws as a whole, figures show that for the 14-year period between 1977 and 1990, States with mandatory helmet laws had 12.5 percent more accidents and 2.3 percent more fatalities than States that did not mandate helmet usage.

In the past decade, motorcycle fatalities have decreased 38 percent and accidents have plummeted 41 percent. These figures are particularly impressive because the Federal Highway Administration estimates that the average vehicle miles traveled by motorcyclists has increased 85 percent since 1975. These statistics are unmatched by any other category of road user—passenger or commercial.

What can account for this decrease in accidents and fatalities? Evidence clearly indicates that the most effective way to reduce motorcycle accidents and motorcycle fatalities is through comprehensive education programs, as opposed to mandating helmet usage. Currently 42 States have established and funded some sort of safety program.

The national average of motorcycle fatalities per 100 accidents is 2.95. States with rider education programs and no helmet laws, however, have the lowest average death rate, 2.56 fatalities per 100 accidents. States with mandatory helmet laws and no rider education programs have a significantly higher rate of 3.09 fatalities per 100 accidents.

Police accident reports indicate that well over 45 percent of motorcyclists involved in accidents did not have a motorcycle license, 92 percent did not have any rider training, and over 50 percent had less than 6 months riding experience. Some 62 percent of the accidents and 50 percent of the fatalities involved riders between the ages of 17 and 26. Clearly, mandating helmet use will not address the real problem of rider inexperience and lack of training.

I believe that encouraging and providing support to States and local communities to establish motorcycle training programs would be a much more effective means of improving motorcycle safety on our roads and highways. The Federal Government should redirect its role to providing uniform national guidelines regarding these safety programs, rather than mandating where the money to pay for them should come from.

I realize the motivations behind ISTEA and those who wish to force States into passing helmet and seatbelt laws are doing so out of concern for the safety of the traveling public, but I think their efforts are misguided.

Forcing States to pass laws, or throwing money at safety programs is not the answer. Throughout my career in politics, I have always strived to protect the interest of States and communities by allowing them to make the important decisions on how their affairs should be conducted. When Congress blackmailed the States regarding highway speed limits, I thought that was wrong. The same goes for helmet laws. I have stuck with the philosophy that each State and each community should, to the best of their abilities, be allowed to make its own policy decisions.

I own a motorcycle, that's no secret. Where helmets are required to be worn, I wear them. Where they are not, I don't. I make no bones about the fact that my dislike for the Federal mandate requiring States to pass helmet laws is in part inspired by my interest in motorcycling. But, I also think personal freedom is an issue. I am prochoice. I do not think the Federal Government should dictate to the States, or its citizens, on matters of individual liberty. The choice of wearing a helmet, or not doing so, should be left up to the individual—not forced by Government extortion. And those who contend that it is not simply a personal responsibility because motorcyclists who choose not to wear helmets can become a public burden, are using faulty logic. It would then follow that we should mandate helmets for skiers, horsemen, skateboarders, and automobile drivers.

Mr. President, in closing, I want to strongly encourage my colleagues to reconsider the position Congress took in ISTEA in mandating that States pass helmet and seatbelt laws. It is wrong to blackmail the States into passing laws. And, if motorcycle safety programs are desired, we should work toward establishing effective program guidelines, rather than force States to dip from one transportation pot to fill another.

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. 234

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. USE OF A MOTORCYCLE HELMET AND MOTORCYCLE SAFETY PROGRAM.

Section 153(h) of title 23, United States Code, is amended—

(1) by striking "(1) FISCAL YEAR 1994.—If," and inserting the following:

"(2) SAFETY BELTS.—

"(A) FISCAL YEAR 1994.—If,";

(2) by striking "(2) THEREAFTER.—If" and inserting the following:

"(B) THEREAFTER.—If,"; and

(3) in paragraph (2) (as amended by paragraphs (1) and (2)), by striking "subsection (a)(1) and a law described in" each place it appears;

(4) by inserting under the subsection heading the following:

"(1) MOTORCYCLE HELMETS.—

"(A) FISCAL YEAR 1996.—If, at any time in fiscal year 1996, a State does not have in effect a law described in subsection (a)(1) or a motorcycle safety program administered or authorized by the State to reduce motorcycle accidents and fatalities, the Secretary shall transfer 1½ percent of the funds apportioned to the State for fiscal year 1997 under each of subsections (b)(1), (b)(2), and (b)(3) of section 104 of this title to the apportionment of the State under section 402 of this title.

"(B) THEREAFTER.—If, at any time in a fiscal year beginning after September 30, 1996, a State does not have in effect a law described in subsection (a)(1) or a motorcycle safety program administered by the State to reduce motorcycle accidents and fatalities, the Secretary shall transfer 3 percent of the funds apportioned to the State for the succeeding fiscal year under each of subsections (b)(1), (b)(2), and (b)(3) of section 104 of this title to the apportionment of the State under section 402 of this title.".

By Mr. HOLLINGS:

S. 237. A bill to amend the Internal Revenue Code of 1986 to impose a value added tax and to use the receipts from the tax to reduce the Federal budget deficit and Federal debt and to finance health care reform; to the Committee on Finance.

THE DEFICIT AND DEBT REDUCTION AND HEALTH CARE FINANCING ACT OF 1995

Mr. HOLLINGS. Mr. President, I rise to introduce the Deficit Reduction and Health Care Financing Act of 1995. This bill would create a 5-percent national value-added tax, with all revenues set aside in a trust fund to finance deficit reduction and health care reform. Let me be clear, I offer this bill under duress. But it is the only way I know—in tandem with deeper spending cuts—to deal with the fiscal recklessness that has gotten out of hand in this city.

It's time we stopped running government based on the promise of pollsters and started thinking about performing for the people. Today, I propose a 5-percent national value-added tax without exemptions. The VAT is essentially like a national sales tax. Traditionally, there have been three principal objections to a VAT: First, it is regressive; second, it is too complicated; third, it raises too much money and would cause waste. Let me address each of these objections in turn.

First, the issue of regressivity. I agree, but all taxes are inherently regressive. With a consumption tax, the more you consume, the more you pay; the less you consume, the less you pay. The VAT does fall disproportionately on lower income brackets. But the VAT is not nearly as regressive as interest costs on the national debt. It is not nearly as regressive as the debt's inflationary impact on the economy, which disproportionately harms the poor.

Second, it is said that the VAT is too complicated. Well, it's certainly not too complicated for the Japanese, the Koreans, and every member of the European Economic Community. Moreover, we can draw on the lessons of these other countries as well as the experiences of the States with sales taxes in order to minimize such complications.

Third, some say that a VAT would raise too much money. This is a dream. We will need ever dime raised by a 5-percent VAT, plus savings from additional steep spending cuts, in order to eliminate the deficit. Even then, it will take years to pay down the debt and to put government back in the black.

A VAT will help us not only to eliminate the deficit but also to pay cash on the barrelhead for health reform. Additionally, moving to border-rebatable taxes will contribute to eliminating our other great deficit—the trade deficit. At present, our overseas competitors rebate to their manufacturers the VAT on all goods exported to the United States; those manufacturers' other in-country taxes are relatively low. In stark contrast, producers in the United States pay property taxes, income taxes, excise taxes, Social Security taxes and much more; then, when their goods are shipped overseas, the importing country slaps a fat VAT tax on top of all those other taxes. This does tremendous harm to the competitiveness of U.S. products abroad. It makes it financially attractive to produce outside the United States, and represents at least a 15-percent disadvantage in international trade. A U.S. VAT would eliminate this disadvantage. With good reason, Lester Thurow of MIT says that "the rules of international trade make you stupid if you don't have a VAT."

I have no illusions as to the political trauma involved in enacting a new tax. There is never a good time to raise a tax. But as we continue to wait for a propitious moment, our financial crisis worsens every day. It's time to put government back on track with difficult belt-tightening and and honest taxes. I propose a single, ultra-simple reform—a reform that would transform the reputation of Congress in the eyes of the American people. That reform is to put the U.S. Government on a pay-as-you-go basis.

By Mr. HOLLINGS:

S. 238. A bill to create a legislative line-item veto by requiring separate enrollment of items in appropriations bills; to the Committee on Rules and Administration.

THE LEGISLATIVE LINE-ITEM VETO SEPARATE ENROLLMENT AUTHORITY

Mr. HOLLINGS. Mr. President, I rise today to introduce legislation which would provide Congress and the President with an additional weapon to eliminate wasteful and unnecessary appropriations and thereby reduce the Federal deficit. This bill, a statutory, separate enrollment line-item veto, is identical to a measure previously considered by the 99th and reported favorably by a bipartisan vote out of the Senate Budget Committee on July 25, 1990. During the 103d Congress, a similar amendment offered by myself and Senator BRADLEY received the support of 52 Senators.

Today, 43 States have, in one form or another, a line-item veto allowing the chief executive to limit legislative spending. As a former Governor who inherited a budget deficit in a poor State, I can testify that a line-item veto is invaluable in imposing fiscal restraints.

The fiscal problems of our Nation have been painfully documented. Our Government continues on annual deficit binges that have pushed our total deficit past $4.7 trillion. For years now, we have been toying with freezes, asset sales, and sham summits, but the deficit and debt continue to grow.

The American taxpayer, as well as the Congress, have grown weary of the smoke and mirrors and are past ready for new measures that will help to put our country back in the black. If every there was a problem that needed to be attacked from every particular angle, it is this deficit.

Mr. President, I welcome President Clinton's strong support for the line-item veto initiative and his continuing resolve to attack the burgeoning deficit monster. In order to hold him to that commitment, we should send him into battle well armed. By restoring accountability and responsibility throughout the appropriations process, the line-item veto would force Members of Congress and the President to stop fixing the blame and start fixing the problem.

In order to provide greater flexibility in the legislative process, this legislation provides that each item shall be enrolled as a separate bill and sent to the President for his approval. Therefore, each item of an appropriations bill would be subject to veto or approval, just like any other bill, and the override provisions found in article I of the Constitution would apply in the case of a veto. An item is defined as any numbered section and any unnumbered paragraph of an appropriations bill. The enrolling clerk would merely break an appropriations bill down into its component parts and send each separately enrolled provision to the President.

Finally, this legislation also contains a 2-year sunset provision allowing for a reasonable testing period and requiring

an evaluation of the line-item veto's success. I have no question but that it will be demonstrated to be a modest, but effective, method of restraining fiscal profligacy. I hope that Senators will join me in this effort, and I ask unanimous consent the full text of the bill be printed in the RECORD.

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

S. 238

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Impoundment Control Act of 1974 is amended by adding at the end thereof the following new title:

"TITLE XI—SEPARATE ENROLLMENT AUTHORITY LEGISLATIVE LINE ITEM VETO

"SEC. 1101. (a)(1) Notwithstanding any other provision of law, when any general or special appropriation bill or any bill or joint resolution making supplemental, deficiency, or continuing appropriations passes both Houses of the Congress in the same form, the Secretary of the Senate (in the case of a bill or joint resolution originating in the Senate) or the Clerk of the House of Representatives (in the case of a bill or joint resolution originating in the House of Representatives) shall cause the enrolling clerk of such House to enroll each item of such bill or joint resolution as a separate bill or joint resolution, as the case may be.

"(2) A bill or joint resolution that is required to be enrolled pursuant to paragraph (1)—

"(A) shall be enrolled without substantive revision;

"(B) shall conform in style and form to the applicable provisions of chapter 2 of title 1, United States Code (as such provisions are in effect on the date of the enactment of this title); and

"(C) shall bear the designation of the measure of which it was an item prior to such enrollment, together with such other designation as may be necessary to distinguish such bill or joint resolution from other bills or joint resolutions enrolled pursuant to paragraph (1) with respect to the same measure.

"(b) A bill or joint resolution enrolled pursuant to subsection (a)(1) with respect to an item shall be deemed to be a bill under clauses 2 and 3 of section 7 of article I of the Constitution of the United States and shall be signed by the presiding officers of both Houses of the Congress and presented to the President for approval or disapproval (and otherwise treated for all purposes) in the manner provided for bills and joint resolutions generally.

"(c) For purposes of this concurrent resolution, the term 'item' means any numbered section and any unnumbered paragraph of—

"(1) any general or special appropriation bill; and

"(2) any bill or joint resolution making supplemental, deficiency, or continuing appropriations.".

(b) The amendment made by subsection (a) shall apply to bills and joint resolutions agreed to by the Congress during the two-calendar-year period beginning with the date of the enactment of this Act.

By Mr. SHELBY (for himself, Mr. NICKLES, Mr. BURNS, Mrs. HUTCHISON, Mr. LOTT, Mr. PACKWOOD, Mr. PRESSLER, Mr. INHOFE, Mr. THOMAS, and Mr. BROWN):

S. 239. A bill to require certain Federal agencies to protect the right of private property owners, and for other purposes; to the Committee on Governmental Affairs.

PRIVATE PROPERTY OWNERS BILL OF RIGHTS

Mr. SHELBY. Mr. President, today I am introducing a bill to address the continued deterioration of individual property rights. Environmental regulations are increasingly interfering with the ability of private property owners to use and develop their land. Contrary to popular belief, protecting the property rights of individuals and protecting our environment are not mutually exclusive principles.

All too often, I hear stories that landowners are being deprived of the ability to build a house because the Corps of Engineers has designated their property as a wetland; or the U.S. Fish and Wildlife Service has prohibited cultivation of land for fear it might jeopardize an endangered species. A landowner may even be required to pay exorbitant mitigation fees or fines in order to regain the use of their property. That is, of course, if they are lucky enough to regain the right to use their property.

Not only does the enforcement of such land use statutes abuse the rights of the property rights owners, but they impose the cost of enforcing these public goods on individual owners rather than the public at large. If the land is regulated in the name of a public good, surely we can distribute the cost among the public as well.

The mounting cases regarding regulatory takings necessitate Congressional action. The Domenigoni family experience is a good example. Cindy and Andy Domenigoni are fifth generation farmers in Riverside County, CA. First cultivated in 1879, their farm has traditionally been home to the Stephen's kangaroo rat, which was listed as an endangered species in 1988.

In 1990, Fish and Wildlife Service officials ordered them to stop cultivating their 800 tillable acres and warned them that disking this land would warrant their arrest. Punishment for disking land that had been cultivated for the previous 100 years would now result in jail time, a $50,000 fine, or both.

As a result, the Domenigonis' land lain idle, producing no crops for 4 years. They lost $75,000 in foregone crops each year and incurred another $100,000 loss in biological consultation fees, legal fees, and other costs associated with fighting this regulatory taking.

Ironically, on November 1, 1993, shortly after devastating southern California fires destroyed thousands of acres of kangaroo rat habitat, FWS biologist John Bradley determined that the rats had left the area before the fire, because the years of leaving the fields fallow had made the brush and weeds grow too thick for the rats.

I must say this kind of policy is reckless and haphazard. When elected to the Senate, we had to take an oath to uphold the Constitution of the United States. I do not believe confiscating the economic value of ones property would be considered upholding the Constitution. Indeed, I believe most would agree that such action is nothing less than the taking of property without compensation.

In another case, Mr. and Mrs. Howard Heck were denied building on their 25 acres of land because a federally threatened plant species was "within 5 miles of the proposed project site." Mr. Heck has said, "We were proud to be Americans in a land where * * * our children were to have the opportunity to achieve any goal we wanted. Now we are ashamed of our country and Government that allows the bureaucrats to steal from its citizens * * *."

I, too, am ashamed the Government in this Nation can effectively steal the economic value of one's land and rob this elderly couple of their dignity and peace during their remaining years on this Earth.

In still another instance, a Corps field agent to the regional chief of enforcement signed a memo stating a particular family in Maine, "would be a good one to squash and set an example * * *."

The Government of the United States of America has no business "squashing" hard working Americans or plundering away their wealth. The very reason the Constitution was established was to protect individuals, not to harm them. The atrocities previously mentioned need to be addressed with a clearly defined policy for Federal agencies in order to stop the abuse of Government bureaucrats.

The two laws most responsible for imposing the heavy burden on property ownership are the Endangered Species Act and section 404 of the Clean Water Act.

Although the intention of these acts is commendable, they have created perverse incentives for private property ownership. Individuals are reluctant to develop or build on land for fear the Fish and Wildlife Service, the Corps of Engineers or the EPA will soon visit. A visit from the IRS is more welcome than a visit from these Federal agencies.

The negative impact of these perverse incentives directly affect the housing and agricultural industries as well as many others. Every house that is not built and every farm that is not cultivated costs us jobs. Not only do the present policies crush an individual's hopes and dreams, but it hinders those still trying to achieve them.

As a result of the inequities in the current policies, Senator NICKLES and I

are reintroducing legislation entitled the, "Private Property Owners Bill of Rights." This bill would insure that private property owners are protected by the Federal Government, its employees, agents, and representatives.

Our bill requires notice and consent from property owners before Federal agencies and their agents can enter a private property owners land for purposes of the Endangered Species Act or wetlands laws.

In addition, this legislation ensures that property owners rights are considered and respected when agency decisions or actions are taken pursuant to these two laws by providing an administrative appeals process. The process calls for the owner to be given access to the information collected, a description of the way the information was collected, and an opportunity to discuss the accuracy of the information.

Lastly, and most importantly, it requires the agency itself to determine whether a taking has occurred and if so to compensate the private property owner for the loss in fair market value of the property. A property owner who is deprived of at least 20 percent or more of the fair market value of $10,000 or more is entitled to receive compensation. The agency would be required to pay the fair market value of the property if purchased or the difference between the fair market value of the property without the restrictions and the fair market value of the property with restrictions.

I believe our legislation addresses the serious problem of property rights abuse. It will enhance the foundation necessary for contracts and commerce and in doing so, will foster an environment essential to achieving the American Dream.

I strongly urge my colleagues to cosponsor this legislation and support this cause on behalf of every property owner in America.

I ask unanimous consent that the following Senators be listed as original cosponsors of this legislation: Senator NICKLES, Senator BURNS, Senator HUTCHISON, Senator LOTT, Senator PACKWOOD, Senator PRESSLER, Senator INHOFE, Senator THOMAS, and Senator BROWN.

Mr. NICKLES. Mr. President, of all the freedoms we enjoy in this country, the ability to own, care for, and develop private property is perhaps the most crucial to our free enterprise economy. In fact, our economy would cease to function without the incentives provided by private property. So sacred and important are these rights, that our forefathers chose to specifically protect them in the fifth amendment to the U.S. Constitution, which says in part, "nor shall private property be taken for public use, without just compensation."

Unfortunately, Mr. President, some Federal environmental, safety, and health laws are encouraging Government violation of private property rights, and it is a problem which is increasing in severity and frequency. we would all like to believe the Constitution will protect our property rights if they are threatened, but today that is simply not true. The only way for a person to protect their private property rights is in the courts, and far too few people have the time or money to take such action. Thus many citizens lose their fifth amendment rights simply because no procedures have been established to prevent Government takings.

Mr. President, many people in the Federal bureaucracy believe that public protection of health, safety, and the environment is not compatible with protection of private property rights. I disagree. In fact, the terrible environmental conditions exposed in Eastern Europe when the cold war ended lead me to believe that property ownership enhances environmental protection. As the residents of East Berlin and Prague know all too well, private owners are more effective caretakers of the environment than communist governments.

Yet the question remains, how do we prevent overzealous bureaucrats from using their authority in ways which threaten property rights?

Mr. President, today I rise to join my colleague Senator RICHARD SHELBY of Alabama in introducing legislation which will strengthen every citizen's fifth amendment rights. Our bill, the Private Property Owners Bill of Rights, targets two of the worst property rights offenders, the Endangered Species Act and the wetlands permitting program established by Section 404 of the Clean Water Act.

Mr. President, our bill requires Federal agents who enter private property to gather information under either the Endangered Species Act or the wetlands permitting program to first obtain the written consent of the landowner. While it is difficult to believe that such a basic right should need to be spelled out in law, overzealous bureaucrats and environmental radicals too often mistake private resources as their own. Property owners are also guaranteed the right of access to that information, the right to dispute its accuracy, and the right of an administrative appeal from decisions made under those laws.

Most importantly, the Private Property Owners Bill of Rights guarantees compensation for a landowner whose property is devalued by 50 percent or more by a Federal action under the Endangered Species Act or wetlands permitting program. An administrative process is established to give property owners a simple and inexpensive way to seek resolution of their takings claims. If we are to truly live up to the requirements of our Constitution, Mr. President, we must make this commitment. I believe this provision will work both to protect landowners from uncompensated takings and to discourage Government actions which would cause such takings.

Mr. President, the time has come for farmers, ranchers, and other landowners to take a stand against violations of their private property rights by the Federal bureaucracy. The Private Property Owners Bill of Rights will help landowners take that stand.

Mr. BURNS. Mr. President, today I join my colleague from Alabama, Senator SHELBY in introducing a bill which would protect individual's private property rights.

This bill, the Private Property Owners Bill of Rights, would provide a consistent Federal policy to encourage, support, and promote the private ownership of property and to ensure the constitutional and legal rights of private property owners.

Private property rights are protected by the fifth amendment of the Constitution. Yet, many laws have been encroaching further and further on this right. The bill we are introducing today is very important to Montana because it makes the Federal Government respect and protect private property rights when enforcing the Endangered Species Act and the Clean Water Act. Montana's private property owners have been greatly impacted by these two laws.

In Montana a couple years ago, I saw a headline which read "Judge Says Grizzlies Have 'People Rights'." This article ran in an agriculture trade publication. The story was about John Shuler of Choteau who shot a grizzly bear in 1989 after he found three of these bears in his sheep pen. He originally fired the shot to scare the bears away, but when one bear charged him, he was forced to shoot that bear. For those who may not be aware, the grizzly is protected under the Endangered Species Act.

The judge ruled that the Endangered Species Act's self-defense exception must meet the same requirements used in criminal law for humans. The judge then ruled that since this rancher had stepped off his porch, to protect his investment, he "Purposefully placed himself in the zone of imminent danger of a bear attack". According to this judge, the rancher didn't have the right to protect his property. Folks, that's wrong.

The Private Property Owners Bill of Rights would create an administrative appeals process for affected property owners. And the bill establishes a framework so private property holders can seek and obtain compensation.

In addition, before a Government official can enter private land, they must have consent from the land owner. If information is collected on private property, this information cannot be

used unless the private individual has full access to the information and has the right to dispute the accuracy of the information. The bill also establishes the right to administratively appeal decisions regarding wetlands and critical habitat of a listed species.

Montanans believe that protecting private property is of utmost importance. And this bill reinforces the Government's responsibility to protect property rights and will help get the Federal Government off the backs of Montana's working men and women.

I believe strongly in every American's private property rights and this bill should be signed into law.

By Mr. DOMENICI (for himself, Mr. DODD, Mr. HATCH, Ms. MIKULSKI, Mr. BENNETT, Ms. MOSELEY-BRAUN, Mr. LOTT, Mrs. MURRAY, Mr. MACK, Mr. JOHNSTON, Mr. FAIRCLOTH, Mr. CONRAD, Mr. BURNS, Mr. CHAFEE, Mr. GORTON, Mr. HELMS, Mr. KYL, Mr. CRAIG THOMAS, Mrs. HUTCHISON, Mr. SANTORUM, and Mr. PELL):

S. 240. A bill to amend the Securities Exchange Act of 1934 to establish a filing deadline and to provide certain safeguards to ensure that the interests of investors are well protected under the implied private action provisions of the act; to the Committee on Banking, Housing, and Urban Affairs.

THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995

• Mr. DOMENICI. Mr. President, I introduce a bill on behalf of Senator DODD, myself and 15 other Senators on both sides of the aisle which will return some fairness and common sense to our broken securities class action litigation system. The system as it currently operates encourages the quick filing of frivolous complaints by entrepreneurial class action attorneys, and costs businesses countless amounts of time and money to defend against and settle these strike suits. In cases of real fraud, the system often leaves injured investors with pennies on the dollar for their losses, while plaintiffs' lawyers take a substantial amount of the settlement. In short, the current securities litigation system rarely benefits anyone except for plaintiffs' attorneys, and victimizes innocent companies and investors.

The list of companies that have been hit with frivolous securities suits reads like the who's who of high growth, high-technology businesses. In fact, 19 of the 30 largest companies in Silicon Valley have been sued since 1988. They are the backbone of our economy and the foundation of our ability to compete in the new global marketplace. During 2 days of hearings on securities litigation conducted by Senator DODD back in 1993, we heard from CEO's who had been involved in frivolous securities class actions first hand. Their testimony indicated that:

Companies get sued when their stock price drops.

Companies also get sued by shareholders for settling securities suits.

Frivolous litigation is time consuming and distracts CEO's and other corporate officers from economically productive activity.

Defending a securities lawsuit often is as costly as starting up a new product line.

The general counsel for the Intel Corp. testified that if Intel had been sued when it was a start-up company, that such a suit probably would have bankrupted the company before it invented the microchip. We cannot afford to allow the current system to snuff out this sort of innovation.

Frivolous litigation also adversely affects investors by drawing scarce resources away from productive activity, which is then reflected in a company's stock price. Arthur Levitt, Chairman of the Securities and Exchange Commission, stated in testimony before the House in August 1994, that "when issuers and others pay substantial sums to deal with frivolous lawsuits, significant costs are imposed on the process of capital-raising and on business, costs that ultimately will be borne by all shareholders".

Instead we must put a stop to the race-to-the-courthouse game played by plaintiffs' class action attorneys, in which they file lawsuits within hours of news that a company came up short on an earnings projection or will be forced to delay the introduction of a new product line. Information provided to the Senate Securities Subcommittee by the National Association of Securities and Commercial Law Attorneys [NASCAT] suggests that 56 percent of the class actions that they hand-picked to provide to the subcommittee were filed within 30 days of a triggering event, like a missed earnings projection. Twenty-one percent of the cases were filed within 48 hours of the triggering. The stock price drops and class action suits are filed quickly with little due diligence done to investigate each of the elements necessary for a successful 10b–5 case.

Many academics and those familiar with our securities class action system also agree that the securities litigation system encourages the filing of frivolous suits. Jonathan Macey, a law professor at Cornell University believes that most securities class actions are frivolous. "The facts show that every time a firm's share price drops by enough that it's profitable for plaintiffs' lawyers to bring a lawsuit, they do", he said recently. Janet Cooper Alexander at Stanford University has proven that most class actions are settled without regard to whether the case has merit. Chairman Levitt has acknowledged that "virtually all securities class actions are settled for some fraction of the claimed damages, and some allege that settlements often fail to reflect the underlying merits of the cases. If true, this means that weak claims are overcompensated and strong claims are undercompensated."

In case you don't believe that class action attorneys are filing frivolous suits, take a look at the article the Wall Street Journal ran last week on January 11. It provides an excellent example of the cookie-cutter complaints which often form the basis of these million-dollar lawsuits. It documents a case against Philip Morris filed within 48 hours of the company's announcement of a price cut on one of its brands of cigarettes. The case was dismissed after the judge noticed that the plaintiffs' attorneys had filed two separate suits which alleged that Philip Morris had engaged in fraud to create and prolong the illusion of their success in the toy industry. As you might well know, Philip Morris doesn't make toys.

But this is how the current system works. Plaintiffs' lawyers race to the courthouse, file frivolous suits without any research into their validity, and companies normally may pay something to make them go away. Because usually, plaintiffs' lawyers don't make the glaring mistake they made in the Philip Morris case and forget to delete the word "toy" from their complaint. Judges rarely dismiss these cases without such a blunder. Companies continue to get sued and are forced to settle frivolous cases. Our bill will eliminate these poorly researched, kitchen, sink complaints.

Plaintiffs' lawyers often sue not only the issuer company, but their officers and directors, accountants, lawyers, and underwriters. These cases are brought under joint and severable liability, which means that any one defendant could be made to pay the entire judgment even if he or she was only marginally responsible. This increases the pressure to settle even the most frivolous cases.

Our bill adopts the State law trend of imposing proportionate liability, liability according to relative fault. Our bill retains joint severable liability for the really bad actors, but provides proportionate liability for those parties only incidentally involved. However, our bill contains a provision which deals with the problem of insolvent defendants and small investors. We believe that this provision strikes the correct balance and returns fairness to the system.

Our bill also allows for alternative dispute resolution as an alternative to costly and time-consuming litigation. One reason these cases settle regardless of the merits is that it costs so much to get through what lawyers call discovery, the process of exchanging information before a trial. By allowing for ADR, we hope to reduce those costs. Our bill also requires specificity in

pleading securities fraud, a requirement imposed on every other fraud action under rule 9(b) of the Federal rules. This provision will reduce the number of fishing expedition lawsuits, like the one in the Philip Morris case.

Even in cases of real fraud, the current system allows investors to recover on average about 6 cents on the dollar, while plaintiffs' lawyers take on average between 30 and 33 percent of the settlement fund. One plaintiffs' class action lawyer boasted in Forbes magazine that securities class action cases are a great practice because there are no clients. Yet these clientless lawyers claim to be acting in the best interests of the class.

Once a settlement is reached, the entrepreneurial lawyer with no clients becomes an adversary of the plaintiffs' class. The lawyers' interest shifts to protecting the settlement. "At its worst, the settlement process may amount to a covert exchange of a cheap settlement for a high award of attorney's fees," according to John Coffee of Columbia University. Professor Coffee also has noted that plaintiffs' attorneys in many securities class actions appear to "sell out their clients in return for an overly generous fee award."

Under our bill, plaintiffs' lawyers will no longer be able to sell out their clients for huge fee awards. Our bill allows judges to appoint a plaintiff steering committee or guardian ad litem at the request of the class to ensure that the attorneys act in the best interests of their clients. Clients, not lawyers, will be in charge of the litigation, and will be able to make the important decisions like when to settle, when to dismiss their attorneys, or when to proceed to trial.

Our bill also eliminates pet plaintiff fees, bonus awards plaintiffs' attorneys pay to individuals to act as class representatives, regardless of the number of shares they own or the amount of their actual losses. These fees reduce the amount of recovery available to the class as a whole and serve no purpose but to give attorneys an available stable of plaintiffs willing to sue at a moment's notice in exchange for a big payoff. This practice undermines the fairness of the system and should be eliminated.

Our current securities class action system obviously is broken and needs the types of reforms Senator DODD and I have proposed in this bill. Too many cases are pursued for the purpose of extracting settlements from corporations and other parties without regard to their merits. The business community is powerless to deal with these suits, and companies settle rather than bet the company. These settlements yield large fees for plaintiffs' lawyers but compensate investors only for a fraction of their actual losses.

We reject the notion that stock price volatility is fraud. Plaintiffs' lawyers must be made to stop, think, investigate, and research before they file these potentially devastating suits. Truly defrauded investors must have greater control over their litigation and receive a greater share of the settlement fund.

The spirit motivating this bill is the obligation that Chairman LEVITT has identified:

"To make sure that current system operates in the best interest of all investors. This means focusing not just on the interests of those who happen to be aggrieved in a particular case, but also on the interests of issuers and the markets as a whole.

I would like to commend Senator DODD for tackling the difficult issue. Under his leadership in the last Congress, we developed a substantial hearing record in the Securities Subcommittee and collected as many facts and opinions as we could. This bill is the product of a great deal of work and deliberation, and I want to express my gratitude for the way he and his staff went about developing this legislation.

I ask unanimous consent that a copy of the Wall Street Journal article I mentioned earlier be printed in the RECORD. I also ask unanimous consent that a section-by-section description of the bill and the bill text itself be printed in the RECORD.

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

S. 240

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 "Private Securities Litigation Reform Act of 1995".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PRIVATE SECURITIES LITIGATION

Sec. 101. Elimination of certain abusive practices.
Sec. 102. Alternative dispute resolution procedure; time limitation on private rights of action.
Sec. 103. Plaintiff steering committees.
Sec. 104. Requirements for securities fraud actions.
Sec. 105. Amendment to Racketeer Influenced and Corrupt Organizations Act.

TITLE II—FINANCIAL DISCLOSURE

Sec. 201. Safe harbor for forward-looking statements.
Sec. 202. Fraud detection and disclosure.
Sec. 203. Proportionate liability and joint and several liability.
Sec. 204. Public Auditing Self-Disciplinary Board.

TITLE I—PRIVATE SECURITIES LITIGATION

SEC. 101. ELIMINATION OF CERTAIN ABUSIVE PRACTICES.

(a) RECEIPT FOR REFERRAL FEES.—Section 15(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*(c)) is amended by adding at the end the following new paragraph:

"(7) RECEIPT OF REFERRAL FEES.—No broker or dealer, or person associated with a broker or dealer, may solicit or accept remuneration for assisting an attorney in obtaining the representation of any customer in any implied private action arising under this title.".

(b) PROHIBITION ON ATTORNEYS' FEES PAID FROM COMMISSION DISGORGEMENT FUNDS.—Section 21(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)) is amended by adding at the end the following new paragraph:

"(4) PROHIBITION ON ATTORNEYS' FEES PAID FROM COMMISSION DISGORGEMENT FUNDS.—Except as otherwise ordered by the court, funds disgorged as the result of an action brought by the Commission in Federal court, or of any Commission administrative action, shall not be distributed as payment for attorneys' fees or expenses incurred by private parties seeking distribution of the disgorged funds.".

(c) ADDITIONAL PROVISIONS APPLICABLE TO CLASS ACTIONS.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended by adding at the end the following new subsections:

"(i) RECOVERY BY NAMED PLAINTIFFS IN CLASS ACTIONS.—In an implied private action arising under this title that is certified as a class action pursuant to the Federal Rules of Civil Procedure, the share of any final judgment or of any settlement that is awarded to class plaintiffs serving as the representative parties shall be calculated in the same manner as the shares of the final judgment or settlement awarded to all other members of the class. Nothing in this subsection shall be construed to limit the award to any representative parties of reasonable compensation, costs, and expenses (including lost wages) relating to the representation of the class.

"(j) CONFLICTS OF INTEREST.—In an implied private action arising under this title that is certified as a class action pursuant to the Federal Rules of Civil Procedure, if a party is represented by an attorney who directly owns or otherwise has a beneficial interest in the securities that are the subject of the litigation, the court shall make a determination of whether such interest constitutes a conflict of interest sufficient to disqualify the attorney from representing the party.

"(k) RESTRICTIONS ON SETTLEMENTS UNDER SEAL.—In an implied private action arising under this title that is certified as a class action pursuant to the Federal Rules of Civil Procedure, the terms and provisions of any settlement agreement between any of the parties shall not be filed under seal, except that on motion of any of the parties to the settlement, the court may order filing under seal for those portions of a settlement agreement as to which good cause is shown for such filing under seal. Good cause shall only exist if publication of a term or provision of a settlement agreement would cause direct and substantial harm to any person.

"(l) RESTRICTIONS ON PAYMENT OF ATTORNEYS' FEES FROM SETTLEMENT FUNDS.—In an implied private action arising under this title that is certified as a class action pursuant to the Federal Rules of Civil Procedure, attorneys' fees awarded by the court to counsel for the class shall be determined as a percentage of the amount of damages and prejudgment interest actually paid to the class as a result of the attorneys' efforts. In no event shall the amount awarded to counsel for the class exceed a reasonable percentage of the amount recovered by the class plus reasonable expenses.

"(m) DISCLOSURE OF SETTLEMENT TERMS TO CLASS MEMBERS.—In an implied private action arising under this title that is certified as a class action pursuant to the Federal

Rules of Civil Procedure, a proposed settlement agreement that is published or otherwise disseminated to the class shall include the following statements, which shall not be admissible for purposes of any Federal or State judicial or administrative proceeding:

"(1) STATEMENT OF POTENTIAL OUTCOME OF CASE.—

"(A) AGREEMENT ON AMOUNT OF DAMAGES AND LIKELIHOOD OF PREVAILING.—If the settling parties agree on the amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this title and the likelihood that the plaintiff would prevail—

"(i) a statement concerning the amount of such potential damages; and

"(ii) a statement concerning the probability that the plaintiff would prevail on the claims alleged under this title and a brief explanation of the reasons for that conclusion.

"(B) DISAGREEMENT ON AMOUNT OF DAMAGES OR LIKELIHOOD OF PREVAILING.—If the parties do not agree on the amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this title or on the likelihood that the plaintiff would prevail on those claims, or both, a statement from each settling party concerning the issue or issues on which the parties disagree.

"(C) INADMISSIBILITY FOR CERTAIN PURPOSES.—Statements made in accordance with subparagraphs (A) and (B) shall not be admissible for purposes of any Federal or State judicial or administrative proceeding.

"(2) STATEMENT OF ATTORNEYS' FEES OR COSTS SOUGHT.—If any of the settling parties or their counsel intend to apply to the court for an award of attorneys' fees or costs from any fund established as part of the settlement, a statement indicating which parties or counsel intend to make such an application, the amount of fees and costs that will be sought, and a brief explanation of the basis for the application.

"(3) IDENTIFICATION OF REPRESENTATIVES.—The name, telephone number, and address of one or more representatives of counsel for the plaintiff class who will be reasonably available to answer questions from class members concerning any matter contained in any notice of settlement published or otherwise disseminated to class members.

"(4) OTHER INFORMATION.—Such other information as may be required by the court, or by any guardian ad litem or plaintiff steering committee appointed by the court pursuant to section 38.

"(n) SPECIAL VERDICTS.—In an implied private action arising under this title in which the plaintiff may recover money damages only on proof that a defendant acted with a particular state of mind, the court shall, when requested by a defendant, submit to the jury a written interrogatory on the issue of each such defendant's state of mind at the time the alleged violation occurred.

"(o) NAMED PLAINTIFF THRESHOLD.—In an implied private action arising under this title, in order for a plaintiff or plaintiffs to obtain certification as representatives of a class of investors pursuant to the Federal Rules of Civil Procedure, the plaintiff or plaintiffs must show that they owned, in the aggregate, during the time period in which violations of this title are alleged to have occurred, not less than the lesser of—

"(1) 1 percent of the securities which are the subject of the litigation; or

"(2) $10,000 (in market value) of such securities.".

SEC. 102. ALTERNATIVE DISPUTE RESOLUTION PROCEDURE; TIME LIMITATION ON PRIVATE RIGHTS OF ACTION.

(a) RECOVERY OF COSTS AND ATTORNEYS' FEES.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

"SEC. 36. ALTERNATIVE DISPUTE RESOLUTION PROCEDURE.

"(a) IN GENERAL.—

"(1) OFFER TO PROCEED.—Except as provided in paragraph (2), in an implied private action arising under this title, any party may, before the expiration of the period permitted for answering the complaint, deliver to all other parties an offer to proceed pursuant to any voluntary, nonbinding alternative dispute resolution procedure established or recognized under the rules of the court in which the action is maintained.

"(2) PLAINTIFF CLASS ACTIONS.—In an implied private action under this title which is brought as a plaintiff class action, an offer under paragraph (1) shall be made not later than 30 days after a guardian ad litem or plaintiff steering committee is appointed by the court in accordance with section 38.

"(3) RESPONSE.—The recipient of an offer under paragraph (1) or (2) shall file a written notice of acceptance or rejection of the offer with the court not later than 10 days after receipt of the offer. The court may, upon motion by any party made prior to the expiration of such period, extend the period for not more than 90 additional days, during which time discovery may be permitted by the court.

"(4) SELECTION OF TYPE OF ALTERNATIVE DISPUTE RESOLUTION.—For purposes of paragraphs (1) and (2), if the rules of the court establish or recognize more than 1 type of alternative dispute resolution, the parties may stipulate as to the type of alternative dispute resolution to be applied. If the parties are unable to so stipulate, the court shall issue an order not later than 20 days after the date on which the parties agree to the use of alternative dispute resolution, specifying the type of alternative dispute resolution to be applied.

"(5) SANCTIONS FOR DILATORY OR OBSTRUCTIVE CONDUCT.—If the court finds that a party has engaged in dilatory or obstructive conduct in taking or opposing any discovery allowed during the response period described in paragraph (3), the court may—

"(A) extend the period to permit further discovery from that party for a suitable period; and

"(B) deny that party the opportunity to conduct further discovery prior to the expiration of the period.

"(b) PENALTY FOR UNREASONABLE LITIGATION POSITION.—

"(1) AWARD OF COSTS.—In an implied private action arising under this title, upon motion of the prevailing party made prior to final judgment, the court shall award costs, including reasonable attorneys' fees, against a party or parties or their attorneys, if—

"(A) the party unreasonably refuses to proceed pursuant to an alternative dispute resolution procedure, or refuses to accept the result of an alternative dispute resolution procedure;

"(B) final judgment is entered against the party; and

"(C) the party asserted a claim or defense in the action which was not substantially justified.

"(2) DETERMINATION OF JUSTIFICATION.—For purposes of paragraph (1)(C), whether a position is 'substantially justified' shall be determined in the same manner as under section 2412(d)(1)(B) of title 28, United States Code.

"(3) LIMITED USE.—Fees and costs awarded under this paragraph shall not be applied to any named plaintiff in any action certified as a class action under the Federal Rules of Civil Procedure if such plaintiff has never owned more than $1,000,000 of the securities which are the subject of the litigation.".

(b) LIMITATIONS PERIOD FOR IMPLIED PRIVATE RIGHTS OF ACTION.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

"SEC. 37. LIMITATIONS PERIOD FOR IMPLIED PRIVATE RIGHTS OF ACTION.

"(a) IN GENERAL.—Except as otherwise provided in this title, an implied private right of action arising under this title shall be brought not later than the earlier of—

"(1) 5 years after the date on which the alleged violation occurred; or

"(2) 2 years after the date on which the alleged violation was discovered or should have been discovered through the exercise of reasonable diligence.

"(b) EFFECTIVE DATE.—The limitations period provided by this section shall apply to all proceedings pending on or commenced after the date of enactment of this section.".

SEC. 103. PLAINTIFF STEERING COMMITTEES.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

"SEC. 38. GUARDIAN AD LITEM AND CLASS ACTION STEERING COMMITTEES.

"(a) GUARDIAN AD LITEM.—Except as provided in subsection (b), not later than 10 days after certifying a plaintiff class in an implied private action brought under this title, the court shall appoint a guardian ad litem for the plaintiff class from a list or lists provided by the parties or their counsel. The guardian ad litem shall direct counsel for the class and perform such other functions as the court may specify. The court shall apportion the reasonable fees and expenses of the guardian ad litem among the parties. Court appointment of a guardian ad litem shall not be subject to interlocutory review.

"(b) CLASS ACTION STEERING COMMITTEE.—Subsection (a) shall not apply if, not later than 10 days after certifying a plaintiff class, on its own motion or on motion of a member of the class, the court appoints a committee of class members to direct counsel for the class (hereafter in this section referred to as the 'plaintiff steering committee') and to perform such other functions as the court may specify. Court appointment of a plaintiff steering committee shall not be subject to interlocutory review.

"(c) MEMBERSHIP OF PLAINTIFF STEERING COMMITTEE.—

"(1) QUALIFICATIONS.—

"(A) NUMBER.—A plaintiff steering committee shall consist of not less than 5 class members, willing to serve, who the court believes will fairly represent the class.

"(B) OWNERSHIP INTERESTS.—Members of the plaintiff steering committee shall have cumulatively held during the class period not less than—

"(i) the lesser of 5 percent of the securities which are the subject matter of the litigation or securities which are the subject matter of the litigation with a market value of $10,000,000; or

"(ii) such smaller percentage or dollar amount as the court finds appropriate under the circumstances.

"(2) NAMED PLAINTIFFS.—Class members who are named plaintiffs in the litigation

may serve on the plaintiff steering committee, but shall not comprise a majority of the committee.

"(3) NONCOMPENSATION OF MEMBERS.—Members of the plaintiff steering committee shall serve without compensation, except that any member may apply to the court for reimbursement of reasonable out-of-pocket expenses from any common fund established for the class.

"(4) MEETINGS.—The plaintiff steering committee shall conduct its business at one or more previously scheduled meetings of the committee at which a majority of its members are present in person or by electronic communication. The plaintiff steering committee shall decide all matters within its authority by a majority vote of all members, except that the committee may determine that decisions other than to accept or reject a settlement offer or to employ or dismiss counsel for the class may be delegated to one or more members of the committee, or may be voted upon by committee members seriatim, without a meeting.

"(5) RIGHT OF NONMEMBERS TO BE HEARD.—A class member who is not a member of the plaintiff steering committee may appear and be heard by the court on any issue in the action, to the same extent as any other party.

"(d) FUNCTIONS OF GUARDIAN AD LITEM AND PLAINTIFF STEERING COMMITTEE.—

"(1) DIRECT COUNSEL.—The authority of the guardian ad litem or the plaintiff steering committee to direct counsel for the class shall include all powers normally permitted to an attorney's client in litigation, including the authority to retain or dismiss counsel and to reject offers of settlement, and the preliminary authority to accept an offer of settlement, subject to the restrictions specified in paragraph (2). Dismissal of counsel other than for cause shall not limit the ability of counsel to enforce any contractual fee agreement or to apply to the court for a fee award from any common fund established for the class.

"(2) SETTLEMENT OFFERS.—If a guardian ad litem or a plaintiff steering committee gives preliminary approval to an offer of settlement, the guardian ad litem or the plaintiff steering committee may seek approval of the offer by a majority of class members if the committee determines that the benefit of seeking such approval outweighs the cost of soliciting the approval of class members.

"(e) IMMUNITY FROM LIABILITY; REMOVAL.—Any person serving as a guardian ad litem or as a member of a plaintiff steering committee shall be immune from any liability arising from such service. The court may remove a guardian ad litem or a member of a plaintiff steering committee for good cause shown.

"(f) EFFECT ON OTHER LAW.—This section does not affect any other provision of law concerning class actions or the authority of the court to give final approval to any offer of settlement.".

SEC. 104. REQUIREMENTS FOR SECURITIES FRAUD ACTIONS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

"SEC. 39. REQUIREMENTS FOR SECURITIES FRAUD ACTIONS.

"(a) INTENT.—In an implied private action arising under this title in which the plaintiff may recover money damages from a defendant only on proof that the defendant acted with some level of intent, the plaintiff's complaint shall allege specific facts demonstrating the state of mind of each defendant at the time the alleged violation occurred.

"(b) MISLEADING STATEMENTS AND OMISSIONS.—In an implied action arising under this title in which the plaintiff alleges that the defendant—

"(1) made an untrue statement of a material fact; or

"(2) omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading;

the plaintiff shall specify each statement alleged to have been misleading, the reason or reasons why the statement is misleading, and, if an allegation regarding the statement or omission is made on information and belief, the plaintiff shall set forth all information on which that belief is formed.

"(c) BURDEN OF PROOF.—In an implied private action arising under this title based on a material misstatement or omission concerning a security, and in which the plaintiff claims to have bought or sold the security based on a reasonable belief that the market value of the security reflected all publicly available information, the plaintiff shall have the burden of proving that the misstatement or omission caused any loss incurred by the plaintiff.

"(d) DAMAGES.—In an implied private action arising under this title based on a material misstatement or omission concerning a security, and in which the plaintiff claims to have bought or sold the security based on a reasonable belief that the market value of the security reflected all publicly available information, the plaintiff's damages shall not exceed the lesser of—

"(1) the difference between the price paid by the plaintiff for the security and the market value of the security immediately after dissemination to the market of information which corrects the misstatement or omission; and

"(2) the difference between the price paid by the plaintiff for the security and the price at which the plaintiff sold the security after dissemination of information correcting the misstatement or omission.".

SEC. 105. AMENDMENT TO RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT.

Section 1964(c) of title 18, United States Code, is amended by inserting ", except that no person may bring an action under this provision if the racketeering activity, as defined in section 1961(1)(D), involves fraud in the sale of securities" before the period.

TITLE II—FINANCIAL DISCLOSURE

SEC. 201. SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS.

(a) CONSIDERATION OF REGULATORY OR LEGISLATIVE CHANGES.—In consultation with investors and issuers of securities, the Securities and Exchange Commission shall consider adopting or amending its rules and regulations, or making legislative recommendations, concerning—

(1) criteria that the Commission finds appropriate for the protection of investors by which forward-looking statements concerning the future economic performance of an issuer of securities registered under section 12 of the Securities Exchange Act of 1934 will be deemed not to be in violation of section 10(b) of that Act; and

(2) procedures by which courts shall timely dismiss claims against such issuers of securities based on such forward-looking statements if such statements are in accordance with any criteria under paragraph (1).

(b) COMMISSION CONSIDERATIONS.—In developing rules or legislative recommendations in accordance with subsection (a), the Commission shall consider—

(1) appropriate limits to liability for forward-looking statements;

(2) procedures for making a summary determination of the applicability of any Commission rule for forward-looking statements early in a judicial proceeding to limit protracted litigation and expansive discovery;

(3) incorporating and reflecting the scienter requirements applicable to implied private actions under section 10(b); and

(4) providing clear guidance to issuers of securities and the judiciary.

(c) SECURITIES ACT AMENDMENT.—The Securities and Exchange Act of 1934 (15 U.S.C. 78a et seq.), is amended by adding at the end the following new section:

"SEC. 40. APPLICATION OF SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS.

"(a) IN GENERAL.—In any implied private action arising under this title that alleges that a forward-looking statement concerning the future economic performance of an issuer registered under section 12 was materially false or misleading, if a party making a motion in accordance with subsection (b) requests a stay of discovery concerning the claims or defenses of that party, the court shall grant such a stay until it has ruled on any such motion.

"(b) SUMMARY JUDGMENT MOTIONS.—Subsection (a) shall apply to any motion for summary judgment made by a defendant asserting that the forward-looking statement was within the coverage of any rule which the Commission may have adopted concerning such predictive statements, if such motion is made not less than 60 days after the plaintiff commences discovery in the action.

"(c) DILATORY CONDUCT; DUPLICATIVE DISCOVERY.—Notwithstanding subsection (a) or (b), the time permitted for a plaintiff to conduct discovery under subsection (b) may be extended, or a stay of the proceedings may be denied, if the court finds that—

"(1) the defendant making a motion described in subsection (b) engaged in dilatory or obstructive conduct in taking or opposing any discovery; or

"(2) a stay of discovery pending a ruling on a motion under subsection (b) would be substantially unfair to the plaintiff or other parties to the action.".

SEC. 202. FRAUD DETECTION AND DISCLOSURE.

(a) IN GENERAL.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting immediately after section 10 the following new section:

"SEC. 10A. AUDIT REQUIREMENTS.

"(a) IN GENERAL.—Each audit required pursuant to this title of an issuer's financial statements by an independent public accountant shall include, in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission—

"(1) procedures designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of financial statement amounts;

"(2) procedures designed to identify related party transactions which are material to the financial statements or otherwise require disclosure therein; and

"(3) an evaluation of whether there is substantial doubt about the issuer's ability to continue as a going concern during the ensuing fiscal year.

"(b) REQUIRED RESPONSE TO AUDIT DISCOVERIES.—

"(1) INVESTIGATION AND REPORT TO MANAGEMENT.—If, in the course of conducting an audit pursuant to this title to which subsection (a) applies, the independent public

accountant detects or otherwise becomes aware of information indicating that an illegal act (whether or not perceived to have a material effect on the issuer's financial statements) has or may have occurred, the accountant shall, in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission—

"(A)(i) determine whether it is likely that an illegal act has occurred; and

"(ii) if so, determine and consider the possible effect of the illegal act on the financial statements of the issuer, including any contingent monetary effects, such as fines, penalties, and damages; and

"(B) as soon as practicable, inform the appropriate level of the issuer's management and assure that the issuer's audit committee, or the issuer's board of directors in the absence of such a committee, is adequately informed with respect to illegal acts that have been detected or have otherwise come to the attention of such accountant in the course of the audit, unless the illegal act is clearly inconsequential.

"(2) RESPONSE TO FAILURE TO TAKE REMEDIAL ACTION.—If, having first assured itself that the audit committee of the board of directors of the issuer or the board (in the absence of an audit committee) is adequately informed with respect to illegal acts that have been detected or have otherwise come to the accountant's attention in the course of such accountant's audit, the independent public accountant concludes that—

"(A) the illegal act has a material effect on the financial statements of the issuer;

"(B) the senior management has not taken, and the board of directors has not caused senior management to take, timely and appropriate remedial actions with respect to the illegal act; and

"(C) the failure to take remedial action is reasonably expected to warrant departure from a standard auditor's report, when made, or warrant resignation from the audit engagement;

the independent public accountant shall, as soon as practicable, directly report its conclusions to the board of directors.

"(3) NOTICE TO COMMISSION; RESPONSE TO FAILURE TO NOTIFY.—An issuer whose board of directors receives a report under paragraph (2) shall inform the Commission by notice not later than 1 business day after the receipt of such report and shall furnish the independent public accountant making such report with a copy of the notice furnished to the Commission. If the independent public accountant fails to receive a copy of the notice before the expiration of the required 1-business-day period, the independent public accountant shall—

"(A) resign from the engagement; or

"(B) furnish to the Commission a copy of its report (or the documentation of any oral report given) not later than 1 business day following such failure to receive notice.

"(4) REPORT AFTER RESIGNATION.—If an independent public accountant resigns from an engagement under paragraph (3)(A), the accountant shall, not later than 1 business day following the failure by the issuer to notify the Commission under paragraph (3), furnish to the Commission a copy of the accountant's report (or the documentation of any oral report given).

"(c) AUDITOR LIABILITY LIMITATION.—No independent public accountant shall be liable in a private action for any finding, conclusion, or statement expressed in a report made pursuant to paragraph (3) or (4) of subsection (b), including any rules promulgated pursuant thereto.

"(d) CIVIL PENALTIES IN CEASE-AND-DESIST PROCEEDINGS.—If the Commission finds, after notice and opportunity for hearing in a proceeding instituted pursuant to section 21C, that an independent public accountant has willfully violated paragraph (3) or (4) of subsection (b), the Commission may, in addition to entering an order under section 21C, impose a civil penalty against the independent public accountant and any other person that the Commission finds was a cause of such violation. The determination to impose a civil penalty and the amount of the penalty shall be governed by the standards set forth in section 21B.

"(e) PRESERVATION OF EXISTING AUTHORITY.—Except as provided in subsection (d), nothing in this section shall be held to limit or otherwise affect the authority of the Commission under this title.

"(f) DEFINITION.—As used in this section, the term 'illegal act' means an act or omission that violates any law, or any rule or regulation having the force of law.".

(b) EFFECTIVE DATES.—With respect to any registrant that is required to file selected quarterly financial data pursuant to item 302(a) of Regulation S-K of the Securities and Exchange Commission (17 CFR 229.302(a)), the amendments made by subsection (a) shall apply to any annual report for any period beginning on or after January 1, 1994. With respect to any other registrant, the amendment shall apply for any period beginning on or after January 1, 1995.

SEC. 203. PROPORTIONATE LIABILITY AND JOINT AND SEVERAL LIABILITY.

(a) SECURITIES ACT AMENDMENT.—The Securities and Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

"SEC. 41. PROPORTIONATE LIABILITY AND JOINT AND SEVERAL LIABILITY IN IMPLIED ACTIONS.

"(a) APPLICABILITY.—This section shall apply only to the allocation of damages among persons who are, or who may become, liable for damages in an implied private action arising under this title. Nothing in this section shall affect the standards for liability associated with an implied private action arising under this title.

"(b) APPLICATION OF JOINT AND SEVERAL LIABILITY.—

"(1) IN GENERAL.—A person against whom a judgment is entered in an implied private action arising under this title shall be liable jointly and severally for any recoverable damages on such judgment if the person is found to have—

"(A) been a primary wrongdoer;

"(B) committed knowing securities fraud; or

"(C) controlled any primary wrongdoer or person who committed knowing securities fraud.

"(2) PRIMARY WRONGDOER.—As used in this subsection—

"(A) the term 'primary wrongdoer' means—

"(i) any—

"(I) issuer, registrant, purchaser, seller, or underwriter of securities;

"(II) marketmaker or specialist in securities; or

"(III) clearing agency, securities information processor, or government securities dealer;

if such person breached a direct statutory or regulatory obligation or if such person otherwise had a principal role in the conduct that is the basis for the implied right of action; or

"(ii) any person who intentionally rendered substantial assistance to the fraudulent conduct of any person described in clause (i), with actual knowledge of such person's fraudulent conduct or fraudulent purpose, and with knowledge that such conduct was wrongful; and

"(B) a defendant engages in 'knowing securities fraud' if such defendant—

"(i) makes a material representation with actual knowledge that the representation is false, or omits to make a statement with actual knowledge that, as a result of the omission, one of the defendant's material representations is false and knows that other persons are likely to rely on that misrepresentation or omission, except that reckless conduct by the defendant shall not be construed to constitute 'knowing securities fraud'; or

"(ii) intentionally rendered substantial assistance to the fraudulent conduct of any person described in clause (i), with actual knowledge of such person's fraudulent conduct or fraudulent purpose, and with knowledge that such conduct was wrongful.

"(c) DETERMINATION OF RESPONSIBILITY.—In an implied private action in which more than 1 person contributed to a violation of this title, the court shall instruct the jury to answer special interrogatories, or if there is no jury, shall make findings, concerning the degree of responsibility of each person alleged to have caused or contributed to the violation of this title, including persons who have entered into settlements with the plaintiff. The interrogatories or findings shall specify the amount of damages the plaintiff is entitled to recover and the degree of responsibility, measured as a percentage of the total fault of all persons involved in the violation, of each person found to have caused or contributed to the damages incurred by the plaintiff or plaintiffs. In determining the degree of responsibility, the trier of fact shall consider—

"(1) the nature of the conduct of each person; and

"(2) the nature and extent of the causal relationship between that conduct and the damage claimed by the plaintiff.

"(d) APPLICATION OF PROPORTIONATE LIABILITY.—Except as provided in subsection (b), the amount of liability of a person who is, or may through right of contribution become, liable for damages based on an implied private action arising under this title shall be determined as follows:

"(1) DEGREE OF RESPONSIBILITY.—Except as provided in paragraph (2), each liable party shall only be liable for the portion of the judgment that corresponds to that party's degree of responsibility, as determined under subsection (c).

"(2) UNCOLLECTIBLE SHARES.—If, upon motion made not later than 6 months after a final judgment is entered, the court determines that all or part of a defendant's share of the obligation is uncollectible—

"(A) the remaining defendants shall be jointly and severally liable for the uncollectible share if the plaintiff establishes that—

"(i) the plaintiff is an individual whose recoverable damages under a final judgment are equal to more than 10 percent of the plaintiff's net financial worth; and

"(ii) the plaintiff's net financial worth is less than $200,000; and

"(B) the amount paid by each of the remaining defendants to all other plaintiffs shall be, in total, not more than the greater of—

"(i) that remaining defendant's percentage of fault for the uncollectible share; or

"(ii) 5 times—

"(I) the amount which the defendant gained from the conduct that gave rise to its liability; or

"(II) if a defendant did not obtain a direct financial gain from the conduct that gave rise to the liability and the conduct consisted of the provision of deficient services to an entity involved in the violation, the defendant's gross revenues received for the provision of all services to the other entity involved in the violation during the calendar years in which deficient services were provided.

"(3) OVERALL LIMIT.—In no event shall the total payments required pursuant to paragraph (2) exceed the amount of the uncollectible share.

"(4) DEFENDANTS SUBJECT TO CONTRIBUTION.—A defendant whose liability is reallocated pursuant to paragraph (2) shall be subject to contribution and to any continuing liability to the plaintiff on the judgment.

"(5) RIGHT OF CONTRIBUTION.—To the extent that a defendant is required to make an additional payment pursuant to paragraph (2), that defendant may recover contribution—

"(A) from the defendant originally liable to make the payment;

"(B) from any defendant liable jointly and severally pursuant to subsection (b)(1);

"(C) from any defendant held proportionately liable pursuant to this subsection who is liable to make the same payment and has paid less than his or her proportionate share of that payment; or

"(D) from any other person responsible for the conduct giving rise to the payment who would have been liable to make the same payment.

"(e) NONDISCLOSURE TO JURY.—The standard for allocation of damages under subsections (b)(1) and (c) and the procedure for reallocation of uncollectible shares under subsection (d)(2) shall not be disclosed to members of the jury.

"(f) SETTLEMENT DISCHARGE.—

"(1) IN GENERAL.—A defendant who settles an implied private action brought under this title at any time before verdict or judgment shall be discharged from all claims for contribution brought by other persons. Upon entry of the settlement by the court, the court shall enter a bar order constituting the final discharge of all obligations to the plaintiff of the settling defendant arising out of the action. The order shall bar all future claims for contribution or indemnity arising out of the action—

"(A) by nonsettling persons against the settling defendant; and

"(B) by the settling defendant against any nonsettling defendants.

"(2) REDUCTION.—If a person enters into a settlement with the plaintiff prior to verdict or judgment, the verdict or judgment shall be reduced by the greater of—

"(A) an amount that corresponds to the degree of responsibility of that person; or

"(B) the amount paid to the plaintiff by that person.

"(g) CONTRIBUTION.—A person who becomes liable for damages in an implied private action arising under this title may recover contribution from any other person who, if joined in the original suit, would have been liable for the same damages. A claim for contribution shall be determined based on the degree of responsibility of the claimant and of each person against whom a claim for contribution is made.

"(h) STATUTE OF LIMITATIONS FOR CONTRIBUTION.—Once judgment has been entered in an implied private action arising under this title determining liability, an action for contribution must be brought not later than 6 months after the entry of a final, nonappealable judgment in the action, except that an action for contribution brought by a defendant who was required to make an additional payment pursuant to subsection (d)(2) may be brought not later than 6 months after the date on which such payment was made.".

(b) EFFECTIVE DATE.—Section 41 of the Securities Exchange Act of 1934, as added by subsection (a), shall only apply to implied private actions commenced after the date of enactment of this Act.

SEC. 204. PUBLIC AUDITING SELF-DISCIPLINARY BOARD.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting immediately after section 13 the following new section:

"SEC. 13A. PUBLIC AUDITING SELF-DISCIPLINARY BOARD.

"(a) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(1) PUBLIC ACCOUNTING FIRM.—The term 'public accounting firm' means a sole proprietorship, unincorporated association, partnership, corporation, or other legal entity that is engaged in the practice of public accounting.

"(2) BOARD.—The term 'Board' means the Public Auditing Self-Disciplinary Board designated by the Commission pursuant to subsection (b).

"(3) ACCOUNTANT'S REPORT.—The term 'accountant's report' means a document in which a public accounting firm identifies a financial statement, report, or other document and sets forth the firm's opinion regarding such financial statement, report, or other document, or an assertion that an opinion cannot be expressed.

"(4) PERSON ASSOCIATED WITH A PUBLIC ACCOUNTING FIRM.—The term 'person associated with a public accounting firm' means a natural person who—

"(A) is a partner, shareholder, employee, or individual proprietor of a public accounting firm, or who shares in the profits of a public accounting firm; and

"(B) engages in any conduct or practice in connection with the preparation of an accountant's report on any financial statement, report, or other document required to be filed with the Commission under any securities law.

"(5) PROFESSIONAL STANDARDS.—The term 'professional standards' means generally accepted auditing standards, generally accepted accounting principles, generally accepted standards for attestation engagements, and any other standards related to the preparation of financial statements or accountant's reports promulgated by the Commission or a standard-setting body recognized by the Board.

"(b) ESTABLISHMENT OF BOARD.—

"(1) IN GENERAL.—Not later than 90 days after the date of enactment of this section, the Commission shall establish a Public Auditing Self-Disciplinary Board to perform the duties set forth in this section. The Commission shall designate an entity to serve as the Board if the Commission finds that—

"(A) such entity is sponsored by an existing national organization of certified public accountants that—

"(i) is most representative of certified public accountants covered by this title; and

"(ii) has demonstrated its commitment to improving the quality of practice before the Commission; and

"(B) control over such entity is vested in the members of the Board selected pursuant to subsection (c).

"(2) ALTERNATIVE ELECTION OF MEMBERS.—If the Commission designates an entity to serve as the Board pursuant to paragraph (1), the entity shall conduct the election of initial Board members in accordance with subsection (c)(1)(B)(i).

"(c) MEMBERSHIP OF BOARD.—

"(1) IN GENERAL.—The Board shall be composed of 3 appointed members and 4 elected members, as follows:

"(A) APPOINTED MEMBERS.—Three members of the Board shall be appointed in accordance with the following:

"(i) INITIAL APPOINTMENTS.—The Chairman of the Commission shall make the initial appointments, in consultation with the other members of the Commission, not later than 90 days after the date of enactment of this section.

"(ii) SUBSEQUENT APPOINTMENTS.—After the initial appointments under clause (i), members of the Board appointed to fill vacancies of appointed members of the Board shall be appointed in accordance with the rules adopted pursuant to paragraph (5). Such rules shall provide that such members shall be appointed by the Board, subject to the approval of the Commission.

"(B) ELECTED MEMBERS.—Four members, including the member who shall serve as the chairperson of the Board, shall be elected in accordance with the following:

"(i) INITIAL ELECTION.—Not later than 120 days after the date on which the Chairman of the Commission makes appointments under subparagraph (A)(i), an entity designated by the Commission pursuant to subsection (b) shall conduct an election of 4 initial elected members pursuant to interim election rules proposed by the entity and approved by the 3 interim members of the Board and the Commission. If the Commission is unable to designate an entity meeting the criteria set forth in subsection (b)(1), the members of the Board appointed under subparagraph (A)(i) shall adopt interim rules, subject to approval by the Commission, providing for the election of the 4 initial elected members. Such rules shall provide that such members of the Board shall be elected—

"(I) not later than 120 days after the date on which members are initially appointed under subparagraph (A)(i);

"(II) by persons who are associated with public accounting firms and who are certified public accountants under the laws of any State; and

"(III) subject to the approval of the Commission.

"(ii) SUBSEQUENT ELECTIONS.—After the initial elections under clause (i), members of the Board elected to fill vacancies of elected members of the Board shall be elected in accordance with the rules adopted pursuant to paragraph (5). Such rules shall provide that such members of the Board shall be elected—

"(I) by persons who are associated with public accounting firms and who are certified public accountants under the laws of any State; and

"(II) subject to the approval of the Commission.

"(2) QUALIFICATION.—Four members of the Board, including the chairperson of the Board, shall be persons who have not been associated with a public accounting firm during the 10-year period preceding appointment or election to the Board under paragraph (1). Three members of the Board who are elected shall be persons associated with a public accounting firm registered with the Board.

"(3) FULL-TIME BASIS.—The chairperson of the Board shall serve on a full-time basis,

severing all business ties with his or her former firms or employers prior to beginning service on the Board.

"(4) TERMS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), each member of the Board shall hold office for a term of 4 years or until a successor is appointed, whichever is later, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of such term.

"(B) INITIAL BOARD MEMBERS.—Beginning on the date on which all members of the Board have been selected in accordance with this subsection, the terms of office of the initial Board members shall expire, as determined by the Board, by lottery—

"(i) for 1 member, 1 year after such date;

"(ii) for 2 members, 2 years after such date;

"(iii) for 2 members, 3 years after such date; and

"(iv) for 2 members, 4 years after such date.

"(5) RULES.—Following selection of the 7 initial members of the Board in accordance with subparagraphs (A)(i) and (B)(i) of paragraph (1), the Board shall propose and adopt rules, which shall provide for—

"(A) the operation and administration of the Board, including—

"(i) the appointment of members in accordance with paragraph (1)(A)(ii);

"(ii) the election of members in accordance with paragraph (1)(B)(ii); and

"(iii) the compensation of the members of the Board;

"(B) the appointment and compensation of such employees, attorneys, and consultants as may be necessary or appropriate to carry out the Board's functions under this title;

"(C) the registration of public accounting firms with the Board pursuant to subsections (d) and (e); and

"(D) the matters described in subsections (f) and (g).

"(d) REGISTRATION AND ANNUAL FEES.—After the date on which all initial members of the Board have been selected in accordance with subsection (c), the Board shall assess and collect a registration fee and annual dues from each public accounting firm registered with the Board. Such fees and dues shall be assessed at a level sufficient to recover the costs and expenses of the Board and to permit the Board to operate on a self-financing basis. The amount of fees and dues for each public accounting firm shall be based upon—

"(1) the annual revenues of such firm from accounting and auditing services;

"(2) the number of persons associated with the public accounting firm;

"(3) the number of clients for which such firm furnishes accountant's reports on financial statements, reports, or other documents filed with the Commission; and

"(4) such other criteria as the Board may establish.

"(e) REGISTRATION WITH BOARD.—

"(1) REGISTRATION REQUIRED.—Beginning 1 year after the date on which all initial members of the Board have been selected in accordance with subsection (c), it shall be unlawful for a public accounting firm to furnish an accountant's report on any financial statement, report, or other document required to be filed with the Commission under any Federal securities law, unless such firm is registered with the Board.

"(2) APPLICATION FOR REGISTRATION.—A public accounting firm may be registered under this subsection by filing with the Board an application for registration in such form and containing such information as the Board, by rule, may prescribe. Each application shall include—

"(A) the names of all clients of the public accounting firm for which the firm furnishes accountant's reports on financial statements, reports, or other documents filed with the Commission;

"(B) financial information of the public accounting firm for its most recent fiscal year, including its annual revenues from accounting and auditing services, its assets and its liabilities;

"(C) a statement of the public accounting firm's policies and procedures with respect to quality control of its accounting and auditing practice;

"(D) information relating to criminal, civil, or administrative actions or formal disciplinary proceedings pending against such firm, or any person associated with such firm, in connection with an accountant's report furnished by such firm;

"(E) a list of persons associated with the public accounting firm who are certified public accountants, including any State professional license or certification number for each such person; and

"(F) such other information that is reasonably related to the Board's responsibilities as the Board considers necessary or appropriate.

"(3) PERIODIC REPORTS.—Once in each year, or more frequently as the Board, by rule, may prescribe, each public accounting firm registered with the Board shall submit reports to the Board updating the information contained in its application for registration and containing such additional information that is reasonably related to the Board's responsibilities as the Board, by rule, may prescribe.

"(4) EXEMPTIONS.—The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any public accounting firm or any accountant's report, or any class of public accounting firms or any class of accountant's reports, from any provisions of this section or the rules or regulations issued hereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this section.

"(5) CONFIDENTIALITY.—The Board may, by rule, designate portions of the filings required pursuant to paragraphs (2) and (3) as privileged and confidential.

"(f) DUTIES OF BOARD.—After the date on which all initial members of the Board have been selected in accordance with subsection (c), the Board shall have the following duties and powers:

"(1) INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS.—The Board shall establish fair procedures for investigating and disciplining public accounting firms registered with the Board, and persons associated with such firms, for violations of the Federal securities laws, the rules or regulations issued thereunder, the rules adopted by the Board, or professional standards in connection with the preparation of an accountant's report on a financial statement, report, or other document filed with the Commission.

"(2) INVESTIGATION PROCEDURES.—

"(A) IN GENERAL.—The Board may conduct an investigation of any act, practice, or omission by a public accounting firm registered with the Board, or by any person associated with such firm, in connection with the preparation of an accountant's report on a financial statement, report, or other document filed with the Commission that may violate any applicable provision of the Federal securities laws, the rules and regulations issued thereunder, the rules adopted by the Board, or professional standards, whether such act, practice, or omission is the subject of a criminal, civil, or administrative action, or a disciplinary proceeding, or otherwise is brought to the attention of the Board.

"(B) POWERS OF BOARD.—For purposes of an investigation under this paragraph, the Board may, in addition to such other actions as the Board determines to be necessary or appropriate—

"(i) require the testimony of any person associated with a public accounting firm registered with the Board, with respect to any matter which the Board considers relevant or material to the investigation;

"(ii) require the production of audit workpapers and any other document or information in the possession of a public accounting firm registered with the Board, or any person associated with such firm, wherever domiciled, that the Board considers relevant or material to the investigation, and may examine the books and records of such firm to verify the accuracy of any documents or information so supplied; and

"(iii) request the testimony of any person and the production of any document in the possession of any person, including a client of a public accounting firm registered with the Board, that the Board considers relevant or material to the investigation.

"(C) SUSPENSION OR REVOCATION OF REGISTRATION FOR NONCOMPLIANCE.—The refusal of any person associated with a public accounting firm registered with the Board to testify, or the refusal of any such person to produce documents or otherwise cooperate with the Board, in connection with an investigation under this section, shall be cause for suspending or barring such person from associating with a public accounting firm registered with the Board, or such other appropriate sanction as the Board shall determine. The refusal of any public accounting firm registered with the Board to produce documents or otherwise cooperate with the Board, in connection with an investigation under this section, shall be cause for the suspension or revocation of the registration of such firm, or such other appropriate sanction as the Board shall determine.

"(D) REFERRAL TO COMMISSION.—

"(i) IN GENERAL.—If the Board is unable to conduct or complete an investigation under this section because of the refusal of any client of a public accounting firm registered with the Board, or any other person, to testify, produce documents, or otherwise cooperate with the Board in connection with such investigation, the Board shall report such refusal to the Commission.

"(ii) INVESTIGATION.—The Commission may designate the Board or one or more officers of the Board who shall be empowered, in accordance with such procedures as the Commission may adopt, to subpoena witnesses, compel their attendance, and require the production of any books, papers, correspondence, memoranda, or other records relevant to any investigation by the Board. Attendance of witnesses and the production of any records may be required from any place in the United States or any State at any designated place of hearing. Enforcement of a subpoena issued by the Board, or an officer of the Board, pursuant to this subparagraph shall occur in the manner provided for in section 21(c). Examination of witnesses subpoenaed pursuant to this subparagraph shall

be conducted before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

"(iii) REFERRALS TO COMMISSION.—The Board may refer any investigation to the Commission, as the Board deems appropriate.

"(E) IMMUNITY FROM CIVIL LIABILITY.—An employee of the Board engaged in carrying out an investigation or disciplinary proceeding under this section shall be immune from any civil liability arising out of such investigation or disciplinary proceeding in the same manner and to the same extent as an employee of the Federal Government in similar circumstances.

"(3) DISCIPLINARY PROCEDURES.—

"(A) DECISION TO DISCIPLINE.—In a proceeding by the Board to determine whether a public accounting firm, or a person associated with such firm, should be disciplined, the Board shall bring specific charges, notify such firm or person of the charges, give such firm or person an opportunity to defend against such charges, and keep a record of such actions.

"(B) SANCTIONS.—If the Board finds that a public accounting firm, or a person associated with such firm, has engaged in any act, practice, or omission in violation of the Federal securities laws, the rules or regulations issued thereunder, the rules adopted by the Board, or professional standards, the Board may impose such disciplinary sanctions as it deems appropriate, including—

"(i) revocation or suspension of registration under this section;

"(ii) limitation of activities, functions, and operations;

"(iii) fine;

"(iv) censure;

"(v) in the case of a person associated with a public accounting firm, suspension or bar from being associated with a public accounting firm registered with the Board; and

"(vi) any other disciplinary sanction that the Board determines to be appropriate.

"(C) STATEMENT REQUIRED.—A determination by the Board to impose a disciplinary sanction shall be supported by a written statement by the Board setting forth—

"(i) any act or practice in which the public accounting firm or person associated with such firm has been found to have engaged, or which such firm or person has been found to have omitted;

"(ii) the specific provision of the Federal securities laws, the rules or regulations issued thereunder, the rules adopted by the Board, or professional standards which any such act, practice, or omission is deemed to violate; and

"(iii) the sanction imposed and the reasons therefor.

"(D) PROHIBITION ON ASSOCIATION.—It shall be unlawful—

"(i) for any person as to whom a suspension or bar is in effect willfully to be or to become associated with a public accounting firm registered with the Board, in connection with the preparation of an accountant's report on any financial statement, report, or other document filed with the Commission, without the consent of the Board or the Commission; and

"(ii) for any public accounting firm registered with the Board to permit such a person to become, or remain, associated with such firm without the consent of the Board or the Commission, if such firm knew or, in the exercise of reasonable care should have known, of such suspension or bar.

"(4) REPORTING OF SANCTIONS.—If the Board imposes a disciplinary sanction against a public accounting firm, or a person associated with such firm, the Board shall report such sanction to the Commission, to the appropriate State or foreign licensing board or boards with which such firm or such person is licensed or certified to practice public accounting, and to the public. The information reported shall include—

"(A) the name of the public accounting firm, or person associated with such firm, against whom the sanction is imposed;

"(B) a description of the acts, practices, or omissions upon which the sanction is based;

"(C) the nature of the sanction; and

"(D) such other information respecting the circumstances of the disciplinary action (including the name of any client of such firm affected by such acts, practices, or omissions) as the Board deems appropriate.

"(5) DISCOVERY AND ADMISSIBILITY OF BOARD MATERIAL.—

"(A) DISCOVERABILITY.—

"(i) IN GENERAL.—Except as provided in subparagraph (C), all reports, memoranda, and other information prepared, collected, or received by the Board, and the deliberations and other proceedings of the Board and its employees and agents in connection with an investigation or disciplinary proceeding under this section shall not be subject to any form of civil discovery, including demands for production of documents and for testimony of individuals, in connection with any proceeding in any State or Federal court, or before any State or Federal administrative agency. This subparagraph shall not apply to any information provided to the Board that would have been subject to discovery from the person or entity that provided it to the Board, but is no longer available from that person or entity.

"(ii) EXEMPTION.—Submissions to the Board by or on behalf of a public accounting firm or person associated with such a firm or on behalf of any other participant in a Board proceeding, including documents generated by the Board itself, shall be exempt from discovery to the same extent as the material described in clause (i), whether in the possession of the Board or any other person, if such submission—

"(I) is prepared specifically for the purpose of the Board proceeding; and

"(II) addresses the merits of the issues under investigation by the Board.

"(iii) CONSTRUCTION.—Nothing in this subparagraph shall limit the authority of the Board to provide appropriate public access to disciplinary hearings of the Board, or to reports or memoranda received by the Board in connection with such proceedings.

"(B) ADMISSIBILITY.—

"(i) IN GENERAL.—Except as provided in subparagraph (C), all reports, memoranda, and other information prepared, collected, or received by the Board, the deliberations and other proceedings of the Board and its employees and agents in connection with an investigation or disciplinary proceeding under this section, the fact that an investigation or disciplinary proceeding has been commenced, and the Board's determination with respect to any investigation or disciplinary proceeding shall be inadmissible in any proceeding in any State or Federal court or before any State or Federal administrative agency.

"(ii) TREATMENT OF CERTAIN DOCUMENTS.—Submissions to the Board by or on behalf of a public accounting firm or person associated with such a firm or on behalf of any other participant in a Board proceeding, including documents generated by the Board itself, shall be inadmissible to the same extent as the material described in clause (i), if such submission—

"(I) is prepared specifically for the purpose of the Board proceedings; and

"(II) addresses the merits of the issues under investigation by the Board.

"(C) AVAILABILITY AND ADMISSIBILITY OF INFORMATION.—

"(i) IN GENERAL.—All information referred to in subparagraphs (A) and (B) shall be—

"(I) available to the Commission and to any other Federal department or agency in connection with the exercise of its regulatory authority to the extent that such information would be available to such agency from the Commission as a result of a Commission enforcement investigation;

"(II) available to Federal and State authorities in connection with any criminal investigation or proceeding;

"(III) admissible in any action brought by the Commission or any other Federal department or agency pursuant to its regulatory authority, to the extent that such information would be available to such agency from the Commission as a result of a Commission enforcement investigation and in any criminal action; and

"(IV) available to State licensing boards to the extent authorized in paragraph (6).

"(ii) OTHER LIMITATIONS.—Any documents or other information provided to the Commission or other authorities pursuant to clause (i) shall be subject to the limitations on discovery and admissibility set forth in subparagraphs (A) and (B).

"(D) TITLE 5 TREATMENT.—This subsection shall be considered to be a statute described in section 552(b)(3)(B) of title 5, United States Code, for purposes of that section 552.

"(6) PARTICIPATION BY STATE LICENSING BOARDS.—

"(A) NOTICE.—When the Board institutes an investigation pursuant to paragraph (2)(A), it shall notify the State licensing boards in the States in which the public accounting firm or person associated with such firm engaged in the act or failure to act alleged to have violated professional standards, of the pendancy of the investigation, and shall invite the State licensing boards to participate in the investigation.

"(B) ACCEPTANCE BY STATE BOARD.—

"(i) PARTICIPATION.—If a State licensing board elects to join in the investigation, its representatives shall participate, pursuant to rules established by the Board, in investigating the matter and in presenting the evidence justifying the charges in any hearing pursuant to paragraph (3)(A).

"(ii) REVIEW.—In the event that the State licensing board disagrees with the Board's determination with respect to the matter under investigation, it may seek review of that determination by the Commission pursuant to procedures that the Commission shall specify by regulation.

"(C) PROHIBITION ON CONCURRENT INVESTIGATIONS.—A State licensing board shall not institute its own proceeding with respect to a matter referred to in subparagraph (A) until after the Board's determination has become final, including completion of all review by the Commission and the courts.

"(D) STATE SANCTIONS PERMITTED.—If the Board or the Commission imposes a sanction upon a public accounting firm or person associated with such a firm, and that determination either is not subjected to judicial review or is upheld on judicial review, a State licensing board may impose a sanction on the basis of the Board's report pursuant to paragraph (4). Any sanction imposed by the State licensing board under this clause

shall be inadmissible in any proceeding in any State or Federal court or before any State or Federal administrative agency, except to the extent provided in paragraph (5)(D).

"(E) SANCTIONS NOT PERMITTED.—If a sanction is not imposed on a public accounting firm or person associated with such a firm, and—

"(i) a State licensing board elected to participate in an investigation referred to in subparagraph (A), the State licensing board may not impose a sanction with respect to the matter; and

"(ii) a State licensing board elected not to participate in an investigation referred to in subparagraph (A), subparagraphs (A) and (B) of paragraph (5) shall apply with respect to any investigation or proceeding subsequently instituted by the State licensing board and, in particular, the State licensing board shall not have access to the record of the proceeding before the Board and that record shall be inadmissible in any proceeding before the State licensing board.

"(g) ADDITIONAL DUTIES REGARDING QUALITY CONTROL.—After the date on which all initial members of the Board have been selected in accordance with subsection (c), the Board shall have the following duties and powers in addition to those set forth in subsection (f):

"(1) IN GENERAL.—The Board shall seek to promote a high level of professional conduct among public accounting firms registered with the Board, to improve the quality of audit services provided by such firms, and, in general, to protect investors and promote the public interest.

"(2) PROFESSIONAL PEER REVIEW ORGANIZATIONS.—

"(A) MEMBERSHIP REQUIREMENT.—The Board shall require each public accounting firm subject to the disciplinary authority of the Board to be a member of a professional peer review organization certified by the Board pursuant to subparagraph (B).

"(B) CRITERIA FOR CERTIFICATION.—The Board shall, by rule, establish general criteria for the certification of peer review organizations and shall certify organizations that satisfy those criteria, or such amended criteria as the Board may adopt. To be certified, a peer review organization shall, at a minimum—

"(i) require a member public accounting firm to undergo peer review not less than once every 3 years and publish the results of the peer review; and

"(ii) adopt standards that are acceptable to the Board relating to audit service quality control.

"(C) PENALTIES.—Violation by a public accounting firm or a person associated with such a firm of a rule of the peer review organization to which the firm belongs shall constitute grounds for—

"(i) the imposition of disciplinary sanctions by the Board pursuant to subsection (f); and

"(ii) denial to the public accounting firm or person associated with such firm of the privilege of appearing or practicing before the Commission.

"(3) CONFIDENTIALITY.—Except as otherwise provided by this section, all reports, memoranda, and other information provided to the Board solely for purposes of paragraph (2), or to a peer review organization certified by the Board, shall be confidential and privileged, unless such confidentiality and privilege are expressly waived by the person or entity that created or provided the information.

"(h) COMMISSION OVERSIGHT OF THE BOARD.—

"(1) PROPOSED RULE CHANGES.—

"(A) IN GENERAL.—The Board shall file with the Commission, in accordance with such rules as the Commission may prescribe, copies of any proposed rule or any proposed change in, addition to, or deletion from the rules of the Board (hereafter in this subsection collectively referred to as a 'proposed rule change') accompanied by a concise general statement of the basis and purpose of such proposed rule change. The Commission shall, upon the filing of any proposed rule change, publish notice thereof together with the terms of substance of the proposed rule change or a description of the subjects and issues involved. The Commission shall give interested persons an opportunity to submit written data, views, and arguments concerning the proposed rule change. No proposed rule change shall take effect unless approved by the Commission or otherwise permitted in accordance with this subsection.

"(B) APPROVAL OR DISAPPROVAL.—

"(i) IN GENERAL.—Not later than 35 days after the date on which notice of the filing of a proposed rule change is published in accordance with subparagraph (A), or such longer period as the Commission may designate (not to exceed 90 days after such date, if it finds such longer period to be appropriate and publishes its reasons for such finding or as to which the Board consents) the Commission shall—

"(I) by order approve such proposed rule change; or

"(II) institute proceedings to determine whether the proposed rule change should be disapproved.

"(ii) DISAPPROVAL PROCEEDINGS.—Proceedings for disapproval shall include notice of the grounds for disapproval under consideration and opportunity for hearing and shall be concluded not later than 180 days after the date of publication of notice of the filing of the proposed rule change. At the conclusion of the proceedings for disapproval, the Commission, by order, shall approve or disapprove such proposed rule change. The Commission may extend the time for conclusion of such proceedings for—

"(I) not more than 60 days, if the Commission finds good cause for such extension and publishes its reasons for such finding; or

"(II) such longer period to which the Board consents.

"(iii) APPROVAL.—The Commission shall approve a proposed rule change if it finds that such proposed rule change is consistent with the requirements of the Federal securities laws, and the rules and regulations issued thereunder, applicable to the Board. The Commission shall disapprove a proposed rule change if it does not make such finding. The Commission shall not approve any proposed rule change prior to the expiration of the 30-day period beginning on the date on which notice of the filing of a proposed rule change is published in accordance with this subparagraph, unless the Commission finds good cause to do so and publishes its reasons for such finding.

"(C) EFFECT OF PROPOSED RULE CHANGE.—

"(i) EFFECTIVE DATE.—Notwithstanding subparagraph (B), a proposed rule change may take effect upon filing with the Commission if designated by the Board as—

"(I) constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board;

"(II) establishing or changing a due, fee, or other charge imposed by the Board; or

"(III) concerned solely with the administration of the Board or other matters which the Commission, by rule, consistent with the public interest and the purposes of this subsection, may specify.

"(ii) SUMMARY EFFECT.—Notwithstanding any other provision of this subsection, a proposed rule change may be put into effect summarily if it appears to the Commission that such action is necessary for the protection of investors. Any proposed rule change put into effect summarily shall be filed promptly thereafter in accordance with this paragraph.

"(iii) ENFORCEMENT.—Any proposed rule change which has taken effect pursuant to clause (i) or (ii) may be enforced by the Board to the extent that it is not inconsistent with the Federal securities laws, the rules and regulations issued thereunder, and applicable Federal and State law. During the 60-day period beginning on the date on which notice of the filing of a proposed rule change if filed in accordance with this paragraph, the Commission may summarily abrogate the change in the rules of the Board made thereby and require that the proposed rule change be refiled in accordance with subparagraph (A) and reviewed in accordance with subparagraph (B), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Federal securities laws. Commission action pursuant to the preceding sentence shall not affect the validity or force of the rule change during the period it was in effect and shall not be reviewable under section 25 of this Act nor deemed to be 'final agency action' for purposes of section 704 of title 5, United States Code.

"(2) AMENDMENT BY COMMISSION OF RULES OF THE BOARD.—The Commission, by rule, may abrogate, add to, and delete from (hereafter in this subsection collectively referred to as 'amend') the rules of the Board as the Commission deems necessary or appropriate to ensure the fair administration of the Board, to conform its rules to requirements of the Federal securities laws, and the rules and regulations issued thereunder applicable to the Board, or otherwise in furtherance of the purposes of the Federal securities laws, in the following manner:

"(A) PUBLICATION OF NOTICE.—The Commission shall notify the Board and publish notice of the proposed rulemaking in the Federal Register. The notice shall include the text of the proposed amendment to the rules of the Board and a statement of the Commission's reasons, including any pertinent facts, for commencing such proposed rulemaking.

"(B) COMMENTS.—The Commission shall give interested persons an opportunity for the oral presentation of data, views, and arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

"(C) INCORPORATION.—A rule adopted pursuant to this subsection shall incorporate the text of the amendment to the rules of the Board and a statement of the Commission's basis for and purpose in so amending such rules. Such statement shall include an identification of any facts on which the Commission considers its determination to so amend the rules of the Board to be based, including the reasons for the Commission's conclusions as to any of the facts that were disputed in the rulemaking.

"(D) REGULATIONS.—

"(i) TITLE 5 APPLICABILITY.—Except as otherwise provided in this paragraph, rulemaking under this paragraph shall be in accordance with the procedures specified in section 553 of title 5, United States Code, for rulemaking not on the record.

"(ii) CONSTRUCTION.—Nothing in this subsection shall be construed to impair or limit the Commission's power to make, modify, or alter the procedures the Commission may follow in making rules and regulations pursuant to any other authority under the Federal securities laws.

"(iii) INCORPORATION OF AMENDMENTS.—Any amendment to the rules of the Board made by the Commission pursuant to this subsection shall be considered for purposes of the Federal securities laws to be part of the rules of the Board and shall not be considered to be a rule of the Commission.

"(3) NOTICE OF DISCIPLINARY ACTION TAKEN BY THE BOARD; REVIEW OF ACTION BY THE COMMISSION.—

"(A) NOTICE REQUIRED.—If the Board imposes a final disciplinary sanction on a public accounting firm registered with the Board or on any person associated with such a firm, the Board shall promptly file notice thereof with the Commission. The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate in furtherance of the purposes of the Federal securities laws.

"(B) REVIEW.—An action with respect to which the Board is required by subparagraph (A) to file notice shall be subject to review by the Commission, on its own motion, or upon application by any person aggrieved thereby, filed not later than 30 days after the date on which such notice is filed with the Commission and received by such aggrieved person, or within such longer period as the Commission may determine. Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of such action unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments). The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of a stay.

"(4) DISPOSITION OF REVIEW; CANCELLATION, REDUCTION, OR REMISSION OF SANCTION.—

"(A) IN GENERAL.—In any proceeding to review a final disciplinary sanction imposed by the Board on a public accounting firm registered with the Board or a person associated with such a firm, after notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the Board and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the sanction)—

"(i) if the Commission finds that—

"(I) such firm or person associated with such a firm has engaged in such acts or practices, or has omitted such acts, as the Board has found them to have engaged in or omitted;

"(II) such acts, practices, or omissions, are in violation of such provisions of the Federal securities laws, the rules or regulations issued thereunder, the rules adopted by the Board, or professional standards as have been specified in the determination of the Board; and

"(III) such provisions were applied in a manner consistent with the purposes of the Federal securities laws;

the Commission, by order, shall so declare and, as appropriate, affirm the sanction imposed by the Board, modify the sanction in accordance with paragraph (2), or remand to the Board for further proceedings; or

"(ii) if the Commission does not make the findings under clause (i), it shall, by order, set aside the sanction imposed by the Board and, if appropriate, remand to the Board for further proceedings.

"(B) CANCELLATION, REDUCTION, OR REMISSION OF SANCTION.—If the Commission, having due regard for the public interest and the protection of investors, finds after a proceeding in accordance with subparagraph (A) that a sanction imposed by the Board upon a firm or person associated with a firm imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Federal securities laws or is excessive or oppressive, the Commission may cancel, reduce, or require the remission of such sanction.

"(5) COMPLIANCE WITH RULES AND REGULATIONS.—

"(A) DUTIES OF BOARD.—The Board shall—

"(i) comply with the Federal securities laws, the rules and regulations issued thereunder, and its own rules; and

"(ii) subject to subparagraph (B) and the rules thereunder, absent reasonable justification or excuse, enforce compliance with such provisions and with professional standards by public accounting firms registered with the Board and persons associated with such firms.

"(B) RELIEF BY COMMISSION.—The Commission, by rule, consistent with the public interest, the protection of investors, and the other purposes of the Federal securities laws, may relieve the Board of any responsibility under this section to enforce compliance with any specified provision of the Federal securities laws, the rules or regulations issued thereunder, or professional standards by any public accounting firm registered with the Board or person associated with such a firm, or any class of such firms or persons associated with such a firm.

"(6) CENSURE; OTHER SANCTIONS.—

"(A) IN GENERAL.—The Commission is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Federal securities laws, to censure or impose limitations upon the activities, functions, and operations of the Board, if the Commission finds, on the record after notice and opportunity for hearing, that the Board has—

"(i) violated or is unable to comply with any provision of the Federal securities laws, the rules or regulations issued thereunder, or its own rules; or

"(ii) without reasonable justification or excuse, has failed to enforce compliance with any such provision or any professional standard by a public accounting firm registered with the Board or a person associated with such a firm.

"(B) REMOVAL FROM OFFICE.—The Commission is authorized, by order, if in its opinion such action is necessary or appropriate, in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Federal securities laws, to remove from office or censure any member of the Board, if the Commission finds, on the record after notice and opportunity for hearing, that such member has—

"(i) willfully violated any provision of the Federal securities laws, the rules or regulations issued thereunder, or the rules of the Board;

"(ii) willfully abused such member's authority; or

"(iii) without reasonable justification or excuse, failed to enforce compliance with any such provision or any professional standard by any public accounting firm registered with the Board or any person associated with such a firm.

"(i) FOREIGN ACCOUNTING FIRMS.—A foreign public accounting firm that furnishes accountant's reports on any financial statement, report, or other document required to be filed with the Commission under any Federal securities law shall, with respect to those reports, be subject to the provisions of this section in the same manner and to the same extent as a domestic public accounting firm. The Commission may, by rule, regulation, or order and as it deems consistent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions, exempt from one or more provisions of this section any foreign public accounting firm. Registration pursuant to this subsection shall not, by itself, provide a basis for subjecting foreign accounting firms to the jurisdiction of the Federal or State courts.

"(j) RELATIONSHIP WITH ANTITRUST LAWS.—

"(1) TREATMENT UNDER ANTITRUST LAWS.—In no case shall the Board, any member thereof, any public accounting firm registered with the Board, or any person associated with such a firm be subject to liability under any antitrust law for any act of the Board or any failure to act by the Board.

"(2) DEFINITION.—For purposes of this subsection, the term 'antitrust law' means the Federal Trade Commission Act and each statute defined by section 4 thereof as 'Antitrust Acts' and all amendments to such Act and such statutes and any other Federal Acts or State laws in pari materia.

"(k) APPLICABILITY OF AUDITING PRINCIPLES.—Each audit required pursuant to this title of an issuer's financial statements by an independent public accountant shall be conducted in accordance with generally accepted auditing standards, as may be modified or supplemented from time-to-time by the Commission. The Commission may defer to professional standards promulgated by private organizations that are generally accepted by the accounting or auditing profession.

"(l) COMMISSION AUTHORITY NOT IMPAIRED.—Nothing in this section shall be construed to impair or limit the Commission's authority—

"(1) over the accounting profession, accounting firms, or any persons associated with such firms;

"(2) to set standards for accounting practices, derived from other provisions of the Federal securities laws or the rules or regulations issued thereunder; or

"(3) to take, on its own initiative, legal, administrative, or disciplinary action against any public accounting firm registered with the Board or any person associated with such a firm.".

SUMMARY OF DOMENICI-DODD PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995

The "Private Securities Litigation Reform Act of 1995" is designed to address several broad areas of concern about private securities litigation: plaintiffs' ability to control their cases and recover damages; abuses of securities litigation by some lawyers; the impact of private securities litigation on financial disclosure by companies; and better methods for deterring fraud.

1. LITIGATION ABUSES AND INVESTOR CONTROL

Plaintiffs' lawyers often race each other to the courthouse in order to be the first to file a case and win control over the case and any resulting legal fees. In some instances plaintiffs' lawyers and defendants tacitly agree to settle a case for a small amount with little regard to whether the case is strong or weak, in order to assure payment to plaintiffs' counsel. In addition, lawyers have filed securities cases without having a real client, or have sued based simply on a price drop, without bothering to investigate whether any wrongdoing might have occurred.

The bill addresses these abuses by ensuring that investors, not lawyers, decide whether to bring a case, whether to settle, and how much the lawyers should receive. It also contains provisions intended to ensure that lawyers look at the facts before they sue:

The bill requires courts to appoint a plaintiff steering committee or a guardian to directly control lawyers for the class.

The bill requires that notices of settlement agreements sent to investors spell out clearly important facts such as how much investors are giving up by settling, and how much their lawyers will receive in the settlement.

The bill requires that courts tie awards of lawyers' fees directly to how much is recovered by investors, rather than simply how many hours the lawyers billed or how many pages of briefs they filed.

The bill establishes an alternative dispute resolution procedure to make it easier to prosecute a case without the necessity of slow and expensive federal court proceedings.

The bill requires that in order to bring a securities case as a class action, the plaintiffs in whose name the case is brought must have held either 1 per cent of the securities which are the subject of the litigation or $10,000 worth of securities. This should help stop a problem pointed to by several courts, in which "professional plaintiffs" who own small amounts of stock in many companies try to bring class action lawsuits whenever one of their investments goes down.

The bill clarifies how a lawyer should plead a securities fraud claim. Plaintiffs' lawyers should have no trouble meeting these standards if they have legitimate cases and have looked at the facts.

These provisions should ensure that defrauded investors can recover damages more quickly, with less of their recovery drained off in lawyers' fees.

2. SECURITIES LITIGATION AND FINANCIAL REPORTING

Certain professionals like accountants, are singled out under the current litigation system simply because they are a deep pocket. Their liability exposure under the current system could drive them away from providing auditing services to many companies, especially new companies and "high tech" companies. The bill establishes a liability system for less culpable defendants that is more fair and is linked to degree of fault. Defendants who have acted egregiously would still be fully liable. Plaintiffs who have a net worth of less than $200,000 and lose more than 10 percent of their net worth.

At the same time, the bill establishes a self-disciplinary organization for accountants under the direct supervision of the SEC. This entity would be somewhat like self-regulatory organizations such as the New York Stock Exchange or the National Association of Securities Dealers. The net effect should be a more direct and rational way of dealing with "bad apples" in the accounting profession without punishing the entire profession.

The bill also contains a provision which gives companies more freedom to make forward-looking statements in good faith. This responds to concerns expressed by many companies that litigation "chills" voluntary predictive statements about a company's future economic performance, even though that is exactly the sort of information that is good for investors and the market.

3. ENHANCING DETERRENCE OF FRAUD

The bill extends the statute of limitations for implied actions to five years from the date of the violation, or two years after the violation was discovered or should have been discovered through the exercise of reasonable diligence. The bill also incorporates pending legislation concerning the responsibility of auditors to search for and report fraud. A similar bill in the House is supported by the SEC and the AICPA.

SECTION-BY-SECTION ANALYSIS OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995

TITLE I—PRIVATE SECURITIES LITIGATION

Section 1. Short Title

Section 1 provides that the title of this Act shall be the "Private Securities Litigation Reform Act of 1995 (the "Act").

Section 101—Elimination of Certain Abusive Practices

Section 101 amends the Securities and Exchange Act of 1934 (the "Exchange Act") by adding new paragraphs to Sections 15(c) and 21 of the Exchange Act. Section 101 eliminates certain litigation practices.

Subsection 101(a) amends Section 15(c) of the Exchange Act. Subsection 101(a) prohibits brokers or dealers from soliciting or accepting compensation from attorneys for assisting them in obtaining the representation of any customer of the broker or dealer in an implied action.

Subsection 101(b) amends Section 21(d) of the Exchange Act to prevent distribution of funds disgorged pursuant to an action by the Securities and Exchange Commission ("Commission" or "SEC") as attorneys' fees or expenses unless otherwise ordered by the court.

Subsection 101(c) amends Section 21 of the Exchange Act and adds seven new subsections. New subparagraph (i) of Section 21 requires that the named plaintiffs of the class action be compensated in the same manner as other members of the class. This provision is not intended to bar reasonable compensation of such plaintiffs out of any common fund established for the class for costs and expenses relating to representation of the class, such as lost wages or out-of-pocket expenses incurred due to deposition or trial testimony.

New subparagraph (j) requires a court to determine whether an attorney who owns or has a beneficial interest in the securities that are the subject of the litigation may represent the class or whether such ownership or interest constitutes a conflict of interest which would disqualify the attorney.

New subparagraph (k) prohibits settlements under seal except by motion of one or more of the settling parties if those parties can show good cause why the court should file under seal. "Good cause" exists only if publication of a term or provision of the settlement would cause direct and substantial harm to any person. This subparagraph is necessary because it is not always possible to determine the outcome of class action cases. Since class action litigation is imbued with a public purpose, information concerning the terms on which such cases are settled should be publicly available in most instances.

New subparagraph (l) requires courts to determine attorneys' fees as a percentage of the amount of damages and prejudgment interest actually recovered by the class as a result of the attorneys' efforts. The amount awarded to class counsel cannot exceed a reasonable percentage of the amount recovered by the class plus reasonable expenses. This provision is intended to encourage courts to link the amount of attorneys' fee awarded to the result achieved for the class and the degree of skill and effort required to achieve that result.

New subparagraph (m) requires proposed settlement agreements distributed to the class to contain certain information. Subpart (1)(A) requires that if the settling parties agree on the amount of damages which the plaintiff class would recover if the class prevailed in litigation, and if they agree on the likelihood that the class could prevail, the notice should contain a brief statement about the potential damages per share, a statement concerning the probability that the plaintiff would prevail on the claims alleged, and a brief explanation of the reasons for that conclusion. Subpart (B) requires that if the settling parties do not agree on the amount of damages that would be recoverable by the plaintiff on each alleged claim, or on the probability that the plaintiff would prevail on the claims alleged, the notice must contain a brief statement by each party containing the elements specified in subparagraph (A), concerning the issues on which the parties disagree. If any of the settling parties or their counsel intend to apply to the court for attorneys' fees or costs from any fund to be established under the settlement, subpart (2) requires a statement concerning the amount of fees and costs to be sought by each such party or attorney, and a brief explanation of the reasons for the application. Subpart (3) requires the settlement agreement to contain the name, address and telephone number of a representative of counsel for the plaintiff class who will be reasonably available to answer class members' questions on any matter contained in the notice of settlement distributed to class members. Subpart (4) permits the court, or a guardian ad litem or plaintiff steering committee apointed by the court in accordance with new Section 38 of the Exchange Act, to require additional information in the notice sent to class members.

New subparagraph (n) requires the court to submit to the jury a written interrogatory on the issue of each defendant's state of mind at the time of the alleged violation. This provision applies only in actions in which the plaintiff, in order to recover money damages, must prove that the defendant acted with some degree of intent.

New subparagraph (o) requires that any plaintiffs who wish to obtain certification as representatives of a class of investors must collectively have owned during the period in which the violations occurred the lesser of 1 percent or $10,000 market value of the securities which are the subject matter of the litigation. This requirement is comparable to a rule of the SEC concerning the minimum holding required in order to seek to place a shareholder proposal on an issuer's proxy statement.[1] However, that rule differs in that it applies to shareholders who own the lesser of 1 percent of the securities or $1,000 market value of the securities, and it also contains minimum holding period requirements which are not included in this bill.

Class certification is a significant step in many securities cases, because it places a

---

Footnotes at end of article.

small group of investors in charge of claims asserted on behalf of a much larger group. This may create an incentive for plaintiffs with nominal claims to seek class certification as a means of coercing other parties into settlement. Moreover, some cases have called attention to investors who appear to buy small amounts of stock in a number of companies with the apparent intent of using those investments to mount class action lawsuits.[2]

The purpose of this provision is to create a minimum "standing" requirement for securities class actions in order to ensure that the representatives of investor class members are not individuals who have only a nominal interest in the outcome of the litigation. This provision does not create any obstacle to filing a lawsuit as a class action, but simply addresses the standard for certifying a particular group of plaintiffs as investor class representatives.

Section 102—Alternative Dispute Resolution Procedure; Time Limitation on Private Rights of Action

Subsection 102(a) amends the Exchange Act by adding a new Section 36, which creates an alternative dispute resolution procedure for securities litigation under Rule 10(b) of the Exchange Act. The section allows any party to offer to proceed pursuant to any voluntary nonbinding ADR procedure established or recognized by the courts within the time period for answering the complaint, or, in cases certified as class actions, within 30 days after a guardian ad litem or plaintiff steering committee is appointed. The court may extend the period for responding to an ADR offer for up to 90 days to permit discovery.

If the courts recognize more than one type of ADR, the parties may stipulate to the type of ADR to be used. If the parties cannot agree, the court must decide within 20 days which method of ADR the parties will use. If any party engages in dilatory or obstructive conduct during the response period, the court may extend the discovery period, deny the party further discovery or impose reasonable fees and costs upon the party.

Should any party reject an offer to proceed via ADR, or refuse to abide by the result of an ADR proceeding, that party can exercise its right to litigate the case in federal court. However, the subsection requires the court to award fees and costs against that party if the court enters judgment against the party and the party asserted a claim or defense which was not substantially justified. As with Section 36(a), this fee-shifting provision would not apply to a named plaintiff in a class action case if he or she had never owned more than $1,000,000 of the securities that are the subject of the dispute.

The purpose of this section is to create a stronger incentive to use ADR in multiparty securities litigation. Greater use of ADR should result in faster recoveries for defrauded investors, and should also result in smaller attorneys' fees for all parties.[3]

Subsection 102(b) adds a new Section 37 to the Exchange Act. Section 37(a) creates a new limitations period for implied private rights of action under the Exchange Act. The subsection requires implied private rights of action to be brought not later than the earlier of five years after the violation occurred or two years after the violation was discovered or should have been discovered through the exercise of reasonable diligence. Subsection 38(b) requires the new limitations period to apply to all proceedings pending on or commenced after the date its enactment.

Section 103—Guardians Ad Litem and Plaintiff Steering Committees

Section 103 adds a new Section 38 to the Exchange Act. Section 38 requires courts to ensure that a plaintiff class has adequate control over its attorneys by either appointing a guardian ad litem when a plaintiff class is certified, or creating a plaintiff steering committee in securities class actions to give the class greater control over the lawsuit.

Section 38(a) requires courts to appoint a guardian ad litem within 10 days of certifying a plaintiff class. The guardian ad litem is to direct counsel for the plaintiff class or perform such other functions as the court may specify. The guardian ad litem is to be selected from one or more lists submitted by the parties or their counsel. The guardian's reasonable fees and expenses are to be apportioned by the court among the parties. In doing so, the Court may permit the guardian to recover his or her reasonable fees and expenses from any fund established for the benefit of the class, but the guardian is to recover reasonable fees and expenses whether or not such a fund is established. This should prevent any possibility that the guardian might have a financial interest in supporting or opposing a settlement offer. This provision also states that appointment of a guardian shall not be subject to interlocutory review.

Section 38(b) permits the Court, as an alternative to appointing a guardian ad litem, appoints a steering committee of class members within 10 days after class certification, with the same powers as a guardian. Appointment of the committee is also not subject to interlocutory review.

Section 38(c) provides that the plaintiff steering committee shall consist of at least 5 willing class members who the court believes will fairly represent the class. Committee members must have cumulatively held the lesser of 5 per cent of the securities which are the subject of the litigation, or securities which are the subject of the litigation with a market value of $10,000,000. "Securities which are the subject matter of the litigation" means securities which were held during any time period when the class alleges that fraud was committed against any class members. The $10,000,000 market value can be measured at any time between the time when the class alleges that violations first occurred until the date the class is certified. If the court determines that appointment of a committee which meets these requirements is impractical, the court may appoint a committee which meets a smaller percentage test or dollar amount test which the court believes is reasonable.

Under subsection 38(c)(2), named plaintiffs may serve on the committee, but may not comprise a majority of the committee. Under subsection 38(c)(3), committee members shall serve without compensation, but may apply to the court for reimbursement of reasonable out-of-pocket expenses from any common fund established for the class. This differs from the compensation scheme for guardians, who can receive compensation for their services. The reason for this distinction from guardians is two-fold: Committee members should be sufficiently motivated to serve on the Committee by their economic interest in the litigation and by their desire to obtain justice for themselves and other class members. Second, since the Committee involves a larger number of people than a single guardian, compensating the Committee would be substantially more burdensome on the class and on other parties than would compensating a guardian.

Under subsection 38(c)(4), the committee would conduct previously scheduled meetings with at least a majority of committee members present in person or by electronic communication. All matters must be decided by majority vote of all members, except decisions on matters other than whether to accept or reject a settlement offer or to hire or fire counsel. Those decisions may be delegated to one or more members of the committee or voted upon by members seriatim, without a meeting. Subsection 38(5) allows any class member who is not a member of the committee to appear and be heard by the court on any issue in the case.

Section 38(d) enumerates the functions of guardians ad litem and plaintiff steering committees. Guardians and Committees have the same powers permitted to clients in other litigation, including the power to hire and fire counsel, reject settlement offers and accept settlement offers, pursuant to some restrictions. However, counsel dismissed other than for cause would be able to enforce any contractual fee agreement or to apply to the Court for a fee award from any common fund established for the class. Section 38(d)(2) allows the committee to give preliminary approval to settlement offers and to seek approval of the settlement by a majority of the class if the benefit of seeking such approval outweighs the cost of soliciting approval from class members.

Section 38(e) provides that any person who is appointed as a guardian ad litem or member of a plaintiff steering committee shall be immune from any liability as a result of such service. This immunity includes liability for breach of fiduciary duty, liability under any provision of the Exchange Act or any other federal statute or rule imposing sanctions for conduct in the course of litigation, or any other action taken in the course of acting as a fiduciary. This immunity would not apply to any action taken by the former guardian or committee member following resignation or removal by the court.

Section 38(f) clarifies that this section does not override any other provision relating to class actions or the authority of the court to approve final settlements, such as under Rule 23 of the Federal Rules of Civil Procedure.

Section 104—Requirements for Securities Fraud Actions

Section 104 adds a new Section 39 to the Exchange Act. Section 39 specifies certain pleading requirements for implied actions, as well as damage calculations to be utilized in securities fraud suits. The overall purpose of this section is to provide a filter at the pleading stage to screen out allegations that have no factual basis, to provide a clearer statement of the plaintiff's claims, and to provide greater clarity about the scope of the case. This section should not provide any barrier to meritorious cases, although in some instances it may require attorneys for plaintiffs to exercise greater care in drafting their complaint. By requiring more specificity in pleading, the amount of motions to dismiss and the amount of discovery should be reduced. For plaintiffs with strong cases, this should encourage faster recoveries with less expenditure for attorneys' fees.

Section 39(a), which applies to implied actions in which the plaintiff may recover money damages only on proof that the defendant acted with some degree of intent, requires the plaintiff to allege in its complaint specific facts demonstrating why the plaintiff believes that each such defendant had such an intent. Blanket assertions of intent unconnected to any facts would be insufficient.

Section 39(b) requires that a plaintiff who alleges that the defendant made an untrue statement of a material fact or omitted to state a material fact necessary to make statements made not misleading must specify in the complaint each statement alleged to have been misleading, the reason or reasons why the plaintiff believes the statement was misleading, and, if an allegation regarding such statements is made on information and belief, the plaintiff must state all information on which his or her belief is formed.

Section 39(c) clarifies that in implied actions based on the "fraud in the market" theory, while the plaintiff need not show that he or she specifically relied on any alleged misstatement or omission, plaintiff has the burden of showing that the misstatement or omission caused the loss. This means that plaintiff must establish that it was the defendant's misstatement or omission, rather than some intervening factor, which established the market price at which the plaintiff purchased or sold the securities in question.

Subsection 39(d) sets out an upper limit for damage calculations to be used in cases of material misstatements or omissions where the plaintiff claims to have bought or sold based upon the "fraud on the market" theory. Plaintiff's damages in these cases may not exceed the lesser of (i) the difference between the price paid by the plaintiff for the security and the market value immediately after dissemination to the market of information which corrects the misstatement or omission, or (ii) the difference between the price paid by the plaintiff for the security and the price at which the plaintiff sold the security after dissemination of correcting information. The purpose of this provision is to provide greater certainty about the upper limit of damage exposure for cases in which the range of possible damage calculations tends to be substantial, leading to complex battles between expert witnesses over damage estimates. This provision also takes into account the fact that plaintiffs' damages are sometimes mitigated when the stock price recovers soon after an adverse announcement.

Section 105—Amendment to the Racketeer Influenced and Corrupt Organizations Act

Section 105 amends Section 1964(c) of Title 18 of the United States Code (the "Racketeer Influenced and Corrupt Organization Act" or "RICO"). Section 106 eliminates private actions for securities fraud under the "civil RICO" provisions of Title 18.

TITLE II—FINANCIAL DISCLOSURE

Section 201—Safe Harbor for Forward-Looking Statements

Subsection 201(a) requires the SEC, in consultation with investors and issuers of securities, to consider adopting or amending rules, or making legislative recommendations, concerning criteria which the Commission finds are appropriate for the protection of investors, and which issuers may rely upon to ensure that their forward-looking statements concerning their future economic performance will be deemed not to violate the Exchange Act. This provision also requires the Commission to consider rule-making or legislative recommendations for procedures by which courts shall timely dismiss claims based on forward-looking statements of issuers of such statements meet any criteria set by the Commission pursuant to this subsection.

Subsection 201(b) amends the Exchange Act by adding a new Section 40. Under new Section 40(a), an implied private action under the Exchange Act alleging that a forward-looking statement concerning the future economic performance of an issuer was materially false or misleading, the court would be required to grant a stay of discovery concerning the claims or defenses of a party if that party made a motion for such a stay in accordance with Section 40(b). Section 40(a) also sets out certain matters to be considered by the Commission in developing any such rules or legislative recommendations.

Section 40(b) states that such a stay shall apply in connection with any motion for summary judgment made by a defendant asserting that the forward-looking statement was within the coverage of any rule of the Commission concerning such statements. However, Section 40(b) requires that plaintiff have at least 60 days to conduct discovery before such a summary judgment motion is made. Section 40(c) permits the court to extend the time for plaintiff to conduct discovery, or to deny a stay of proceedings, if the party making the motion engaged in dilatory or obstructive conduct, or if a stay of discovery would be substantially unfair to the plaintiff or any other party.

Section 202—Fraud Detection and Disclosure

Section 202(a) amends the Exchange Act to create a new Section 10A. Section 10A would codify certain auditing standards for the detection of financial fraud by auditors, and would require auditors to report directly to the Commission any financial fraud discovered during an audit engagement. This provision also would shield auditors from private liability for the contents of such a report. This provision is substantially similar to H.R. 574 and S. 630, both titled the "Financial Fraud Detection and Disclosure Act."

Section 203. Proportionate Liability and Joint and Several Liability

Section 203(a) amends the Exchange Act to create a new Section 41. Section 41(a) specifies that this provision only applies to the allocation of damages among persons who are or may become liable in an implied right of action under the Exchange Act.

Section 41(b) applies joint and several liability against primary wrongdoers, persons who commit knowing securities fraud, and those who control any primary wrongdoer or person who commits knowing securities fraud. Section 41(b)(2) defines the terms "primary wrongdoer" and "knowing securities fraud."

In cases where more than one person is found to have contributed to an act of securities fraud, subsection 41(c) requires the finder of fact to determine the degree of responsibility of each party. The finder of fact must specify the plaintiff's total amount of damages, and the degree of responsibility of each defendant, measured as a percentage of the total fault of all those liable for the violation. In determining the degree of responsibility, the subsection requires the finder of fact to consider the nature and conduct of each person and the causal relationship between the conduct and the plaintiff's damages.

Subsection 41(d) creates a system of proportionate liability for those who are not jointly and severally liable under section 41(b). Section 41(d) holds such defendants liable for their proportionate share of damages. If a plaintiff is unable to collect the proportionate share of any defendant's liability within six months after the final judgment, subsection 41(d) reallocates the uncollectible share. If the plaintiff is an individual with a net worth of under $200,000, and his or her recoverable damages are more than 10 per cent of that net worth, all of the remaining defendants are jointly and severally liable for all of the plaintiff's damages.

Otherwise, where damages are uncollectible from one or more defendants, the defendants as to whom proportionate liability applies will be liable for their proportionate share of plaintiff's damages, plus the greater of (i) their proportionate share of the uncollectible damages, or (ii) five times the amount which that defendant gained from the conduct which gave rise to the liability. If the defendant did not obtain a direct financial gain from its conduct, and the conduct giving rise to its liability consisted of deficient services, the latter measurement would be five times the defendant's gross revenues from its entire economic relationship with any other entity involved in the violation during the calendar years in which the defendant provided deficient services. Under Section 41(d)(4) and (5), defendants who become liable for another defendant's uncollectible share would have a right of contribution against the defendant originally liable for the payment or any other person responsible for the fraudulent conduct.

Subsection 41(e) prevents disclosure of the formula for allocation of damages and the procedure for reallocation of uncollectible shares to the jury.

Subsection 41(f) provides that a defendant who enters into a settlement of an implied right to action is discharged from any claim for contribution by any other potential defendants. This subsection also clarifies that a settlement prior to a verdict or judgment shall reduce the verdict or judgment against other defendants by the greater of (i) the amount that corresponds to the settling person's degree of responsibility, and (ii) the amount paid to the plaintiff by that person.

Section 41(g) clarifies that contribution shall be determined based on the degree of responsibility of the claimant and each person against whom a right of contribution is asserted. Subsection 41(h) requires liable defendants to bring contribution actions within six months after the date that the judgment against the defendant becomes final unless the defendant made additional payments of uncollectible liability under subsection 41(d). In cases where the defendant made additional payments, the defendant must bring the contribution action within six months after the additional payment was made.

Section 203(b) provides that Section 41 shall only apply to actions commenced after the enactment date of this Act.

Section 204—Public Auditing Self-Disciplinary Board

Section 204 amends the Exchange Act and adds a new Section 13A. Section 13A creates a self-disciplinary board for public auditors.

Section 13A(a) supplies definitions for key terms to be used throughout the section.

Subsection 13A(b) requires the SEC to establish a Public Auditing Self-Disciplinary Board ("Board") within 90 days after the date of the enactment of section 13A. The Commission shall designate an entity to serve as the Board if control of such entity is vested in members of the Board selected under Section 13A(c) and if the entity meets other enumerated criteria.

Subsection 13A(c) specifies that the Board will be composed of three SEC-appointed members and four elected members. For the appointed members, the Chairman of the SEC shall make the initial appointments in consultation with other members of the

Commission within ninety days after enactment. After initial appointments, the Board will appoint members to fill vacancies in these three slots, subject to SEC approval.

For elected members, subsection 13A(c)(1), paragraph (B) requires that within 120 days after the 3 initial Board members are appointed, if an entity has been designated as the Board under Section 13A(b), that entity shall conduct an election of 4 initial Board members. The election shall be conducted under interim election rules proposed by the entity and approved by the 3 appointed members and the Commission. If no entity has been designated by the Commission under Section 13A(b), the 3 appointed members shall adopt interim rules providing for the election of the 4 initial elected members. In either event, the election of the 4 elected members shall occur within 120 days after the appointment of the 3 initial members, the initial election shall be by persons who are certified public accountants and who are associated with public accounting firms, and the persons elected shall be subject to approval by the Commission. After the initial elections, elections for the 4 elected member slots must be by persons associated with public accounting firms who are certified public accountants, and the persons elected are subject to SEC approval.

Subsection 13A(c)(2) requires that four members of the Board, including the Chairman, must not have been associated with a public accounting firm during the 10-year period preceding their appointment. Three of the elected members are required to be associated with a public accounting firm registered with the Board.

Subsection 13A(c)(3) requires the Chairman of the Board to serve on a full-time basis, unless the SEC otherwise authorizes, and to sever all business ties with his or her former firms prior to serving on the Board.

Subsection 13A(c)(4) requires that each member of the Board will serve a four-year term or until a successor is appointed, whichever is later. However, those members appointed to fill a vacancy created by a member's departure prior to the expiration of her term will only be appointed for the remainder of the term. Pursuant to section 13A(c)(4), initially selected Board members' terms will expire on a staggered basis until all initial members have been replaced by members appointed according to the terms of the section.

Section 13A(c)(5) requires the Board to propose and adopt rules providing for the administration and operation of the Board, including appointment and election of members, the selection of a chairperson, and compensation of Board members. The Board also must adopt rules concerning the appointment and compensation of other employees, attorneys and consultants deemed necessary and appropriate to carry out the board's functions. The Board must create rules for the registration of public accounting firms, and rules governing the Board's duties.

Subsection 13A(d) provides the Board with power to assess and collect registration fees and annual dues from each public accounting firm registered with the Board. These fees must be sufficient to cover the costs and expenses of the Board and permit the Board to operate on a self-financed basis, and will be based upon the annual revenues of each firm from accounting and auditing services, the number of persons associated with the firm, the number of clients the firm furnishes with accountant's reports, and other criteria the Board establishes.

Subsection 13A(e) requires all public accounting firms which furnish accountants reports with respect to documents filed with the SEC to register with the Board within one year after all members of the Board have been selected.

Each public accounting firm that performs such services must apply for registration with the Board. Each application must contain the names of all clients of the firm for which the firm provides accountant's reports.

The application must also list financial information of the firm for the most recent fiscal year, including assets, liabilities and annual revenues from accounting and auditing services, a statement of the firm's policies and procedures with respect to quality control of its accounting and auditing practice, information relating to criminal, civil or administrative actions or disciplinary proceedings pending against the firm or any of its members and any other information the Board deems necessary or appropriate that is reasonably related to the Board's responsibilities.

The registered firms must update their application information annually. Finally, the subsection allows the Board or SEC to exempt any firm or class of firms, accountant's report or class of reports from any provision of the section, if the SEC finds the exemption consistent with the public interest, the protection of investors and the purposes of the section. The Board may designate portions of the filings as confidential and privileged.

Section 13A(f) sets out the duties of the Board. The Board must establish fair procedures for investigating and disciplining registered firms and persons associated with them for violations of the Federal securities laws, their rules and regulations, the Board's rules or professional standards in connection with the preparation of an accountant's report on a financial statement, report or other document filed with the SEC.

Section 13A(f)(2) allows the Board to conduct an investigation of any illegal act, practice or omission by a registered firm or an associated person in connection with the preparation of documents filed with the SEC.

Section 13A(f)(2), paragraph (B) empowers the Board to require the testimony of any person associated with a firm with respect to any matter the Board considers material or relevant. The Board also can require the production of audit workpapers or any other document possessed by a registered firm or any associated person that the Board considers relevant or material, including the books and records of the firm to verify the accuracy of any document supplied. The Board also has the power to request the testimony of any person, including a firm's client, and the production of any documents they possess that the Board deems material or relevant.

Section 13A(f)(2), paragraph (C) provides that if any person associated with a public accounting firm refuses to produce documents or otherwise comply with a Board request, the Board may suspend or bar the person from associating with any registered firm or hand down any other sanction the Board deems appropriate. The refusal of any registered public accounting firm to produce documents or otherwise cooperate with the Board also is cause for suspension or revocation of the registration.

If the Board cannot complete or conduct its investigation because of the refusal of any client to comply, Section 13A(f)(2), paragraph (D) requires the Board to report the refusal to the SEC. The SEC then may designate one or more officers of the Board to be granted nationwide subpoena power. This Section also authorizes the Board to refer any investigation to the SEC.

Section 13A(f)(2), paragraph (E) grants immunity to any Board member who carries out an investigation or disciplinary proceeding under this Section from civil liability arising out of the investigation or disciplinary proceeding in the same manner as any other federal Government employee in similar circumstances.

Section 13A(f)(3) allows the Board to implement procedures to determine if disciplinary measures should be taken against a firm or its associated persons. In determining whether a person or firm should be disciplined, the Board must bring specific charges, notify the firm or associated persons of the charges, give the parties an opportunity to defend against the charges, and keep a record of such actions. Upon a finding of a violation, the Board may impose any disciplinary sanctions as it deems appropriate, including those enumerated in subsection 13A(f)(3), part (B).

Section 13A(f)(3), paragraph (C) requires the Board to file a written statement in support of a determination to impose sanctions. The statement must set forth the illegal act or practice, the specific law, regulation, Board rules or professional standards violated, the sanction imposed, and the reasons therefor.

Section 13A(f)(3), paragraph (D) prohibits any person suspended or barred by the Board from willfully associating with a registered firm without Board or SEC permission. Firms may not knowingly permit suspended or barred persons to become or remain associated with the firm without Board or SEC approval.

Section 13A(f)(4) requires the Board to report sanctions to the SEC, the appropriate foreign or state licensing boards or any boards with which the firm or person is licensed or certified to practice public accounting, and to the public. The report must include the name of the firm or associated person, a description of the acts, practice or omissions, the nature of the sanctions, and any other information on the circumstances of the disciplinary action as the Board deems appropriate.

Section 13A(f)(5) concerns the discoverability and admissibility of material related to the Board's disciplinary process in civil litigation. It is intended to ensure that the Board's disciplinary process does not interfere with private actions for damages relating to conduct within the Board's jurisdiction and, at the same time, that private damages actions do not interfere with the Board's disciplinary process. The intention of this section is that plaintiffs should not be deprived of access to any material that they can obtain from public accounting firms under current law. Similarly, the Board itself, and materials specifically created by others in connection with the Board's disciplinary procedure, would be kept separate from the civil liability system.

Section 13A(f)(5)(A) provides that except as provided in subparagraph (B), all documents prepared, collected or received by the Board and the deliberations of the Board in connection with an investigation or disciplinary proceeding are not subject to any form of compulsory discovery. This subparagraph does not apply to information provided to the Board that would have been subject to discovery from the person or entity that provided it to the Board, but is no longer available from that person or entity. This does not limit the Board's authority to provide public access to disciplinary proceedings.

Section 13A(f)(5)(B) provides that all documents prepared, collected or received by the Board and the deliberations and other proceedings of the Board in connection with an investigation or disciplinary proceeding shall be inadmissible in any state or federal court or any administrative agency.

Section 13A(f)(5)(C) creates an exception to subparagraphs (A) and (B) so that all information referred to in those subparagraphs is available to the SEC and any other Federal agency and admissible in any action brought by the Commission or other Federal agency to the same extent it would be available and admissible under current law. This information shall also be available to state licensing boards under certain circumstances.

Section 13A(f)(6) allows state licensing boards limited participation in Board actions. When the Board institutes an investigation it shall notify the State licensing board in the States in which the public accounting firm or auditor engaged in the act or failure to act that is the subject matter of the investigation and invite the state licensing boards to participate. If the state licensing board elects to participate, it shall do so pursuant to rules established by the Board.

If the State board disagrees with the Board's determination, it may seek review of that determination by the Commission pursuant to procedures that the Commission shall specify by regulation. However, this Section prohibits state licensing boards from instituting its own proceeding until after the Board's determination has become final.

Section 13A(f)(6), paragraph (C) provides that if the State board elects not to participate in the Board's investigation, it shall not institute its own investigation or proceeding in the matter until after the Board's determination has become final.

Section 13A(f)(6), paragraph (D) provides that if the Board or Commission imposes a sanction upon a public accounting firm or auditor, and that determination either is not subjected to judicial review or is upheld on judicial review, the state licensing board may impose a sanction on the basis of the Board's report. Any sanction imposed by the state licensing board on this basis shall be inadmissible in any proceeding in any State or Federal court or administrative agency except to extent provided in paragraph (5)(D).

Section 13A(f)(6), paragraph (E) provides that if no sanction is imposed by the Board or the SEC, the state licensing board may not impose a sanction if it chose to participate in the investigation. If the State board chose not to participate in the investigation, paragraph (5)'s rules on discovery and admissibility apply to subsequent State board proceedings. The Section also denies State boards access to the record of the proceeding before the Board, and that record is inadmissible in any State board proceeding.

Section 13A(g) requires the Board to promote a high level of professional conduct among registered public accounting firms, to improve the quality of audit services those firms provide, and to protect investors and promote the public interest.

Section 13A(g)(2) mandates that the Board require public accounting firms subject to its disciplinary authority to be members of a Board-certified professional peer review organization. To qualify the peer review organization must require a public accounting firm to undergo peer review at least once every three years and publish the results of the peer review. It must have standards relating to audit service quality control that are acceptable to the Board. Violation by a public accounting firm or auditor of a rule of the peer review organization shall constitute grounds for imposition of disciplinary sanctions and denial to the public accounting firm or auditor the privilege of appearing before the SEC.

Section 13A(g)(3) provides that all reports, memoranda and other information provided to the Board for the purpose of creating the procedures are confidential unless confidentiality and privilege are expressly waived by the proper parties.

Section 13A(h) gives the SEC oversight of the Board. Section 13A(h), paragraph (1) requires the Board to file copies of proposed Board rule changes or deletions with the SEC pursuant to rules to be promulgated by the SEC, along with a concise statement of the basis and purpose of the proposed change. The SEC then must publish notice of the change and give interested persons an opportunity to submit comments. The Board cannot make changes without Commission approval.

Not later than 35 days after the SEC publishes notice of the change, or within 90 days if the SEC so designates, the SEC must approve the change or institute proceedings to determine whether the change should be disapproved. Disapproval proceedings must include notice of the grounds for disapproval under consideration and an opportunity for a hearing. The proceedings must be concluded not later than 180 days after the publication of notice and filing of the proposed change. At the end of the proceedings, the SEC must approve or disapprove the change or extend the time for conclusion of the proceedings pursuant to subsection 13A(h), paragraphs (1)(B)(ii) (I) and (II).

Section 13A(h)(1), paragraph (B)(iii) requires the SEC to approve the change if it finds that it is consistent with the Federal securities laws and disapprove it if it does not make such a finding. The SEC may not approve a rule change until the 30-day period after the notice of the proposed change is filed, unless the SEC finds good cause to do so and publishes its reasons.

Section 13A(h)(1), paragraph (C) allows a proposed rule change to take effect upon filing with the SEC if the Board designates it as constituting a stated policy, practice or interpretation of an existing Board rule, establishing or changing a due, fee or other Board-imposed charge, or concerned solely with the administration of the Board. The SEC may put a change into effect summarily if such action is necessary to protect investors. The Board may enforce such changes to the extent they are not inconsistent with the Federal securities laws, their rules and regulations, and applicable State and Federal law. The SEC may summarily abrogate changes in the rules by the Board if it appears to the SEC that such action is necessary to the public interest, for the protection of investors, or in furtherance of federal or state laws.

Section 13A(h)(2) also allows the SEC to amend the Board's rules if the SEC deems the action necessary or appropriate to the fair administration of the Board, to conform its rules to requirements of the Federal securities laws by following certain procedures adopted from the Administrative Procedure Act. The SEC must publish notice of the proposed rulemaking in the Federal Register, give interested persons an opportunity to comment, and incorporate the text of its amendment to the rules of the Board with a statement of the basis and purpose of the amendment.

The SEC also may adopt regulations pursuant to section 553 of title 5 of the United States Code for rulemaking not on the record. Amendments to the Board's rules by the SEC are deemed Board rules and not rules of the SEC.

Section 13A(h)(3) requires the Board to promptly notify the SEC if the Board imposes a final disciplinary sanction on a registered firm or associated person. The Commission may review the action on its own motion or the motion of any aggrieved party filed within 30 days after the Board's notice is filed with the SEC and received by the aggrieved party.

Section 13A(h)(4) requires the Commission to affirm the Board's sanction, modify it or remand to the Board for further proceedings if upon review of the sanctions, the SEC determines that the firm or person engaged in the acts, practices or omissions that the Board alleges, that such acts, practices or omissions violated the Federal securities laws, the Board's rules or professional standards, and such laws are consistent with the purposes of the Federal securities laws. If the SEC does not make such findings, it must set aside the sanctions and remand to the Board if appropriate. If the SEC finds that a sanction imposed by the Board burdens competition unnecessary or inappropriate in furtherance to the purposes of the Federal securities laws or is excessive or oppressive, the SEC may cancel, reduce or require the remission of the sanctions.

Section 13A(h)(5) requires the Board to comply with Federal securities laws and its own rules and enforce compliance with those laws and with professional standards. The SEC may relieve the Board of any responsibility under Section 13A to enforce compliance with the above laws or standards.

Section 13A(h)(6) allows the SEC to censure or limit the activities, functions or operations of the Board if the SEC finds that the Board violated or is unable to comply or has failed to enforce compliance by a registered firm or associated persons with any provision of the Federal securities laws, the Board's rules or professional standards of conduct. The SEC also may remove a Board member from office if, after notice and opportunity for hearing, the SEC determines that the member willfully violated any provision of the Federal securities laws or the Board's rules, abused the member's authority or failed to enforce compliance with any professional standard of conduct by any firm or associated person without reasonable justification or excuse.

Section 13A(i) requires foreign accounting firms to register with the Board if they furnish the same types of services as domestic firms required to register under Section 13A. The SEC may exempt foreign firms from the provisions of this section if exemption is deemed consistent with the public interest and the protection of investors.

Registration pursuant to this subsection shall not be itself provide a basis for subjecting foreign accounting firms to the jurisdiction of the federal or state courts.

Under Section 13A(j), neither the Board, any member of the Board nor any person associated with a public accounting firm shall be subject to suit under any antitrust law for any act of the Board of any failure to act by the Board. "Antitrust law" means the Federal Trade Commission Act and each statute defined by Section 4 thereof as "Antitrust Acts" and all amendments to such act and such statutes and any other federal Acts or state laws in pari materia.

Section 13A(k) provides that all audits of an issuer's financial statements required under the Exchange Act shall be in accordance with generally accepted auditing standards. It also clarifies that the Commission

can modify or supplement such standards, and that the Commission may defer to professional standards promulgated by private-sector organizations that are generally accepted by the accounting or auditing profession.

Section 13A(*l*) declares that nothing in Section 13A impairs or limits the SEC's authority over accountants, to set standards for accounting or auditing standards or to take action against any firm or associated person.

FOOTNOTES

[1] *See* 17 C.F.R. §240.14a-8.

[2] For example, in one such case the Court found that due to a "consistent pattern of purchasing a few shares in troubled companies [and] Plaintiff's involvement in over two dozen lawsuits," "the Court finds clear evidence that Plaintiff's purchasing stock in troubled companies to possibly pursue litigation is a serious defense likely to become the focus of the litigation to the detriment of the class." *Shields v. Smith*, [1991-92 Transfer binder] Fed. Sec. L. Rep. (CCH) ¶97,007, at 91,967-68 (N.D. Cal. Nov. 4, 1991). *See also Cooperman v. Fairfield Communities, Inc.*, No. LR-C-90-164, slip op. at 9 n.1 (E.D. Ark., filed June 26, 1991); *Hoexter v. Simmons*, 140 F.R.D. 416, 422-23 (D. Ariz. 1991).

[3] The Committee on Commerce, Science, and Transportation recently voted out of Committee a comparable measure concerning alternative dispute resolution procedures. *See* the "Product Liability Fairness Act," S. 687 [Report No. 103-203], November 20, 1993. The report accompanying S. 687 stated that its provision on Alternative Dispute Resolution was intended to reduce delay and undercompensation of victims. *See* Product Liability Reform Act, Report of the Senate Committee on Commerce and Transportation, [Report No. 103-203], November 20, 1993, at 6-7.

[From the Wall Street Journal, Jan. 11, 1995]

JUDGES SHOW GROWING SKEPTICISM IN CLASS-ACTION SECURITIES CASES

(By Junda Woo)

The dismissal last week of a shareholder suit against Philip Morris Cos. is the latest sign that some judges are growing impatient with securities class action litigation.

In dismissing allegations that Philip Morris misled shareholders in the months before announcing its 1993 Marlboro price cut, U.S. District Judge Richard Owen in Manhattan criticized the plaintiffs' attorneys. Two separate suits, later consolidated with eight others, "contained identical allegations, apparently lodged in counsel's computer memory of 'fraud' from complaints that the defendants here engaged in conduct "to create and prolong the illusion of (Philip Morris') success in the *toy industry*," he said.

Judge Owen also noted with disapproval that the original suits, in which plaintiffs had sought class-action status, were filed either on the day of Philip Morris's announcement, known as Marlboro Friday, or the following Monday. He expressed disbelief that shareholders of the tobacco, food and beer giant would have landed on attorney's doorsteps so quickly.

And he quoted from similar rulings by other judges, including a 1991 ruling dismissing a complaint against Citicorp that said, "The complaint creates the strong impression that when Citicorp announced a cut in dividends, plaintiff's counsel simply stepped to the nearest computer console, conducted a global Nexis search, pressed the 'Print' button, and filed the product as their complaint." Judge Owen couldn't be reached for comment.

But Melvyn L. Weiss, a partner at one of the firms that filed the Philip Morris suit, said the plaintiffs plan an appeal. "The law is very clear that an investor is entitled to know all facts that they would want to know in making their decision," he said. "You can remain silent, but when you speak, you have to tell the whole truth." The plaintiffs had contended that New York-based Philip Morris led analysts to believe that it wouldn't cut the price of its flagship Marlboro brand.

"I have enough of a reputation without going around filing suits that I don't believe in," Mr. Weiss added. "I would never pursue a case like this, especially against a worthy adversary, without a profound belief in the integrity of the case."

In addition to Mr. Weiss's firm, Milberg Weiss Bershad Hynes & Lerach, other law firms representing the plaintiffs were Abbey & Ellis and Barrack, Rodos & Bacine.

Nevertheless, Judge Owen isn't the only one worried about class-action securities suits. Sens. Pete Domenici, a New Mexico Republican, and Christopher Dodd, a Connecticut Democrat, are expected to reintroduce a bill that would put the brakes on some alleged abuses in securities litigation. Its provisions include a higher legal standard for claiming securities fraud and a nonbinding arbitration mechanism for securities litigation.

"In my opinion, it's most of them that are frivolous—not just a lot, but most," said Jonathan R. Macey, a Cornell University law professor who advocates having plaintiffs' lawyers bid to work on such cases, with the money going to the plaintiffs. "The facts show that every time a firm's share price drops by enough that it's profitable for plaintiffs lawyers to bring a lawsuit, they do."

John L. Coffee, Jr., a Columbia University law professor, says "some of the judges are very skeptical of particular law firms" because some of them bring so many shareholder suits. He adds that "about nine firms" bring more than half of the suits that are filed.

Federal judges sometimes try to dismiss shareholder suits early on because they are so time-consuming, Prof. Coffee said, but appellate courts have reined in any attempts to broadly throw out securities suits.●

● Mr. DODD. Mr. President, I introduce the Private Securities Litigation Reform Act of 1995. This bipartisan proposal is identical to the legislation I introduced in the 103d Congress with my good friend Senator DOMENICI. eighteen of our colleagues are joining us as original cosponsors.

In the year since we last introduced this legislation, the process by which private individuals bring securities lawsuits has received enormous scrutiny. I am happy to say that as a result of this increased focus in the media and in the investor and business community, the debate has shifted. We are no longer arguing about whether the current system is in need of repair. The discussion is now centered on how best to fix it.

Even those who 1 year ago were unwilling to admit that the system needed to be reformed, now concede that substantial changes are needed. In my view, the fact that there is finally consensus about the need for securities litigation reform is enormously significant. Because this consensus now exists, I believe we will see comprehensive legislation enacted this Congress. With the introduction of this bill, we begin the process to develop the best legislative solutions.

This bill is by no means the final word on the matter. In the last year, hearings have been held in both Houses of Congress. Numerous studies of have been completed, including a comprehensive report by my securities Subcommittee staff. Every word of the legislation has received in-depth analysis. In addition, there have been a number of judicial decisions which have altered the private securities litigation landscape. The most significant of these was the U.S. Supreme Court Decision last year in Central Bank of Denver versus First Interestate Bank of Denver, which eliminated private liability for those who aid and abet securities fraud.

Many constructive suggestions have been made about ways to improves the legislation. The fact that we have not incorporated these changes to last years proposal should not be taken as a sign that we are unwilling to modify our bill. We simply preferred to begin this year where we left off last year so as not to create additional controversy or confusion. I am eager to work with my colleagues to refine and perfect the proposal as it moves through the process. As I have stated before, I would be willing to address the Bank of Denver decision as part of our deliberations.

I cannot overstate how critical securities lawsuits brought by private individuals are to ensuring the integrity of our capital markets. As an important back-up to Government enforcement actions, these private actions help deter wrongdoing. When the system is working well, it helps to ensure that corporate officers, auditors, directors, lawyers and others properly perform their jobs. Private litigation is an indispensable tool with which defrauded investors can recover their losses without having to rely on Government action.

Private securities litigation has evolved over the years mainly as a result of court decisions rather than legislative action. The most important private right of action for defrauded investors has long been section 10(b) of the Securities Exchange Act. Private actions under that provision were never expressly set out by Congress, but have been construed and refined by courts, with the tacit consent of Congress.

This lack of congressional involvement in shaping the contours of private litigation has created uncertainty about legal standards and unwarranted opportunities for abuse of investors and companies. Last Congress, my Securities Subcommittee held several days of hearing on securities litigation. These hearings documented a number of glaring problems with the current system.

First, securities class action cases are vulnerable to abuses by "entrepreneurial" lawyers who put their own interests ahead of their clients. Many

critics charge that plaintiffs' attorneys appear to control the settlement of the case with little or no influence from either the named plaintiffs or the larger class of investors.

For example, in one case which was cited to the subcommittee by a lawyer as a showcase of how the system works, the case was settled before trial for $33 million. The lawyers asked the court for more than $20 million of that amount in fees and costs. The court awarded the plaintiffs' lawyers over $11 million and lawyers for the company $3 million. Investors recovered only 6.5 percent of their recoverable damages.

A second area of abuse is frivolous litigation. We have heard complaints from companies, especially in the high-technology sectors, that they face groundless securities litigation days or even hours after adverse earnings announcements. Courts have echoed this concern. As the Supreme Court pointed out in Blue Chip Stamps versus Manor Drug Store:

> [I]n the field of federal securities laws governing disclosure of information, even a complaint which by objective standards may have very little success at trial has a settlement value to the plaintiff out of any proportion to its prospect of success at trial so long as he may prevent the suit from being resolved against him by dismissal or summary judgment. The very pendency of the lawsuit may frustrate or delay normal business activity of the defendant which is totally unrelated to the lawsuit.

The net effect of private litigation under the Federal securities laws has been to weaken the financial disclosure system on which our capital markets depend. The accounting profession, which is at the heart of the Financial Disclosure System, has warned that because of the doctrine of joint and several liability, accountants face potential liability which could destroy the ability of independent auditors to review financial disclosure by companies.

We need to rationalize the current framework for assessing liability so it is fairer and doesn't simply create an incentive to sue those with the deepest pockets. Unlimited liability is simply not the most effective deterrent of wrongdoing. We need to more directly police the conduct of professionals like accountants and do so in a more effective manner.

LEGISLATIVE SOLUTIONS

The bill contains three major initiatives to deal with these problems:

First, it empowers investors so that they—not their lawyers—have greater control over class action cases.

Second, it limits opportunities for frivolous litigation.

Third, it rationalizes the professional liability of accountants in exchange for stronger regulation.

In addition, the bill incorporates measures previously proposed in Congress to strengthen the obligation of auditors to search for fraud and to lengthen the statute of limitations for fraud actions.

1. EMPOWERING INVESTORS

The bill addresses abuses of investors by their lawyers by ensuring that investors, not lawyers, decide whether to bring a case, whether to settle, and how much the lawyers should receive.

The bill requires courts to appoint a plaintiff steering committee or a guardian to directly control lawyers for the class.

The bill requires that notices of settlement agreements sent to investors spell out clearly important facts such as how much investors are giving up by settling, and how much their lawyers will receive in the settlement.

The bill requires that courts tie awards of lawyers' fees directly to how much is recovered by investors, rather than simply how many hours the lawyers billed or how many pages of briefs they filed.

The bill establishes an alternative dispute resolution procedure to make it easier to prosecute a case without the necessity of slow and expensive Federal court proceedings. This idea is very similar to a provision in the products liability bill passed by the Commerce Committee last fall, and like that bill it is intended to speed up the recovery process for plaintiffs who have strong cases.

These provisions should ensure that defrauded investors are not cheated a second time by their lawyers. It also should help victims of fraud to recover damages more quickly, with less of their recovery drained off in lawyers' fees.

2. FRIVOLOUS LITIGATION

The bill requires that in order to bring a securities case as a class action, the plaintiffs in whose name the case is brought must have held either 1 percent of the securities which are the subject of the litigation or $10,000 worth of securities. This should help stop a problem pointed to by several courts, in which professional plaintiffs who own small amounts of stock in many companies try to bring class action lawsuits whenever one of their investments goes down.

The bill clarifies how a lawyer should plead a securities fraud claim. Plaintiffs' lawyers should have no trouble meeting these standards if they have legitimate cases and have looked at the facts.

These and other reforms should end the race to the courthouse by lawyers eager to file a case without investigating the facts or finding a real client.

3. SECURITIES LITIGATION AND FINANCIAL REPORTING

The accounting profession has argued that accounting firms are unfairly singled out under the current litigation system simply because they are a deep pocket. They claim that their liability exposure under the current system could drive them away from providing auditing services to many companies, especially new companies and high-technology companies.

The bill establishes a liability system for less culpable defendants that is linked to degree of fault. At the same time, the bill establishes a self-disciplinary organization for accountants under the direct supervision of the SEC. This entity would be somewhat like self-regulatory organizations such as the New York Stock Exchange or the National Association of Securities Dealers. The net effect should be a more direct and rational way of dealing with bad apples in the accounting profession without punishing the entire profession.

3. ENHANCING DETERRENCE OF FRAUD

The bill would extend the statute of limitations for implied actions to 5 years from the date of the violation, or 2 years after the violation was discovered or should have been discovered through the exercise of reasonable diligence. The bill also incorporates pending legislation concerning the responsibility of auditors to search for and report fraud. A similar bill in past Congresses has been supported by the SEC and the AICPA.

There is tremendous support for this legislation within Congress and from a large variety of private organizations. I look forward to working with my colleagues to enact comprehensive reform as soon as possible.●

● Ms. MIKULSKI. Mr. President, I am pleased to work on a bipartisan basis with my colleagues Senator DODD and Senator DOMENICI to cosponsor and renew my commitment to reforming securities litigation.

This bill addresses the problem of bounty hunters racing to the courthouse to be the first to file a lawsuit based on nothing more than a change in stock price—and then coerce innocent businesses to settle these lawsuits.

This bill eliminates the payment of bonus awards or bounties to representative plaintiffs in class actions. It gives people who are harmed extra time to consider who really harmed them before they have to file their case at the courthouse, by extending the statute of limitations to 2 years after the violation was or should have been discovered, and 5 years after the violation occurred. It also puts the investor in the driver's seat to control the litigation and recover more of their damages.

My constituents have told me that some attorneys are paying stock brokers and others a bounty in return for identifying who they should sue. High-technology companies, their accountants, and others are being lumped into these securities lawsuits that are filed at the courthouse just hours after a change in the stock price.

I am opposed to the race-to-the courthouse mentality that ends up in needless lawsuits that have huge litigation costs for firms that should be focused on creating jobs.

I want to see the courthouse door kept open for the little guy, but let's

get this bounty hunter law under control.

These needless lawsuits hit these firms through: expensive liability insurance premiums; disruption to the lives of those people who have been drawn into the suit—and is a tremendous distraction from the company's achieving its mission, contributing to the economy, and creating jobs.

I am concerned about these costs to the private sector, and to communities across America—and especially the costs to the high-technology community who are our hope for jobs in the 21st century.

I am hearing loud and clear that the current bounty hunter mentality is putting these jobs at risk.

Rather than creating jobs, these high-technology jobs are having to put their efforts and their dollars into expensive litigation and insurance.

I know how the system works with these lawsuits. It doesn't matter who's right or who's wrong. Both the guilty and the innocent end up settling at some big cost, even if just to avoid the risk and to get on with life.

So, the good guys cut their losses and the bad guys get off the hook.

I am pleased to work on a bipartisan basis with Senators DOMENICI and DODD and support this legislation that helps take care of the good guys.●

By Mr. D'AMATO:

S. 241. A bill to increase the penalties for sexual exploitation of children, and for other purposes; to the Committee on the Judiciary.

THE PREVENTION OF SEXUAL EXPLOITATION OF CHILDREN ACT

● Mr. D'AMATO. Mr. President, I rise today to introduce the Prevention of the Sexual Exploitation of Children's Act. There is a large and growing threat to the welfare and safety of our children being caused by the advent of the computer age. The "information superhighway," while a boon to our standard of living and economic growth, also contains hidden dangers which must be addressed to protect our children from debauched sexual predators. The "information superhighway" has become a safe haven for pedophiles to entice children into acts of sexual depravity with little chance of exposure. Pedophiles and other sexual miscreants historically would position themselves outside of schools, playgrounds, and other public areas where children would congregate in order to satisfy their own depraved appetites. Now through the use of bulletin boards, major on-line services such as Prodigy, America Online, Compuserve, Internet, and a host of other computer conduits, these individuals can ply their trade with much less exposure to parental supervision or law enforcement. While many State and local authorities are addressing this problem, the use of the "information superhighway" makes the role of the Federal Government even more critical. The use of the computer conduits allow for the defendants to cross State, local and even international boundaries with impunity. These miscreants can be extremely violent and cause irreparable harm to the children they come into contact with. This violence must be answered with stiff judicial penalties.

In addition to the physical depravity that is a direct result of the computer age, there has been a noted increase in pornographic material involving children being distributed and sold over computer lines. This pornographic material not only acts as a stimulus to the pedophiles but the simple possession of this material by people creates a demand for it, and these people should share in the responsibility of the exploitation of children by the pornography producers. This circular motion of supply and demand fuels the proliferation of more and more pornographic material.

My legislation will raise the judicial penalties which would deter the proliferation of pornographic material available and remove the defendants from society. By enacting harsher judicial penalties, Congress will be sending a strong message that our society will not tolerate these forms of criminal behavior.

I ask my fellow colleagues to join me in support of this legislation. These violations are a growing concern both within the law enforcement community and the family structure, and we must deal with them now.

Mr. President, I ask for unanimous consent that the text of this legislation 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. 241

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 "Prevention of Sexual Exploitation of Children Act".

SEC. 2. PENALTIES.

(a) SEXUAL EXPLOITATION OF CHILDREN.—Section 2251(d) of title 18, United States Code, is amended—

(1) by striking "10 years" and inserting "15 years"; and

(2) by striking "more than 15 years" and inserting "more than 20 years".

(b) CERTAIN ACTIVITIES RELATING TO MATERIAL INVOLVING THE SEXUAL EXPLOITATION OF MINORS.—Section 2252(b)(1) of title 18, United States Code, is amended—

(1) by striking "ten years" and inserting "15 years"; and

(2) by striking "more than fifteen" and inserting "more than 20 years".

U.S. SENATE,
Washington, DC, January 18, 1995.

DEAR COLLEAGUE: I am writing to invite you to join me as a cosponsor of "The Prevention of Sexual Exploitation of Children's Act".

Technological advances, while a boon to our standard of living and our economic growth, contain hidden dangers that directly effect the welfare of our children. Computer conduits, or the "information superhighway", is being used extensively to entice children into acts of sexual depravity by pedofiles and other deviants. These sexual predators will often depict themselves as children and arrange a meeting with their victims, with the child being sexually abused as the ultimate outcome. In addition to the luring of children through the "information superhighway", these conduits are also being used to transport child pornography. The influx and availability of the child pornography only prompt these sexual deviants into further preying on our children.

Pedofiles and other sexual miscreants historically would position themselves outside of schools, playgrounds and other public areas where children would congregate in order to satisfy their own depraved appetites. Now through the use of bulletin boards, major on-line services, such as Prodigy, America Online, Compuserve, Internet, and a host of other computer conduits, these individuals can ply their trade with much less exposure to parental supervision or law enforcement. These deviants are often very violent and cause the children irreparable harm.

This legislation will raise the judicial penalties which would deter the proliferation of pornographic material available and remove the defendants from society. By enacting harsher judicial penalties, Congress will be sending a strong message that our society will not tolerate these forms of criminal behavior.

If you would like to help me stem this burgeoning problem by cosponsoring the "Prevention of Sexual Exploitation of Children's Act", please contact Greg Regan of my office at 4-8349.

Sincerely,

ALFONSE M. D'AMATO,
Senator

[From the New York Post, Jan. 9, 1995]

MOLESTERS WITH A MODEM—KIDDIE-SEX PERVERTS USING COMPUTERS TO LURE VICTIMS

(By Lou Lumenick and Kieran Crowley)

City cops are about to start patrolling the information superhighway to hunt down child pornographers and pedophiles who are luring kids through high-tech computer bulletin boards, The Post has learned.

"The bulletin boards are a total haven for pedophiles," said Sgt. Richard Perrine, who's forming a new computer investigation unit.

"There are no names and faces, and a 33-year-old man can pass himself off as a 10-year-old kid."

Perrine said the new unit, in the NYPD's Organized Crime Control Bureau, plans to include computer child-pornographers and pedophiles among its targets.

"We haven't really solidified our strategy yet," he told The Post.

"This is something that's so new, law enforcement is not quite ready for it."

Law-enforcement officials say pedophiles are lurking on the nation's three major on-line services, America Online, Prodigy and Compuserve—as well as on the worldwide Internet, smaller on-line services, and locally-operated computer bulletin boards.

On-line services are an easy way for pedophiles to meet children anonymously, noted Dyanne Greer, a senior lawyer with the National Center for the Prosecution of Child Abuse.

"Many cases are not reported, so I'm not sure anybody is really aware how much this is going on," she said.

A Post probe uncovered these on-line horror stories:

Westchester computer expert George Telesha pretended to be a 14-year-old girl on America Online and was quickly besieged by perverts sending dirty pictures.

A Manhattan computer expert allegedly got a 13-year-old New Jersey boy he met on-line to go skating with him.

Cops said the man lured the youth into the woods near the boy's home and sexually abused him six times between last July and September.

An unemployed Brooklyn computer programmer tried to sodomize a Nevada teen-ager he met on a computer bulletin board.

A 27-year-old computer engineer in Cupertino, Calif., allegedly met a 14-year-old boy through America Online.

He is charged with handcuffing, shackling and blindfolding the boy and then taking him to his apartment, where he whipped him with a belt, shaved his pubic hair and had sex with him.

A California man sent pornographic photos via computer to a teen-ager, then sought to have the teen killed to silence him.

Such crimes are not easy to investigate or prosecute, officials note.

"It's a bigger problem than most people realize," said Mike Brick, director of the Orlando bureau of the Florida State Office of Law Enforcement.

"There's a lot of people out there who want to have sex with children. If they hang out at a real playground, a teacher or someone might see them. In the computer playground, they can more or less hide in the bushes."

A handful of agencies have staffers pose as youngsters to solicit dirty pictures and come-ons, but many don't have the manpower, equipment or inclination to do so on a regular basis.

And even if they did, experts say there's probably no way to completely stop on-line perverts—who constitute a tiny fraction of overall on-line communicators—short of shutting down the services.

And that is not only unlikely, but would rob children and others of a valuable educational resource.

The service say they're concerned—but in no position to play the role of police.

AOL spokeswoman Pam McGraw said computer-privacy laws keep her company's hands tied when it comes to the person-to-person type of communication in which porn can be exchanged in electronic "private chat rooms."

"Federal law prevents us from monitoring E-mail," McGraw said. "We do our best to prevent misuse of our service."

She urged AOL customers to report offensive communications which are prohibited under company rules so the company can warn offenders or eject them from the system.

Law enforcement officials say on-line companies are quick to cut off perverts and help track down and prosecute pedophiles and pornographers.

But the crimes still flourish because computers make life simpler for the perverts.

Pedophilies can easily pretend to be a child on-line, or even someone of the opposite sex, to help draw a child into a trap. And they can elude detection by using false names and post office boxes.

"Offenders can say they're other kids, then arrange for face-to-face meetings." Greer said "It's pretty scary when you find out you're dealing with a 47-year-old man instead of the 14-year-old you expected.●

By Mr. DASCHLE (for himself, Mr. BREAUX, Mr. KENNEDY, Mr. REID, Mr. ROCKEFELLER, Ms. MIKULSKI, Mr. FORD, Mr. DODD, and Mr. KERRY):

S. 242. A bill to amend the Internal Revenue Code of 1986 to allow a deduction for the payment of tuition for higher education and interest on student loans; to the Committee on Finance.

HIGHER EDUCATION TAX RELIEF ACT

Mr. DASCHLE. Mr. President, earlier today, several of my distinguished colleagues and I announced our intention to introduce another important element of our Democratic plan to help middle-class Americans who are squeezed between prices that are rising and incomes that are not.

Today Senators BREAUX, KENNEDY, REID, ROCKEFELLER, MIKULSKI, FORD, DODD, KERRY, and I are introducing the Higher Education Tax Relief Act of 1995. This legislation will provide tax relief for middle-income families who are trying to send their children to college or vocational or professional school, as well as to individuals who seek such educational opportunities.

As I have noted on many occasions, our highest priority in the 104th Congress is to strengthen the financial security of working middle-income families. One of our greatest concerns is the increasing inability of many families to afford to send their children to college or vocational school.

Pressures on State budgets are forcing public colleges and universities to increase the tuition and fees they charge to new students. Many private institutions are trying to fill the student aid gap by taking on the task themselves, but they are finding it more and more costly to do so.

Our legislation will provide a tax deduction of up to $10,000 for tuition and fees associated with attending public and non-profit colleges and universities or vocational and professional schools. This aspect of the proposal is identical to the tuition deduction advanced by President Clinton in his middle-class bill of rights package. We think the President was right to focus on education in that package because it is one of the highest priorities—and biggest expenses—of middle-income families.

In addition, our tax deduction would be available up to the same amount for interest incurred on student loans. Ever since the deduction for student loan interest was eliminated in the Tax Reform Act of 1986, we have heard an ever-louder cry from middle-income Americans that they want it back. And for good reason. As more and more forms of direct student aid are eliminated, these families are having to incur debt in order to finance the costs of higher education, especially since their incomes simply are not rising commensurate with the cost of living.

The deduction we are proposing, whether taken for tuition and fees or for student loan interest, is available to families with incomes of up to $100,000 per year or individuals with incomes of up to $70,000 per year. Moreover, the deduction may be taken whether or not the taxpayer is in a position to itemize on his or her return, providing greater assurance that those at the lower end of the middle-income range will benefit.

Our proposal provides a choice to middle-income Americans and complements the various forms of student aid currently available to those with the lowest incomes. Middle-income taxpayers, most of whom no longer qualify for other forms of student aid, may deduct amounts they are able to pay for tuition and fees at the time they or their children are attending an institution of higher education. If, however, they must finance their own or their children's education, they may deduct the interest on student loans later when they begin paying back the loans.

Mr. President, the Higher Education Tax Relief Act of 1995, along with the President's tuition deduction proposal, identifies a major difference between the Republican and Democratic views of middle-income tax relief. The Republican Contract With America does not contain tax relief directed at helping middle-income families pay for education. In fact, it contains numerous measures that will further harm the ability of middle-income Americans to obtain the education they seek.

For example, one of the spending cuts contemplated by Republicans is the repeal of the in-school interest subsidy for student loans. Right now, the interest clock on many student loans does not start ticking until a student has finished college. The Republicans want to start charging interest immediately. We believe that's an attack on middle-income families who cannot afford to send their children to college without borrowing the money.

College already is too expensive for many families, and we shouldn't limit the number who can afford it by raising the costs even more. Democrats believe opportunities should be open to everyone willing to earn them with hard work. We believe education is necessary and should be affordable to anyone who wants it—that we should not tax the income necessary for middle-income families to send their children to college or vocational and professional schools.

These are Democratic values.

Let me point out that none of us introducing this legislation today have any intention of increasing the deficit as a result of this proposal. We have asked the Joint Committee on Taxation to estimate the cost of this proposal and, at the appropriate time, we intend to offer ways to pay for it.

Mr. President, I ask that a copy of our legislation be printed in the RECORD.

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

S. 242

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 "Higher Education Tax Relief Act of 1995".

SEC. 2. DEDUCTION FOR HIGHER EDUCATION EXPENSES.

(a) DEDUCTION ALLOWED.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (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. HIGHER EDUCATION TUITION AND FEES; INTEREST ON STUDENT LOANS.

"(a) ALLOWANCE OF DEDUCTION.—In the case of an individual, there shall be allowed as a deduction an amount equal to the sum of—

"(1) the qualified higher education expenses, plus

"(2) interest on qualified higher education loans,

paid by the taxpayer during the taxable year.

"(b) QUALIFIED HIGHER EDUCATION EXPENSES.—For purposes of this section—

"(1) QUALIFIED HIGHER EDUCATION EXPENSES.—

"(A) IN GENERAL.—The term 'qualified higher education expenses' means tuition and fees required for the enrollment or attendance of—

"(i) the taxpayer,

"(ii) the taxpayer's spouse, or

"(iii) any dependent of the taxpayer with respect to whom the taxpayer is allowed a deduction under section 151,

as an eligible student at an institution of higher education.

"(B) EXCEPTION FOR EDUCATION INVOLVING SPORTS, ETC.—Such term does not include expenses with respect to any course or other education involving sports, games, or hobbies unless such expenses—

"(i) are part of a degree program, or

"(ii) are deductible under this chapter without regard to this section.

"(C) EXCEPTION FOR NONACADEMIC FEES.—Such term does not include any student activity fees, athletic fees, insurance expenses, or other expenses unrelated to a student's academic course of instruction.

"(D) ELIGIBLE STUDENT.—For purposes of subparagraph (A), the term 'eligible student' means a student who meets the requirements of section 484(a)(1) of the Higher Education Act of 1965 (20 U.S.C. 1091(a)(1)).

"(2) DOLLAR LIMITATION.—

"(A) IN GENERAL.—The amount taken into account under paragraph (1) for any taxable year shall not exceed $10,000.

"(B) PHASE-IN.—In the case of taxable years beginning in 1996, 1997, 1998, and 1999, the following amounts shall be substituted for '$10,000' in subparagraph (A):

"For taxable years beginning in:	The substitute amount is:
1996	$2,000
1997	4,000
1998	6,000
1999	8,000.

"(3) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

"(A) IN GENERAL.—If the modified adjusted gross income of the taxpayer for the taxable year exceeds $70,000 ($100,000 in the case of a joint return), the amount which would (but for this paragraph) be taken into account under paragraph (1) shall be reduced (but not below zero) by the amount which bears the same ratio to the amount which would be taken into account as such excess bears to $20,000.

"(B) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 1996, the $70,000 and $100,000 amounts contained in subparagraph (A) shall be increased by an amount equal to—

"(i) such dollar amount, multiplied by

"(ii) the cost-of-living adjustment under section 1(f)(3) for the calendar year in which the taxable year begins, except that section 1(f)(3)(B) shall be applied by substituting '1995' for '1992'.

"(C) ROUNDING.—If any amount as adjusted under subparagraph (B) is not a multiple of $50, such amount shall be rounded to the nearest multiple of $50 (or if such amount is a multiple of $25, such amount shall be rounded to the next highest multiple of $50).

"(D) MODIFIED ADJUSTED GROSS INCOME.—The term 'modified adjusted gross income' means the adjusted gross income of the taxpayer for the taxable year determined—

"(i) without regard to this section and sections 911, 931, and 933, and

"(ii) after the application of sections 86, 135, 219, and 469.

"(4) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' means an institution which—

"(A) is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), and

"(B) is eligible to participate in programs under title IV of such Act.

"(c) QUALIFIED HIGHER EDUCATION LOAN.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified higher education loan' means a loan to a student which is—

"(A) made, insured, or guaranteed by the Federal Government,

"(B) made by a State or a political subdivision of a State,

"(C) made from the proceeds of a qualified student loan bond under section 144(b), or

"(D) made by an institution of higher education (as defined in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a))).

"(2) LIMITATION.—

"(A) IN GENERAL.—The amount of interest on a qualified higher education loan which is taken into account under subsection (a)(2) shall be reduced by the amount which bears the same ratio to such amount of interest as—

"(i) the proceeds from such loan used for qualified higher education expenses, bears to

"(ii) the total proceeds from such loan.

"(B) QUALIFIED HIGHER EDUCATION EXPENSES.—For purposes of subparagraph (A), the term 'qualified higher education expenses' has the meaning given such term by subsection (b), except that—

"(i) such term shall include reasonable living expenses while away from home, and

"(ii) the limitations of paragraphs (2) and (3) of subsection (b) shall not apply.

"(d) COORDINATION WITH OTHER PROVISIONS.—

"(1) NO DOUBLE BENEFIT.—

"(A) IN GENERAL.—No deduction shall be allowed under subsection (a) for qualified higher education expenses or interest on qualified higher education loans with respect to which a deduction is allowed under any other provision of this chapter.

"(B) SAVINGS BOND EXCLUSION.—A deduction shall be allowed under subsection (a)(1) for qualified higher education expenses only to the extent the amount of such expenses exceeds the amount excludable under section 135 for the taxable year.

"(2) QUALIFIED RESIDENCE INTEREST.—If a deduction is allowed under subsection (a)(2) for interest which is also qualified residence interest under section 163(h), such interest shall not be taken into account under section 163(h).

"(e) SPECIAL RULES.—

"(1) ELECTION.—If a deduction is allowable under more than one provision of this chapter with respect to qualified higher education expenses, the taxpayer may elect the provision under which the deduction is allowed.

"(2) LIMITATION ON TAXABLE YEAR OF DEDUCTION.—

"(A) IN GENERAL.—A deduction shall be allowed under subsection (a)(1) for any taxable year only to the extent the qualified higher education expenses are in connection with attendance at an institution of higher education during the taxable year.

"(B) CERTAIN PREPAYMENTS ALLOWED.—Subparagraph (A) shall not apply to qualified higher education expenses paid during a taxable year which are in connection with attendance at an institution of higher education which begins during the first 2 months of the following taxable year.

"(3) ADJUSTMENT FOR CERTAIN SCHOLARSHIPS AND VETERANS BENEFITS.—The amount of qualified higher education expenses otherwise taken into account under subsection (a)(1) with respect to the education of an individual shall be reduced (before the application of subsection (b)) by the sum of the amounts received with respect to such individual for the taxable year as—

"(A) a qualified scholarship which under section 117 is not includable in gross income,

"(B) an educational assistance allowance under chapter 30, 31, 32, 34, or 35 of title 38, United States Code, or

"(C) a payment (other than a gift, bequest, devise, or inheritance within the meaning of section 102(a)) for educational expenses, or attributable to attendance at an eligible educational institution, which is exempt from income taxation by any law of the United States.

"(4) NO DEDUCTION FOR MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—If the taxpayer is a married individual (within the meaning of section 7703), this section shall apply only if the taxpayer and his spouse file a joint return for the taxable year.

"(5) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations requiring recordkeeping and information reporting."

(b) DEDUCTION ALLOWED IN COMPUTING ADJUSTED GROSS INCOME.—Section 62(a) of such Code is amended by inserting after paragraph (15) the following new paragraph:

"(16) HIGHER EDUCATION TUITION AND FEES.—The deduction allowed by section 219."

(c) CONFORMING AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking the item relating to section 220 and inserting:

"Sec. 220. Higher education tuition and fees.
"Sec. 221. Cross reference."

(d) EFFECTIVE DATES.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

Mr. KENNEDY. Mr. President, a college education is a building block of the American dream. But with college costs rising, higher education is increasingly out of reach for many families.

President Clinton deserves credit for acting on this problem, and the legislation we are introducing today will carry out the President's proposal to make college education more affordable for working families. The bill provides a tax deduction of up to $10,000 a year for college tuition costs, and it restores the deduction for interest on student loans.

The deduction for tuition will be available for families earning up to $100,000 a year and individuals earning up to $70,000. It will be available for tuition at traditional 4-year colleges and universities, community colleges, and vocational and professional schools offering job training in a variety of fields.

The deduction for interest on student loans is equally important, and will offer significant help to students who must borrow to go to college and who are struggling to pay off their loans and establish themselves in the working world.

By contrast, the Republican contract proposes to cut over $10 billion in Federal financial aid for students over the next 5 years. In Massachusetts alone, that would mean a loss of over $100 million a year. In reality, when you read the fine print, the Contract With America is a contract against college education.

Families across the country know that education is the best investment they can make in their children's future. We must do more to ease the burden of that investment, not make it harder for families to obtain it.

I look forward to working with my colleagues on both side of the aisle to ensure that this important legislation becomes law.

By Mr. SARBANES (for himself, Mr. BYRD, Mr. ROCKEFELLER, and Ms. MIKULSKI):

S.J. Res. 20. A joint resolution granting the consent of Congress to a compact to provide for joint natural resource management and enforcement of laws and regulations pertaining to natural resources and boating at the Jennings Randolph Lake Project lying in Garrett County, MD and Mineral County, WV, entered into between the States of West Virginia and Maryland; to the Committee on the Judiciary.

THE JENNINGS RANDOLPH LAKE PROJECT COMPACT

Mr. SARBANES. Mr. President, today I am reintroducing legislation together with my colleagues Senators BYRD, ROCKEFELLER, and MIKULSKI to grant congressional consent to a compact entered into between the States of West Virginia and Maryland, with concurrence of the U.S. Army Corps of Engineers, to provide for joint management and enforcement of laws and regulations pertaining to natural resources and boating at Jennings Randolph Lake. This legislation was approved by the Senate in the closing days of the 103d Congress, but was not considered in the House.

Jennings Randolph Lake is located on the north branch of the Potomac River in Garrett County, MD and Mineral County, WV. Construction of the dam, which created the lake, was authorized by the Flood Control Act of 1962 and the project was specifically designed to improve the water quality of the Potomac River, reduce flood damage, provide water supply, and opportunities for recreation. Completed in 1982, the dam is one of the largest dams east of the Mississippi—approximately 6.6 miles long, with a surface area of 952 acres and a drainage area of 263 square miles. Originally named Bloomington Lake, the project was rededicated in May 1987 in honor of former West Virginia Senator Jennings Randolph.

The lake and surrounding area are extraordinarily beautiful and include some of the most picturesque countryside in the Nation. The lake and the north branch of the Potomac River below the dam support a recreational trout fishery that is regarded as one of the best in America. Other recreational opportunities including boating, downstream whitewater rafting, hiking, and picnicing are drawing increasing numbers of visitors to the lake. The Army Corps of Engineers currently operates and maintains five recreation sites at the project and the State of Maryland, in cooperation with the corps, is in the process of developing a boat launch and support facilities on the Maryland side of the project.

Unfortunately, the creation of the lake removed the natural boundary between West Virginia and Maryland and the meandering nature of the former river and the depth of the lake have made it virtually impossible to reestablish the precise location of the boundary. As a consequence, enforcement of natural resources and boating laws and regulations on the lake has been tentative at best and at worst, nonexistent. As recreational uses of the lake continue to increase, it is anticipated that enforcement problems will become increasingly difficult.

The compact legislation I am introducing today provides the States of West Virginia and Maryland with concurrent jurisdiction over the project area to enable them to jointly enforce natural resource and boating laws and regulations. This approach eliminates the need to redefine the boundary between the two States for law enforcement purposes. As required before congressional action can be taken, the compact was approved by the respective legislatures of Maryland and West Virginia in their 1993 legislative sessions.

Mr. President, this legislation will address the ongoing problems associated with the management and enforcement of laws and regulations relating to natural resources and boating at the Jennings Randolph Lake Project. It has been long awaited by both States and I urge its swift enactment.

I ask unanimous consent that the legislation be printed in the RECORD.

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

S.J. RES. 20

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONGRESSIONAL CONSENT.

The Congress hereby consents to the Jennings Randolph Lake Project Compact entered into between the States of West Virginia and Maryland which compact is substantially as follows:

"COMPACT

"Whereas the State of Maryland and the State of West Virginia, with the concurrence of the United States Department of the Army, Corps of Engineers, have approved and desire to enter into a compact to provide for joint natural resource management and enforcement of laws and regulations pertaining to natural resources and boating at the Jennings Randolph Lake Project lying in Garrett County, Maryland and Mineral County, West Virginia, for which they seek the approval of Congress, and which compact is as follows:

"Whereas the signatory parties hereto desire to provide for joint natural resource management and enforcement of laws and regulations pertaining to natural resources and boating at the Jennings Randolph Lake Project lying in Garrett County, Maryland and Mineral County, West Virginia, for which they have a joint responsibility; and they declare as follows:

"1. The Congress, under Public Law 87–874, authorized the development of the Jennings Randolph Lake Project for the North Branch of the Potomac River substantially in accordance with House Document Number 469, 87th Congress, 2nd Session for flood control, water supply, water quality, and recreation; and

"2. Section 4 of the Flood Control Act of 1944 (Ch 665, 58 Stat. 534) provides that the Chief of Engineers, under the supervision of the Secretary of War (now Secretary of the Army), is authorized to construct, maintain and operate public park and recreational facilities in reservoir areas under control of such Secretary for the purpose of boating, swimming, bathing, fishing, and other recreational purposes, so long as the same is not inconsistent with the laws for the protection of fish and wildlife of the State(s) in which such area is situated; and

"3. Pursuant to the authorities cited above, the U.S. Army Engineer District (Baltimore), hereinafter 'District', did construct and now maintains and operates the Jennings Randolph Lake Project; and

"4. The National Environmental Policy Act of 1969 (P.L. 91–190) encourages productive and enjoyable harmony between man and his environment, promotes efforts which will stimulate the health and welfare of man, and encourages cooperation with State and local governments to achieve these ends; and

"5. The Fish and Wildlife Coordination Act (16 U.S.C. 661–666c) provides for the consideration and coordination with other features of water-resource development programs through the effectual and harmonious planning, development, maintenance, and coordination of wildlife conservation and rehabilitation; and

"6. The District has Fisheries and Wildlife Plans as part of the District's project Operational Management Plan; and

"7. In the respective States, the Maryland Department of Natural Resources (hereinafter referred to as 'Maryland DNR') and the West Virginia Division of Natural Resources (hereinafter referred to as 'West Virginia DNR') are responsible for providing a system of control, propagation, management, protection, and regulation of natural resources and boating in Maryland and West Virginia and the enforcement of laws and regulations pertaining to those resources as provided in Annotated Code of Maryland Natural Resources Article and West Virginia Chapter 20, respectively, and the successors thereof; and

"8. The District, the Maryland DNR, and the West Virginia DNR are desirous of conserving, perpetuating and improving fish and wildlife resources and recreational benefits of the Jennings Randolph Lake Project; and

"9. The District and the States of Maryland and West Virginia wish to implement the aforesaid acts and responsibilities through this Compact and they each recognize that consistent enforcement of the natural resources and boating laws and regulations can best be achieved by entering this Compact:

"Now, therefore, be it *Resolved*, That the States of Maryland and West Virginia, with the concurrence of the United States Department of the Army, Corps of Engineers, hereby solemnly covenant and agree with each other, upon enactment of concurrent legislation by The Congress of the United States and by the respective state legislatures, to the Jennings Randolph Lake Project Compact, which consists of this preamble and the articles that follow:

"Article I—Name, Findings, and Purpose

"1.1 This compact shall be known and may be cited as the Jennings Randolph Lake Project Compact.

"1.2 The legislative bodies of the respective signatory parties, with the concurrence of the U.S. Army Corps of Engineers, hereby find and declare:

"1. The water resources and project lands of the Jennings Randolph Lake Project are affected with local, state, regional, and national interest, and the planning, conservation, utilization, protection and management of these resources, under appropriate arrangements for inter-governmental cooperation, are public purposes of the respective signatory parties.

"2. The lands and waters of the Jennings Randolph Lake Project are subject to the sovereign rights and responsibilities of the signatory parties, and it is the purpose of this compact that, notwithstanding any boundary between Maryland and West Virginia that preexisted the creation of Jennings Randolph Lake, the parties will have and exercise concurrent jurisdiction over any lands and waters of the Jennings Randolph Lake Project concerning natural resources and boating laws and regulations in the common interest of the people of the region.

"Article II—District Responsibilities

"The District, within the Jennings Randolph Lake Project,

"2.1 Acknowledges that the Maryland DNR and West Virginia DNR have authorities and responsibilities in the establishment, administration and enforcement of the natural resources and boating laws and regulations applicable to this project, provided that the laws and regulations promulgated by the States support and implement, where applicable, the intent of the Rules and Regulations Governing Public Use of Water Resources Development Projects administered by the Chief of Engineers in Title 36, Chapter RI, Part 327, Code of Federal Regulations,

"2.2 Agrees to practice those forms of resource management as determined jointly by the District, Maryland DNR and West Virginia DNR to be beneficial to natural resources and which will enhance public recreational opportunities compatible with other authorized purposes of the project,

"2.3 Agrees to consult with the Maryland DNR and West Virginia DNR prior to the issuance of any permits for activities or special events which would include, but not necessarily be limited to: fishing tournaments, training exercises, regattas, marine parades, placement of ski ramps, slalom water ski courses and the establishment of private markers and/or lighting. All such permits issued by the District will require the permittee to comply with all State laws and regulations,

"2.4 Agrees to consult with the Maryland DNR and West Virginia DNR regarding any recommendations for regulations affecting natural resources, including, but not limited to, hunting, trapping, fishing or boating at the Jennings Randolph Lake Project which the District believes might be desirable for reasons of public safety, administration of public use and enjoyment,

"2.5 Agrees to consult with the Maryland DNR and West Virginia DNR relative to the marking of the lake with buoys, aids to navigation, regulatory markers and establishing and posting of speed limits, no wake zones, restricted or other control areas and to provide, install and maintain such buoys, aids to navigation and regulatory markers as are necessary for the implementation of the District's Operational Management Plan. All buoys, aids to navigation and regulatory markers to be used shall be marked in conformance with the Uniform State Waterway Marking System,

"2.6 Agrees to allow hunting, trapping, boating and fishing by the public in accordance with the laws and regulations relating to the Jennings Randolph Lake Project,

"2.7 Agrees to provide, install and maintain public ramps, parking areas, courtesy docks, etc., as provided for by the approved Corps of Engineers Master Plan, and

"2.8 Agrees to notify the Maryland DNR and the West Virginia DNR of each reservoir drawdown prior thereto excepting drawdown for the reestablishment of normal lake levels following flood control operations and drawdown resulting from routine water control management operations described in the reservoir regulation manual including releases requested by water supply owners and normal water quality releases. In case of emergency releases or emergency flow curtailments, telephone or oral notification will be provided. The District reserves the right, following issuance of the above notice, to make operational and other tests which may be necessary to insure the safe and efficient operation of the dam, for inspection and maintenance purposes, and for the gathering of water quality data both within the impoundment and in the Potomac River downstream from the dam.

"Article III—State Responsibilities

"The State of Maryland and the State of West Virginia agree:

"3.1 That each State will have and exercise concurrent jurisdiction with the District and the other State for the purpose of enforcing the civil and criminal laws of the respective States pertaining to natural resources and boating laws and regulations over any lands and waters of the Jennings Randolph Lake Project;

"3.2 That existing natural resources and boating laws and regulations already in effect in each State shall remain in force on the Jennings Randolph Lake Project until either State amends, modifies or rescinds its laws and regulations;

"3.3 That the Agreement for Fishing Privileges dated June 24, 1985 between the State of Maryland and the State of West Virginia, as amended, remains in full force and effect;

"3.4 To enforce the natural resources and boating laws and regulations applicable to the Jennings Randolph Lake Project;

"3.5 To supply the District with the name, address and telephone number of the person(s) to be contacted when any drawdown except those resulting from normal regulation procedures occurs;

"3.6 To inform the Reservoir Manager of all emergencies or unusual activities occurring on the Jennings Randolph Lake Project;

"3.7 To provide training to District employees in order to familiarize them with natural resources and boating laws and regulations as they apply to the Jennings Randolph Lake Project; and

"3.8 To recognize that the District and other Federal Agencies have the right and responsibility to enforce, within the boundaries of the Jennings Randolph Lake Project, all applicable Federal laws, rules and regulations so as to provide the public with safe and healthful recreational opportunities and to provide protection to all federal property within the project.

"Article IV—Mutual Cooperation

"4.1 Pursuant to the aims and purposes of this Compact, the State of Maryland, the State of West Virginia and the District mutually agree that representatives of their natural resource management and enforcement agencies will cooperate to further the purposes of this Compact. This cooperation includes, but is not limited to, the following:

"4.2 Meeting jointly at least once annually, and providing for other meetings as deemed necessary for discussion of matters relating to the management of natural resources and visitor use on lands and waters within the Jennings Randolph Lake Project;

"4.3 Evaluating natural resources and boating, to develop natural resources and boating management plans and to initiate and carry out management programs;

"4.4 Encouraging the dissemination of joint publications, press releases or other public information and the interchange between parties of all pertinent agency policies and objectives for the use and perpetuation of natural resources of the Jennings Randolph Lake Project; and

"4.5 Entering into working arrangements as occasion demands for the use of lands, waters, construction and use of buildings and other facilities at the project.

"Article V—General Provisions

"5.1 Each and every provision of this Compact is subject to the laws of the States of Maryland and West Virginia and the laws of the United States, and the delegated authority in each instance.

"5.2 The enforcement and applicability of natural resources and boating laws and regulations referenced in this Compact shall be

limited to the lands and waters of the Jennings Randolph Lake Project, including but not limited to the prevailing reciprocal fishing laws and regulations between the States of Maryland and West Virginia.

"5.3 Nothing in this Compact shall be construed as obligating any party hereto to the expenditure of funds or the future payment of money in excess of appropriations authorized by law.

"5.4 The provisions of this Compact shall be severable, and if any phrase, clause, sentence or provision of the Jennings Randolph Lake Project Compact is declared to be unconstitutional or inapplicable to any signatory party or agency of any party, the constitutionality and applicability of the Compact shall not be otherwise affected as to any provision, party, or agency. It is the legislative intent that the provisions of the Compact be reasonably and liberally construed to effectuate the stated purposes of the Compact.

"5.5 No member of or delegate to Congress, or signatory shall be admitted to any share or part of this Compact, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

"5.6 When this Compact has been ratified by the legislature of each respective State, when the Governor of West Virginia and the Governor of Maryland have executed this Compact on behalf of their respective States and have caused a verified copy thereof to be filed with the Secretary of State of each respective State, when the Baltimore District of the U.S. Army Corps of Engineers has executed its concurrence with this Compact, and when this Compact has been consented to by the Congress of the United States, then this Compact shall become operative and effective.

"5.7 Either State may, by legislative act, after one year's written notice to the other, withdraw from this Compact. The U.S. Army Corps of Engineers may withdraw its concurrence with this Compact upon one year's written notice from the Baltimore District Engineer to the Governor of each State.

"5.8 This Compact may be amended from time to time. Each proposed amendment shall be presented in resolution form to the Governor of each State and the Baltimore District Engineer of the U.S. Army Corps of Engineers. An amendment to this Compact shall become effective only after it has been ratified by the legislatures of both signatory States and concurred in by the U.S. Army Corps of Engineers, Baltimore District. Amendments shall become effective thirty days after the date of the last concurrence or ratification.".

SEC. 2. The right to alter, amend or repeal this joint resolution is hereby expressly reserved. The consent granted by this joint resolution shall not be construed as impairing or in any manner affecting any right or jurisdiction of the United States in and over the region which forms the subject of the compact.

ADDITIONAL COSPONSORS

S. 91

At the request of Mr. COVERDELL, the names of the Senator from Mississippi [Mr. LOTT] and the Senator from North Carolina [Mr. HELMS] were added as cosponsors of S. 91, a bill to delay enforcement of the National Voter Registration Act of 1993 until such time as Congress appropriates funds to implement such Act.

S. 98

At the request of Mr. BRADLEY, the name of the Senator from West Virginia [Mr. BYRD] was added as a cosponsor of S. 98, a bill to amend the Congressional Budget Act of 1974 to establish a process to identify and control tax expenditures.

S. 111

At the request of Mr. DASCHLE, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 111, a bill to amend the Internal Revenue Code of 1986 to make permanent, and to increase to 100 percent, the deduction of self-employed individuals for health insurance costs.

S. 137

At the request of Mr. BRADLEY, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 137, a bill to create a legislative item veto by requiring separate enrollment of items in appropriations bills and tax expenditure provisions in revenue bills.

S. 145

At the request of Mr. GRAMM, the name of the Senator from Kentucky [Mr. MCCONNELL] was added as a cosponsor of S. 145, a bill to provide appropriate protection for the constitutional guarantee of private property rights, and for other purposes.

S. 153

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 153, a bill to reduce Federal spending and enhance military satellite communications by reducing funds for the MILSTAR II satellite program and accelerating plans for deployment of the Advanced EHF Satellite/MILSTAR III.

S. 155

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 155, a bill to reduce Federal spending by prohibiting the backfit of Trident I ballistic missile submarines to carry D-5 Trident II submarine-launched ballistic missiles.

S. 157

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 157, a bill to reduce Federal spending by prohibiting the expenditure of appropriated funds on the United States International Space Station Program.

S. 191

At the request of Mrs. HUTCHISON, the name of the Senator from Oklahoma [Mr. INHOFE] was added as a cosponsor of S. 191, a bill to amend the Endangered Species Act of 1973 to ensure that constitutionally protected private property rights are not infringed until adequate protection is afforded by reauthorization of the Act, to protect against economic losses from critical habitat designation, and for other purposes.

S. 194

At the request of Mr. MCCAIN, the name of the Senator from Louisiana [Mr. JOHNSTON] was added as a cosponsor of S. 194, a bill to repeal the Medicare and Medicaid Coverage Data Bank, and for other purposes.

S. 205

At the request of Mrs. BOXER, the names of the Senator from Arkansas [Mr. PRYOR], the Senator from Virginia [Mr. ROBB], the Senator from Montana [Mr. BAUCUS], and the Senator from Iowa [Mr. GRASSLEY] were added as cosponsors of S. 205, a bill to amend title 37, United States Code, to revise and expand the prohibition on accrual of pay and allowances by members of the Armed Forces who are confined pending dishonorable discharge.

S. 210

At the request of Mr. THOMAS, the name of the Senator from Arizona [Mr. KYL] was added as a cosponsor of S. 210, a bill to amend title XVIII of the Social Security Act to provide for coverage under part B of the medicare program of emergency care and related services furnished by rural emergency access care hospitals.

SENATE JOINT RESOLUTION 19

At the request of Mr. BROWN, the names of the Senator from Georgia [Mr. COVERDELL], the Senator from North Carolina [Mr. FAIRCLOTH], the Senator from Tennessee [Mr. FRIST], the Senator from Minnesota [Mr. GRAMS], the Senator from Iowa [Mr. GRASSLEY], the Senator from Texas [Mrs. HUTCHISON], the Senator from Oklahoma [Mr. INHOFE], the Senator from Arizona [Mr. KYL], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of Senate Joint Resolution 19, a joint resolution proposing an amendment to the Constitution of the United States relative to limiting congressional terms.

AMENDMENTS SUBMITTED

UNFUNDED MANDATES ACT

FORD AMENDMENTS NOS. 20–29

(Ordered to lie on the table.)

Mr. FORD submitted 10 amendments intended to be proposed by him to the bill, S.1, to curb the practice on imposing unfunded Federal mandates on States and local governments; 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; and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and

regulations; and for other purposes; as follows:

AMENDMENT NO. 20

On page 17, line 4, strike "or the House of Representatives".

AMENDMENT NO. 21

On page 17, lines 12 and 13, strike "or the House of Representatives".

AMENDMENT NO. 22

On page 26, strike lines 1 through 5 and insert end quotation marks.

AMENDMENT NO. 23

On page 26, strike beginning with line 11 through line 2 on page 28.

AMENDMENT NO. 24

On page 31, line 19, strike "House of Representatives or the".

AMENDMENT NO. 25

On page 14, line 8, strike "or the House of Representatives".

AMENDMENT NO. 26

On page 16, line 15, strike "or the House of Representatives".

AMENDMENT NO. 27

On page 13, line 25, and page 14, line 1, strike "or the House of Representatives".

AMENDMENT NO. 28

On page 3, line 17, strike "and the House of Representatives".

On page 4, lines 7 and 8, strike "and the House of Representatives".

On page 13, line 25 and page 14, line 1, strike "or the House of Representatives".

On page 14, line 8, strike "or the House of Representatives".

On page 16, line 15, strike "or the House of Representatives".

On page 17, line 4, strike "or the House of Representatives".

On page 17, lines 12 and 13, strike "or the House of Representatives".

On page 18, lines 1 and 2, strike "or the House of Representatives".

On page 19, lines 15 and 16, strike "or the House of Representatives".

On page 26, strike lines 1 through 5 and insert end quotation marks.

On page 26, strike beginning with line 11 through line 2 on page 28.

On page 28, line 13, strike "or the House of Representatives".

On page 29, line 8, strike "or the House of Representatives".

On page 31, line 19, strike "or the House of Representatives".

On page 32, strike lines 12 through 24 and insert the following:

The provisions of sections 101, 102, 103, 104, and 107 are enacted by the Senate—

(1) as an exercise of the rulemaking power of the Senate and as such they shall be considered as part of the rules of the Senate, 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 the Senate to change such rules (so far as relating to the Senate) at any time, in the same manner, and to the same extent as in the case of any other rule of the Senate.

On page 42, lines 20 and 21, strike "the Committee on Government Reform and Oversight of the House of Representatives and".

On page 43, strike lines 9 through 12, and insert the following:

"(A) ".

AMENDMENT NO. 29

On page 32, strike lines 12 through 24, and insert the following:

"The provisions of sections 101, 102, 103, 104, and 107 are enacted by the Senate—

"(1) as an exercise of the rulemaking power of the Senate and as such they shall be considered as part of the rules of the Senate 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 the Senate to change such rules (so far as relating to the Senate) at any time, in the same manner, and to the same extent as in the case of any other rule of the Senate."

DODD (AND OTHERS) AMENDMENT NO. 30

(Ordered to lie on the table.)

Mr. DODD (for himself, Mr. DASCHLE, and Mr. LAUTENBERG) submitted the following amendment intended to be proposed by them to the bill S. 1, supra; as follows:

At the appropriate place in the bill, insert the following:

SEC. . CONGRESSIONAL ENFORCEMENT OF A BALANCED BUDGET.

(a) PURPOSE.—The Congress declares it essential that the Congress prior to adopting in the 1st session of the 104th Congress a joint resolution proposing an amendment to the Constitution requiring a balanced Federal budget—

(1) set forth with specificity the policies that achieving such a balanced Federal budget would require; and

(2) enforce through the congressional budget process the requirement to achieve a balanced Federal budget.

(b) POINT OF ORDER AGAINST BUDGET RESOLUTIONS THAT FAIL TO SET FORTH A GLIDE PATH TO A BALANCED BUDGET.—Section 301 of the Congressional Budget Act of 1974 is amended by inserting at the end thereof the following new subsection:

"(j) CONGRESSIONAL ENFORCEMENT OF A BALANCED BUDGET.—It shall not be in order to consider any concurrent resolution on the budget (or amendment, motion, or conference report thereon) that—

"(1) fails to set forth appropriate levels for all items described in subsection (a)(1) through (7) for all fiscal years through 2002;

"(2) sets forth a level of outlays for fiscal year 2002 or any subsequent fiscal year that exceeds the level of revenues for that fiscal year; or

"(3) relies on the assumption of either—

"(A) reductions in direct spending; or

"(B) increases in revenues, without including specific reconciliation instructions under section 310 to carry out those assumptions.".

(c) REQUIREMENT FOR 60 VOTES TO WAIVE OR APPEAL IN THE SENATE.—Section 904 of the Congressional Budget Act of 1974 is amended by inserting "301(j)," after "301(i)," in both places that it appears.

(d) SUSPENSION IN THE EVENT OF WAR OR CONGRESSIONALLY DECLARED LOW GROWTH.—Section 258(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by inserting "301(j)," after "sections".

(e) EFFECTIVE DATE.—The amendments made by subsections (b), (c), and (d) shall take effect on the date that a joint resolution proposing a balanced budget amendment to the Constitution is adopted by the Congress.

GORTON (AND OTHERS) AMENDMENT NO. 31

Mr. GORTON (for himself, Mr. BYRD, Mr. LIEBERMAN, and Mr. GRAMM) proposed an amendment to the bill S. 1, supra; as follows:

At the end of the language proposed to be stricken by the amendment, add the following:

SEC. . NATIONAL HISTORY STANDARDS.

(a) IN GENERAL.—Notwithstanding any other provision of law, the National Education Goals Panel shall disapprove, and the National Education Standards and Improvement Council shall not certify, any voluntary national content standards, voluntary national student performance standards, or criteria for the certification of such content and student performance standards, on the subject of world and United States history, developed prior to the date of enactment of this Act.

(b) PROHIBITION.—No Federal funds shall be awarded to, or expended by, the National Center for History in the Schools, after the date of enactment of this Act, for the development of voluntary national content standards, voluntary national student performance standards, or criteria for the certification of such content and student performance standards, on the subject of such history.

(c) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) voluntary national content standards, voluntary national student performance standards, and criteria for the certification of such content and student performance standards, on the subject of world and United States history, established under title II of the Goals 2000: Educate America Act should not be based on standards developed by the National Center for History in the Schools; and

(2) if the Department of Education, the National Endowment for the Humanities, or any other Federal agency provides funds for the development of the standards and criteria described in paragraph (1), the recipient of such funds should have a decent respect for the contributions of western civilization, and United States history, ideas, and institutions, to the increase of freedom and prosperity around the world.

BINGAMAN AMENDMENTS NOS. 32–36

(Ordered to lie on the table.)

Mr. BINGAMAN submitted five amendments intended to be proposed by him to the bill S. 1, supra; as follows:

AMENDMENT NO. 32

On page 25, add after line 25 the following new section:

"(4) DETERMINATION BY REPORTING COMMITTEE OF APPLICABILITY TO PENDING LEGISLATION.—Notwithstanding any provision of paragraph (1)(B), it shall always be in order to consider a bill, resolution, or conference report if such report includes a determination by the reporting committee that the pending measure is needed to serve a compelling national interest that furthers the public health, safety, or welfare."

AMENDMENT NO. 33

On page 5, line 23, strike out "or" and insert in lieu thereof a semicolon.

On page 6, insert between lines 2 and 3 the following new subclause:

"(III) a law enforcement provision relating to organized crime; or

On page 7, line 14, strike out "or".

On page 7, insert between lines 16 and 17 the following new clause:

"(iii) a law enforcement provision relating to organized crime; or"

AMENDMENT NO. 34

On page 21, line 24, strike out "amendment,".

On page 22, lines 5 and 6, strike out "amendment,".

On page 22, line 10, strike out "amendment,".

On page 22, lines 14 and 15, strike out "amendment,".

On page 22, line 20, strike out "amendment,".

On page 22, lines 24 and 25, strike out "amendment,".

On page 23, line 9, strike out "amendment,".

On page 27, line 15, strike out "amendment,".

AMENDMENT NO. 35

On page 5, line 23, after "or" insert "a condition of receipt of a Federal license; or".

On page 7, line 13, after "assistance" insert "or a condition of receipt of a Federal license".

AMENDMENT NO. 36

On page 5, line 23, strike out "or" and insert in lieu thereof a semicolon.

On page 6, insert between lines 2 and 3 the following new subclause:

"(III) any requirement for a license or permit for the treatment and disposal of nuclear and hazardous waste; or

On page 7, line 14, strike out "or".

On page 7, insert between lines 16 and 17 the following new clause:

"(iii) any requirement for a license or permit for the treatment and disposal of nuclear and hazardous waste; or".

KOHL AMENDMENT NO. 37

(Ordered to lie on the table.)

Mr. KOHL submitted an amendment intended to be proposed by him to the bill S. 1, supra; as follows:

On page 24, line 21, strike the period and insert the following: "; and

"(v) the bill, joint resolution, amendment, motion, or conference report provides that any State, local, or tribal government that already complies with the Federal intergovernmental mandates included in the bill, joint resolution, amendment, motion, or conference report shall be eligible to receive funds for the cost of the mandate, including the costs the State, local, or tribal government is currently paying and any additional costs necessary to meet the new mandate.".

MURRAY AMENDMENTS NOS. 38–40

(Ordered to lie on the table.)

Mrs. MURRAY submitted three amendments intended to be proposed by her to the bill S. 1, supra; as follows:

AMENDMENT NO. 38

On page 21, insert between lines 13 and 14 the following new paragraph:

"(2) TIME LIMITATIONS FOR ESTIMATES.—The Director of the Congressional Budget Office shall provide an estimate as required by this section—

"(A) relating to a bill or resolution reported by a committee, no later than one week after the date on which the bill or resolution is reported by the committee; and

"(B) relating to an amendment or conference report, no later than one day after the date on which the amendment is offered or the conference report is submitted.".

AMENDMENT NO. 39

On page 21, insert between lines 13 and 14 the following new paragraph:

"(2) TIME LIMITATIONS FOR STATEMENTS.—(A) The Director of the Congressional Budget Office shall provide the statement as required by this section—

"(i) relating to a bill or resolution ordered reported by a committee, no later than one week after the date on which the bill or resolution is ordered reported by the committee; and

"(ii) relating to an amendment or conference report, no later than one day after the date on which the amendment is offered or the conference report is submitted.

"(B) Failure by the Director to meet the time limitations in subparagraph (A) of this paragraph shall vitiate the provisions of subsection (c)(1)(A) of this section.".

AMENDMENT NO. 40

On page 12, line 11, insert "(a)" before "The provisions".

On page 13, between lines 8 and 9, insert the following:

(b) The provisions of this Act and the amendments made by this Act also shall not apply to any agreement between the Federal Government and a State, local, or tribal government, or the private sector for the purpose of carrying out environmental restoration or waste management activities of the Department of Defense or the Department of Energy.

GRASSLEY AMENDMENTS NOS. 41–44

(Ordered to lie on the table.)

Mr. GRASSLEY submitted four amendments, intended to be proposed by him, to the bill S. 1, supra; as follows:

AMENDMENT NO. 41

On page 26, line 6, redesignate subsection (b) as subsection (c), and insert the following:

(b) WAIVER.—Subsections (c) and (d) of section 904 of the Congressional Budget and Impoundment Control Act of 1974 are amended by inserting "408(c)(1)(A)," after "313,".

AMENDMENT NO. 42

On page 12, insert "age," after "race,".

AMENDMENT NO. 43

On page 32, between lines 5 and 6, insert the following:

SEC. 103A. PROJECTED COSTS OF EXISTING FEDERAL MANDATES.

Not later than 6 months after the date of enactment of this Act, the Congressional Budget Office shall conduct a study of the projected 5-year costs to State and local governments and the private sector of unfunded mandates in existence on the date of enactment of this Act. The study shall estimate such costs based on the assumption that expiring programs and activities would be reauthorized by Congress.

AMENDMENT NO. 44

At the appropriate place, insert the following:

SEC. . COST OF REGULATIONS.

(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that Federal agencies should review and evaluate planned regulations to ensure that the costs of Federal regulations are within the cost estimates provided by the Congressional Budget Office.

(b) STATEMENT OF COST.—Not later than January 1, 1998, the Director shall submit a report to the Congress including—

(1) an estimate of the costs of regulations implementing each Act containing an unfunded Federal mandate (as that term is defined in section 3(13) of the Federal Budget and Impoundment Control Act of 1974, as added by section 3(b) of this Act); and

(2) a comparison of the costs of such regulations with cost estimate provided for such Act by the Congressional Budget Office.

BOXER AMENDMENT NO. 45

(Ordered to lie on the table.)

Mrs. BOXER submitted an amendment, intended to be proposed by her to the bill, S. 1, supra; as follows:

On page 13, between lines 8 and 9, insert the following:

"(7) is intended to study, control, deter, prevent, prohibit or otherwise mitigate child pornography, child abuse and illegal child labor."

HATFIELD AMENDMENTS NOS. 46–47

(Ordered to lie on the table.)

Mr. HATFIELD submitted two amendments, intended to be proposed by him to the bill, S. 1, supra; as follows:

AMENDMENT NO. 46

At the end of the bill add the following new title:

TITLE V—

LOCAL EMPOWERMENT AND FLEXIBILITY

SECTION 501. SHORT TITLE.

This title may be cited as the "Local Empowerment and Flexibility Act of 1995".

SEC. 502. FINDINGS.

The Congress finds that—

(1) historically, Federal programs have addressed the Nation's problems by providing categorical financial assistance with detailed requirements relating to the use of funds;

(2) while the assistance described in paragraph (1) has been directed at critical problems, some program requirements may inadvertently impede the effective delivery of services;

(3) the Nation's local governments and private, nonprofit organizations are dealing with increasingly complex problems which require the delivery of many kinds of services;

(4) the Nation's communities are diverse, and different needs are present in different communities;

(5) it is more important than ever to provide programs that—

(A) promote more effective and efficient local delivery of services to meet the full range of needs of individuals, families, and society;

(B) respond flexibly to the diverse needs of the Nation's communities;

(C) reduce the barriers between programs that impede local governments' ability to effectively deliver services; and

(D) empower local governments and private, nonprofit organizations to be innovative in creating programs that meet the unique needs of their communities while continuing to address national policy goals; and

(6) many communities have innovative planning and community involvement strategies for providing services, but Federal, State, and local regulations often hamper full implementation of local plans.

SEC. 503. PURPOSES.

The purposes of this title are to—

(1) enable more efficient use of Federal, State, and local resources;

(2) place less emphasis in Federal service programs on measuring resources and procedures and more emphasis on achieving Federal, State, and local policy goals;

(3) enable local governments and private, nonprofit organizations to adapt programs of Federal financial assistance to the particular needs of their communities, by—

(A) drawing upon appropriations available from more than one Federal program; and

(B) integrating programs and program funds across existing Federal financial assistance categories; and

(4) enable local governments and private, nonprofit organizations to work together and build stronger cooperative partnerships to address critical service problems.

SEC. 504. DEFINITIONS.

For purposes of this title—

(1) the term "approved local flexibility plan" means a local flexibility plan that combines funds from Federal, State, local government or private sources to address the service needs of a community (or any part of such a plan) that is approved by the Flexibility Council under section 505;

(2) the term "community advisory committee" means such a committee established by a local government under section 509;

(3) the term "Flexibility Council" means the council composed of the—

(A) Assistant to the President for Domestic Policy;

(B) Assistant to the President for Economic Policy;

(C) Secretary of the Treasury;

(D) Attorney General;

(E) Secretary of the Interior;

(F) Secretary of Agriculture;

(G) Secretary of Commerce;

(H) Secretary of Labor;

(I) Secretary of Health and Human Services;

(J) Secretary of Housing and Urban Development;

(K) Secretary of Transportation;

(L) Secretary of Education;

(M) Secretary of Energy;

(N) Secretary of Veterans Affairs;

(O) Secretary of Defense;

(P) Director of Federal Emergency Management Agency;

(Q) Administrator of the Environmental Protection Agency;

(R) Director of National Drug Control Policy;

(S) Administrator of the Small Business Administration;

(T) Director of the Office of Management and Budget; and

(U) Chair of the Council of Economic Advisers.

(4) the term "covered Federal financial assistance program" means an eligible Federal financial assistance program that is included in a local flexibility plan of a local government;

(5) the term "eligible Federal financial assistance program"—

(A) means a Federal program under which financial assistance is available, directly or indirectly, to a local government or a qualified organization to carry out the specified program; and

(B) does not include a Federal program under which financial assistance is provided by the Federal Government directly to a beneficiary of that financial assistance or to a State as a direct payment to an individual;

(6) the term "eligible local government" means a local government that is eligible to receive financial assistance under 1 or more covered Federal programs;

(7) the term "local flexibility plan" means a comprehensive plan for the integration and administration by a local government of financial assistance provided by the Federal Government under 2 or more eligible Federal financial assistance programs;

(8) the term "local government" means a subdivision of a State that is a unit of general local government (as defined under section 6501 of title 31, United States Code);

(9) the term "priority funding" means giving higher priority (including by the assignment of extra points, if applicable) to applications for Federal financial assistance submitted by a local government having an approved local flexibility program, by—

(A) a person located in the jurisdiction of such a government; or

(B) a qualified organization eligible for assistance under a covered Federal financial assistance program included in such a plan;

(10) the term "qualified organization" means a private, nonprofit organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986; and

(11) the term "State" means the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, and the Virgin Islands.

SEC. 505. PROVISION OF FEDERAL FINANCIAL ASSISTANCE IN ACCORDANCE WITH APPROVED LOCAL FLEXIBILITY PLAN.

(a) PAYMENTS TO LOCAL GOVERNMENTS.—Notwithstanding any other provision of law, amounts available to a local government or a qualified organization under a covered Federal financial assistance program included in an approved local flexibility plan shall be provided to and used by the local government or organization in accordance with the approved local flexibility plan.

(b) ELIGIBILITY FOR BENEFITS.—An individual or family that is eligible for benefits or services under a covered Federal financial assistance program included in an approved local flexibility plan may receive those benefits only in accordance with the approved local flexibility plan.

SEC. 506. APPLICATION FOR APPROVAL OF LOCAL FLEXIBILITY PLAN.

(a) IN GENERAL.—A local government may submit to the Flexibility Council in accordance with this section an application for approval of a local flexibility plan.

(b) CONTENTS OF APPLICATION.—An application submitted under this section shall include—

(1)(A) a proposed local flexibility plan that complies with subsection (c); or

(B) a strategic plan submitted in application for designation as an enterprise community or an empowerment zone under section 1391 of the Internal Revenue Code of 1986;

(2) certification by the chief executive of the local government, and such additional assurances as may be required by the Flexibility Council, that—

(A) the local government has the ability and authority to implement the proposed plan, directly or through contractual or other arrangements, throughout the geographic area in which the proposed plan is intended to apply; and

(B) amounts are available from non-Federal sources to pay the non-Federal share of all covered Federal financial assistance programs included in the proposed plan; and

(3) any comments on the proposed plan submitted under subsection (d) by the Governor of the State in which the local government is located;

(4) public comments on the plan including the transcript of at least 1 public hearing and comments of the appropriate community advisory committee established under section 509; and

(5) other relevant information the Flexibility Council may require to approve the proposed plan.

(c) CONTENTS OF PLAN.—A local flexibility plan submitted by a local government under this section shall include—

(1) the geographic area to which the plan applies and the rationale for defining the area;

(2) the particular groups of individuals, by service needs, economic circumstances, or other defining factors, who shall receive services and benefits under the plan;

(3)(A) specific goals and measurable performance criteria, a description of how the plan is expected to attain those goals and criteria;

(B) a description of how performance shall be measured; and

(C) a system for the comprehensive evaluation of the impact of the plan on participants, the community, and program costs;

(4) the eligible Federal financial assistance programs to be included in the plan as covered Federal financial assistance programs and the specific benefits that shall be provided under the plan under such programs, including—

(A) criteria for determining eligibility for benefits under the plan;

(B) the services available;

(C) the amounts and form (such as cash, in-kind contributions, or financial instruments) of nonservice benefits; and

(D) any other descriptive information the Flexibility Council considers necessary to approve the plan;

(5) except for the requirements under section 508(b)(3), any Federal statutory or regulatory requirement applicable under a covered Federal financial assistance program included in the plan, the waiver of which is necessary to implement the plan;

(6) fiscal control and related accountability procedures applicable under the plan;

(7) a description of the sources of all non-Federal funds that are required to carry out covered Federal financial assistance programs included in the plan;

(8) written consent from each qualified organization for which consent is required under section 506(b)(2); and

(9) other relevant information the Flexibility Council may require to approve the plan.

(d) PROCEDURE FOR APPLYING.—(1) To apply for approval of a local flexibility plan, a local government shall submit an application in accordance with this section to the Governor of the State in which the local government is located.

(2) A Governor who receives an application from a local government under paragraph (1) may, by no later than 30 days after the date of that receipt—

(A) prepare comments on the proposed local flexibility plan included in the application;

(B) describe any State laws which are necessary to waive for successful implementation of a local plan; and

(C) submit the application and comments to the Flexibility Council.

(3) If a Governor fails to act within 30 days after receiving an application under paragraph (2), the applicable local government may submit the application to the Flexibility Council.

SEC. 507. REVIEW AND APPROVAL OF LOCAL FLEXIBILITY PLANS.

(a) REVIEW OF APPLICATIONS.—Upon receipt of an application for approval of a local flexibility plan under this title, the Flexibility Council shall—

(1) approve or disapprove all or part of the plan within 45 days after receipt of the application;

(2) notify the applicant in writing of that approval or disapproval by not later than 15 days after the date of that approval or disapproval; and

(3) in the case of any disapproval of a plan, include a written justification of the reasons for disapproval in the notice of disapproval sent to the applicant.

(b) APPROVAL.—(1) The Flexibility Council may approve a local flexibility plan for which an application is submitted under this title, or any part of such a plan, if a majority of members of the Council determines that—

(A) the plan or part shall improve the effectiveness and efficiency of providing benefits under covered Federal programs included in the plan by reducing administrative inflexibility, duplication, and unnecessary expenditures;

(B) the applicant local government has adequately considered, and the plan or part of the plan appropriately addresses, any effect that administration of each covered Federal program under the plan or part of the plan shall have on administration of the other covered Federal programs under that plan or part of the plan;

(C) the applicant local government has or is developing data bases, planning, and evaluation processes that are adequate for implementing the plan or part of the plan;

(D) the plan shall more effectively achieve Federal financial assistance goals at the local level and shall better meet the needs of local citizens;

(E) implementation of the plan or part of the plan shall adequately achieve the purposes of this title and of each covered Federal financial assistance program under the plan or part of the plan;

(F) the plan and the application for approval of the plan comply with the requirements of this title;

(G) the plan or part of the plan is adequate to ensure that individuals and families that receive benefits under covered Federal financial assistance programs included in the plan or part shall continue to receive benefits that meet the needs intended to be met under the program; and

(H) the local government has—

(i) waived the corresponding local laws necessary for implementation of the plan; and

(ii) sought any necessary waivers from the State.

(2) The Flexibility Council may not approve any part of a local flexibility plan if—

(A) implementation of that part would result in any increase in the total amount of obligations or outlays of discretionary appropriations or direct spending under covered Federal financial assistance programs included in that part, over the amounts of such obligations and outlays that would occur under those programs without implementation of the part; or

(B) in the case of a plan or part that applies to assistance to a qualified organization under an eligible Federal financial assistance program, the qualified organization does not consent in writing to the receipt of that assistance in accordance with the plan.

(3) The Flexibility Council shall disapprove a part of a local flexibility plan if a majority of the Council disapproves that part of the plan based on a failure of the part to comply with paragraph (1).

(4) In approving any part of a local flexibility plan, the Flexibility Council shall specify the period during which the part is effective. An approved local flexibility plan shall not be effective after the date of the termination of effectiveness of this title under section 513.

(5) Disapproval by the Flexibility Council of any part of a local flexibility plan submitted by a local government under this title shall not affect the eligibility of a local government, a qualified organization, or any individual for benefits under any Federal program.

(c) MEMORANDA OF UNDERSTANDING.—(1) The Flexibility Council may not approve a part of a local flexibility plan unless each local government and each qualified organization that would receive financial assistance under the plan enters into a memorandum of understanding under this subsection with the Flexibility Council.

(2) A memorandum of understanding under this subsection shall specify all understandings that have been reached by the Flexibility Council, the local government, and each qualified organization that is subject to a local flexibility plan, regarding the approval and implementation of all parts of a local flexibility plan that are the subject of the memorandum, including understandings with respect to—

(A) all requirements under covered Federal financial assistance programs that are to be waived by the Flexibility Council under section 508(b);

(B)(i) the total amount of Federal funds that shall be provided as benefits under or used to administer covered Federal financial assistance programs included in those parts; or

(ii) a mechanism for determining that amount, including specification of the total amount of Federal funds that shall be provided or used under each covered Federal financial assistance program included in those parts;

(C) the sources of all non-Federal funds that shall be provided as benefits under or used to administer those parts;

(D) measurable performance criteria that shall be used during the term of those parts to determine the extent to which the goals and performance levels of the parts are achieved; and

(E) the data to be collected to make that determination.

(d) LIMITATION ON CONFIDENTIALITY REQUIREMENTS.—The Flexibility Council may not, as a condition of approval of any part of a local flexibility plan or with respect to the implementation of any part of an approved local flexibility plan, establish any confidentiality requirement that would—

(1) impede the exchange of information needed for the design or provision of benefits under the parts; or

(2) conflict with law.

SEC. 508. IMPLEMENTATION OF APPROVED LOCAL FLEXIBILITY PLANS; WAIVER OF REQUIREMENTS.

(a) PAYMENTS AND ADMINISTRATION IN ACCORDANCE WITH PLAN.—Notwithstanding any other law, any benefit that is provided under a covered Federal financial assistance program included in an approved local flexibility plan shall be paid and administered in the manner specified in the approved local flexibility plan.

(b) WAIVER OF REQUIREMENTS.—(1) Notwithstanding any other law and subject to paragraphs (2) and (3), the Flexibility Council may waive any requirement applicable under Federal law to the administration of, or provision of benefits under, any covered Federal assistance program included in an approved local flexibility plan, if that waiver is—

(A) reasonably necessary for the implementation of the plan; and

(B) approved by a majority of members of the Flexibility Council.

(2) The Flexibility Council may not waive a requirement under this subsection unless the Council finds that waiver of the requirement shall not result in a qualitative reduction in services or benefits for any individual or family that is eligible for benefits under a covered Federal financial assistance program.

(3) The Flexibility Council may not waive any requirement under this subsection—

(A) that enforces 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. 701 et seq.);

(iii) title IX of the Education Amendments of 1972 (86 Stat. 373 et seq.);

(iv) the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); or

(v) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

(B) for payment of a non-Federal share of funding of an activity under a covered Federal financial assistance program; or

(C) for grants received on a maintenance of effort basis.

(c) SPECIAL ASSISTANCE.—To the extent permitted by law, the head of each Federal agency shall seek to provide special assistance to a local government or qualified organization to support implementation of an approved local flexibility plan, including expedited processing, priority funding, and technical assistance.

(d) EVALUATION AND TERMINATION.—(1) A local government, in accordance with regulations issued by the Flexibility Council, shall—

(A) submit such reports on and cooperate in such audits of the implementation of its approved local flexibility plan; and

(B) periodically evaluate the effect implementation of the plan has had on—

(i) individuals who receive benefits under the plan;

(ii) communities in which those individuals live; and

(iii) costs of administering covered Federal financial assistance programs included in the plan.

(2) No later than 90 days after the end of the 1-year period beginning on the date of the approval by the Flexibility Council of an approved local flexibility plan of a local government, and annually thereafter, the local government shall submit to the Flexibility Council a report on the principal activities and achievements under the plan during the period covered by the report, comparing

those achievements to the goals and performance criteria included in the plan under section 506(c)(3).

(3)(A) The Flexibility Council may terminate the effectiveness of an approved local flexibility plan, if the Flexibility Council, after consultation with the head of each Federal agency responsible for administering a covered Federal financial assistance program included in such, determines—

(i) that the goals and performance criteria included in the plan under section 506(c)(3) have not been met; and

(ii) after considering any experiences gained in implementation of the plan, that those goals and criteria are sound.

(B) In terminating the effectiveness of an approved local flexibility plan under this paragraph, the Flexibility Council shall allow a reasonable period of time for appropriate Federal, State, and local agencies and qualified organizations to resume administration of Federal programs that are covered Federal financial assistance programs included in the plan.

(e) FINAL REPORT; EXTENSION OF PLANS.—(1) No later than 45 days after the end of the effective period of an approved local flexibility plan of a local government, or at any time that the local government determines that the plan has demonstrated its worth, the local government shall submit to the Flexibility Council a final report on its implementation of the plan, including a full evaluation of the successes and shortcomings of the plan and the effects of that implementation on individuals who receive benefits under those programs.

(2) The Flexibility Council may extend the effective period of an approved local flexibility plan for such period as may be appropriate, based on the report of a local government under paragraph (1).

SEC. 509. COMMUNITY ADVISORY COMMITTEES.

(a) ESTABLISHMENT.—A local government that applies for approval of a local flexibility plan under this title shall establish a community advisory committee in accordance with this section.

(b) FUNCTIONS.—A community advisory committee shall advise a local government in the development and implementation of its local flexibility plan, including advice with respect to—

(1) conducting public hearings; and

(2) reviewing and commenting on all community policies, programs, and actions under the plan which affect low income individuals and families, with the purpose of ensuring maximum coordination and responsiveness of the plan in providing benefits under the plan to those individuals and families.

(c) MEMBERSHIP.—The membership of a community advisory committee shall—

(1) consist of—

(A) persons with leadership experience in the private and voluntary sectors;

(B) local elected officials;

(C) representatives of participating qualified organizations; and

(D) the general public; and

(2) include individuals and representatives of community organizations who shall help to enhance the leadership role of the local government in developing a local flexibility plan.

(d) OPPORTUNITY FOR REVIEW AND COMMENT BY COMMITTEE.—Before submitting an application for approval of a final proposed local flexibility plan, a local government shall submit the final proposed plan for review and comment by a community advisory committee established by the local government.

(e) COMMITTEE REVIEW OF REPORTS.—Before submitting annual or final reports on an approved Federal assistance plan, a local government or private nonprofit organization shall submit the report for review and comment to the community advisory committee.

SEC. 510. TECHNICAL AND OTHER ASSISTANCE.

(a) TECHNICAL ASSISTANCE.—(1) The Flexibility Council may provide, or direct that the head of a Federal agency provide, technical assistance to a local government or qualified organization in developing information necessary for the design or implementation of a local flexibility plan.

(2) Assistance may be provided under this subsection if a local government makes a request that includes, in accordance with requirements established by the Flexibility Council—

(A) a description of the local flexibility plan the local government proposes to develop;

(B) a description of the groups of individuals to whom benefits shall be provided under covered Federal assistance programs included in the plan; and

(C) such assurances as the Flexibility Council may require that—

(i) in the development of the application to be submitted under this title for approval of the plan, the local government shall provide adequate opportunities to participate to—

(I) individuals and families that shall receive benefits under covered Federal financial assistance programs included in the plan; and

(II) governmental agencies that administer those programs; and

(ii) the plan shall be developed after considering fully—

(I) needs expressed by those individuals and families;

(II) community priorities; and

(III) available governmental resources in the geographic area to which the plan shall apply.

(b) DETAILS TO COUNCIL.—At the request of the Flexibility Council and with the approval of an agency head who is a member of the Council, agency staff may be detailed to the Flexibility Council on a nonreimbursable basis.

SEC. 511. FLEXIBILITY COUNCIL.

(a) FUNCTIONS.—The Flexibility Council shall—

(1) receive, review, and approve or disapprove local flexibility plans for which approval is sought under this title;

(2) upon request from an applicant for such approval, direct the head of an agency that administers a covered Federal financial assistance program under which substantial Federal financial assistance would be provided under the plan to provide technical assistance to the applicant;

(3) monitor the progress of development and implementation of local flexibility plans;

(4) perform such other functions as are assigned to the Flexibility Council by this title; and

(5) issue regulations to implement this title within 180 days after the date of its enactment.

(b) REPORTS.—No less than 18 months after the date of the enactment of this Act, and annually thereafter, the Flexibility Council shall submit a report on the 5 Federal regulations that are most frequently waived by the Flexibility Council for local governments with approved local flexibility plans to the President and the Congress. The President shall review the report and determine whether to amend or terminate such Federal regulations.

SEC. 512. REPORT.

No later than 54 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Congress, a report that—

(1) describes the extent to which local governments have established and implemented approved local flexibility plans;

(2) evaluates the effectiveness of covered Federal assistance programs included in approved local flexibility plans; and

(3) includes recommendations with respect to local flexibility.

SEC. 513. CONDITIONAL TERMINATION.

This title is repealed on the date that is 5 years after the date of the enactment of this Act unless extended by the Congress through the enactment of the resolution described under section 514.

SEC. 515. JOINT RESOLUTION FOR THE CONTINUATION AND EXPANSION OF LOCAL FLEXIBILITY PROGRAMS.

(a) DESCRIPTION OF RESOLUTION.—A resolution referred to under section 513 is a joint resolution the matter after the resolving clause is as follows: "That Congress approves the application of local flexibility plans to all local governments in the United States in accordance with the Local Empowerment and Flexibility Act of 1995, and that—

"(1) if the provisions of such Act have not been repealed under section 513 of such Act, such provisions shall remain in effect; and

"(2) if the repeal under section 513 of such Act has taken effect, the provisions of such Act shall be effective as though such provisions had not been repealed.".

(b) INTRODUCTION.—No later than 30 days after the transmittal by the Comptroller General of the United States to the Congress of the report required in section 512, a resolution as described under subsection (a) shall be introduced in the Senate by the chairman of the Committee on Governmental Affairs, or by a Member or Members of the Senate designated by such chairman, and shall be introduced in the House of Representatives by the Chairman of the Committee on Government Operations, or by a Member or Members of the House of Representatives designated by such chairman.

(c) REFERRAL.—A resolution as described under subsection (a) shall be referred to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives. The committee shall make its recommendations to the Senate or House of Representatives within 30 calendar days of the date of such resolution's introduction.

(d) DISCHARGE FROM COMMITTEE.—If the committee to which a resolution is referred has not reported such resolution at the end of 30 calendar days after its introduction, that committee shall be deemed to be discharged from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

(e) VOTE ON FINAL PASSAGE.—When the committee has reported or has been deemed to be discharged from further consideration of a resolution described under subsection (a), it is at any time thereafter in order for any Member of the respective House to move to proceed to the consideration of the resolution.

(f) RULES OF THE SENATE AND HOUSE.—This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure

to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

AMENDMENT NO. 47

At the end of the bill, and the following new title:

TITLE V—OREGON OPTION PROPOSAL

SEC. 501. OREGON OPTION PROPOSAL.

(a) FINDINGS.—The Senate finds that—

(1) Federal, State and local governments are dealing with increasingly complex problems which require the delivery of many kinds of social services at all levels of government;

(2) historically, Federal programs have addressed the Nation's problems by providing categorical assistance with detailed requirements relating to the use of funds which are often delivered by State and local governments;

(3) although the current approach is one method of service delivery, a number of problems exist in the current intergovernmental structure that impede effective delivery of vital services by State and local governments;

(4) it is more important than ever to provide programs that respond flexibly to the needs of the Nation's States and communities, reduce the barriers between programs that impede Federal, State and local governments' ability to effectively deliver services, encourage the Nation's Federal, State and local governments to be innovative in creating programs that meet the unique needs of the people in their communities while continuing to address national goals, and improve the accountability of all levels of government by better measuring government performance and better meeting the needs of service recipients;

(5) the State and local governments of Oregon have begun a pilot project, called the Oregon Option, that will utilize strategic planning and performance-based management that may provide new models for intergovernmental social service delivery;

(6) the Oregon Option is a prototype of a new intergovernmental relations system, and it has the potential to completely transform the relationships among Federal, State and local governments by creating a system of intergovernmental service delivery and funding that is based on measurable performance, customer satisfaction, prevention, flexibility, and service integration; and

(7) the Oregon Option has the potential to dramatically improve the quality of Federal, State and local services to Oregonians.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Oregon Option project has the potential to improve intergovernmental service delivery by shifting accountability from compliance to performance results and that the Federal Government should continue in its partnership with the State and local governments of Oregon to fully implement the Oregon Option.

McCAIN AMENDMENTS NOS. 48–50

(Ordered to lie on the table.)

Mr. McCAIN submitted three amendments, intended to be proposed by him, to the bill S. 1, supra; as follows:

AMENDMENT NO. 48

On page 20, strike line 15 and insert the following: "that determination in the statement.

"(iv) The Director shall, to the extent permitted in law, develop an effective process to permit elected officials (or their designated representatives) of State, local, and tribal governments to provide meaningful and timely input in the development of the cost estimates to be prepared by the Congressional Budget Office pursuant to this Act."

AMENDMENT NO. 49

On page 32, strike line 9 through line 23, and insert in lieu thereof the following: "permitted in Chapter 5 of Title 5, United States Code (Commonly referred to as the Administrative Procedures Act)—

"(1) assess the effects of Federal regulations on State, local, and tribal governments (other than to the extent that such regulations incorporate requirements specifically set forth in legislation), and the private sector including specifically the availability of resources to carry out any Federal intergovernmental mandates in those regulations; and

"(2) seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving statutory and regulatory objectives.

"(b) STATE, LOCAL, AND TRIBAL GOVERNMENT INPUT.—Each agency shall, to the extent permitted in the Administrative Procedures Act, develop an effective process to permit elected officials."

AMENDMENT NO. 50

On page 25, strike lines 7 through 10, and insert the following: "(3) COMMITTEE ON APPROPRIATIONS.—Paragraph (1)—

"(A) shall not apply to any bill or resolution reported by the Committee on Appropriations of the Senate or the House of Representatives; but

"(B) shall apply to—

"(i) Any legislative provision increasing direct costs of a federal inter-governmental mandate contained in any bill or resolution reported by such Committee;

"(ii) any legislative provision increasing direct costs of a federal inter-governmental mandate contained in any amendment offered to a bill or resolution reported by such Committee;

"(iii) any legislative provision increasing direct costs of a federal inter-governmental mandate in a conference report accompanying a bill or resolution reported by such Committee; and

"(iv) any legislative provision increasing direct costs of a federal inter-governmental mandate contained in any amendments in disagreement between the two Houses to any bill or resolution reported by such Committee.

"(C) Upon a point of order being made by any Senator against any provision listed in Paragraph (3)(B), and the point of order being sustained by the Chair, such specific provision shall be deemed stricken from the bill, resolution, amendment, amendment in disagreement, or conference report and may not be offered as an amendment from the floor.".

McCONNELL AMENDMENT NO. 51

(Ordered to lie on the table.)

Mr. McCONNELL submitted an amendment intended to be proposed by him to the bill, S. 1, supra, as follows:

On page 12, line 18, after "national origin," insert "age,".

BUMPERS AMENDMENTS NOS. 52–53

(Ordered to lie on the table.)

Mr. BUMPERS submitted two amendments intended to be proposed by him to the bill, S. 1, supra, as follows:

AMENDMENT NO. 52

At the appropriate place, insert the following new title:

TITLE ___—COLLECTION OF STATE AND LOCAL SALES TAXES

SEC. ___01. SHORT TITLE.

This title may be cited as the "Consumer and Main Street Business Protection Act of 1995".

SEC. ___02. FINDINGS.

The Congress finds that—

(1) merchandise purchased from out-of-State firms is subject to State and local sales taxes in the same manner as merchandise purchased from in-State firms,

(2) State and local governments generally are unable to compel out-of-State firms to collect and remit such taxes, and consequently, many out-of-State firms choose not to collect State and local taxes on merchandise delivered across State lines,

(3) moreover, many out-of-State firms fail to inform their customers that such taxes exist, with some firms even falsely claim that merchandise purchased out-of-State is tax-free, and consequently, many consumers unknowingly incur tax liabilities, including interest and penalty charges,

(4) Congress has a duty to protect consumers from explicit or implicit misrepresentations of State and local sales tax obligations,

(5) small businesses, which are compelled to collect State and local sales taxes, are subject to unfair competition when out-of-State firms cannot be compelled to collect and remit such taxes on their sales to residents of the State,

(6) State and local governments provide a number of resources to out-of-State firms including government services relating to disposal of tons of catalogs, mail delivery, communications, and bank and court systems,

(7) the inability of State and local governments to require out-of-State firms to collect and remit sales taxes deprives State and local governments of needed revenue and forces such State and local governments to raise taxes on taxpayers, including consumers and small businesses, in such State,

(8) the Supreme Court ruled in Quill Corporation v. North Dakota, 112 S. Ct. 1904 (1992) that the due process clause of the Constitution does not prohibit a State government from imposing personal jurisdiction and tax obligations on out-of-State firms that purposefully solicit sales from residents therein, and that the Congress has the power to authorize State governments to require out-of-State firms to collect State and local sales taxes, and

(9) as a matter of federalism, the Federal Government has a duty to assist State and local governments in collecting sales taxes on sales from out-of-State firms.

SEC. ___03. AUTHORITY FOR COLLECTION OF SALES TAX.

(a) IN GENERAL.—A State is authorized to require a person who is subject to the personal jurisdiction of the State to collect and remit a State sales tax, a local sales tax, or both, with respect to tangible personal property if—

(1) the destination of the tangible personal property is in the State,

(2) during the 1-year period ending on September 30 of the calendar year preceding the calendar year in which the taxable event occurs, the person has gross receipts from sales of such tangible personal property—

(A) in the United States exceeding $3,000,000, or

(B) in the State exceeding $100,000, and

(3) the State, on behalf of its local jurisdictions, collects and administers all local sales taxes imposed pursuant to this title.

(b) STATES MUST COLLECT LOCAL SALES TAXES.—Except as provided in section ___04(d), a State in which both State and local sales taxes are imposed may not require State sales taxes to be collected and remitted under subsection (a) unless the State also requires the local sales taxes to be collected and remitted under subsection (a).

(c) AGGREGATION RULES.—All persons that would be treated as a single employer under section 52 (a) or (b) of the Internal Revenue Code of 1986 shall be treated as one person for purposes of subsection (a).

(d) DESTINATION.—For purposes of subsection (a), the destination of tangible personal property is the State or local jurisdiction which is the final location to which the seller ships or delivers the property, or to which the seller causes the property to be shipped or delivered, regardless of the means of shipment or delivery or the location of the buyer.

SEC.___04. TREATMENT OF LOCAL SALES TAXES.

(a) UNIFORM LOCAL SALES TAXES.—

(1) IN GENERAL.—Sales taxes imposed by local jurisdictions of a State shall be deemed to be uniform for purposes of this title and shall be collected under this title in the same manner as State sales taxes if—

(A) such local sales taxes are imposed at the same rate and on identical transactions in all geographic areas in the State, and

(B) such local sales taxes imposed on sales by out-of-State persons are collected and administered by the State.

(2) APPLICATION TO BORDER JURISDICTION TAX RATES.—A State shall not be treated as failing to meet the requirements of paragraph (1)(A) if, with respect to a local jurisdiction which borders on another State, such State or local jurisdiction—

(A) either reduces or increases the local sales tax in order to achieve a rate of tax equal to that imposed by the bordering State on identical transactions, or

(B) exempts from the tax transactions which are exempt from tax in the bordering State.

(b) NONUNIFORM LOCAL SALES TAXES.—

(1) IN GENERAL.—Except as provided in subsection (d), nonuniform local sales taxes required to be collected pursuant to this title shall be collected under one of the options provided under paragraph (2).

(2) ELECTION.—For purposes of paragraph (1), any person required under authority of this title to collect nonuniform local sales taxes shall elect to collect either—

(A) all nonuniform local sales taxes applicable to transactions in the State, or

(B) a fee (at the rate determined under paragraph (3)) which shall be in lieu of the nonuniform local sales taxes described in subparagraph (A).

Such election shall require the person to use the method elected for all transactions in the State while the election is in effect.

(3) RATE OF IN-LIEU FEE.—For purposes of paragraph (2)(B), the rate of the in-lieu fee for any calendar year shall be an amount equal to the product of—

(A) the amount determined by dividing total nonuniform local sales tax revenues collected in the State for the most recently completed State fiscal year for which data is available by total State sales tax revenues for the same year, and

(B) the State sales tax rate.

Such amount shall be rounded to the nearest 0.25 percent.

(4) NONUNIFORM LOCAL SALES TAXES.—For purposes of this title, nonuniform local sales taxes are local sales taxes which do not meet the requirements of subsection (a).

(c) DISTRIBUTION OF LOCAL SALES TAXES.—

(1) IN GENERAL.—Except as provided in subsection (d), a State shall distribute to local jurisdictions a portion of the amounts collected pursuant to this title determined on the basis of—

(A) in the case of uniform local sales taxes, the proportion which each local jurisdiction receives of uniform local sales taxes not collected pursuant to this title,

(B) in the case of in-lieu fees described in subsection (b)(2)(B), the proportion which each local jurisdiction's nonuniform local sales tax receipts bears to the total nonuniform local sales tax receipts in the State, and

(C) in the case of any nonuniform local sales tax collected pursuant to this title, the geographical location of the transaction on which the tax was imposed.

The amounts determined under subparagraphs (A) and (B) shall be calculated on the basis of data for the most recently completed State fiscal year for which the data is available.

(2) TIMING.—Amounts described in paragraph (1) (B) or (C) shall be distributed by a State to its local jurisdictions in accordance with State timetables for distributing local sales taxes, but not less frequently than every calendar quarter. Amounts described in paragraph (1)(A) shall be distributed by a State as provided under State law.

(3) TRANSITION RULE.—If, upon the effective date of this title, a State has a State law in effect providing a method for distributing local sales taxes other than the method under this subsection, then this subsection shall not apply to that State until the 91st day following the adjournment sine die of that State's next regular legislative session which convenes after the effective date of this title (or such earlier date as State law may provide). Local sales taxes collected pursuant to this title prior to the application of this subsection shall be distributed as provided by State law.

(d) EXCEPTION WHERE STATE BOARD COLLECTS TAXES.—Notwithstanding section ___03(b) and subsections (b) and (c) of this section, if a State had in effect on January 1, 1995, a State law which provides that local sales taxes are collected and remitted by a board of elected States officers, then for any period during which such law continues in effect—

(1) the State may require the collection and remittance under this title of only the State sales taxes and the uniform portion of local sales taxes, and

(2) the State may distribute any local sales taxes collected pursuant to this title in accordance with State law.

SEC.___05. RETURN AND REMITTANCE REQUIREMENTS.

(a) IN GENERAL.—A State may not require any person subject to this title—

(1) to file a return reporting the amount of any tax collected or required to be collected under this title, or to remit the receipts of such tax, more frequently than once with respect to sales in a calendar quarter, or

(2) to file the initial such return, or to make the initial such remittance, before the 90th day after the person's first taxable transaction under this Act.

(b) LOCAL TAXES.—The provisions of subsection (a) shall also apply to any person required by a State acting under authority of this title to collect a local sales tax or in-lieu fee.

SEC.___06. NONDISCRIMINATION AND EXEMPTIONS.

Any State which exercises any authority granted under this title shall allow to all persons subject to this title all exemptions or other exceptions to State and local sales taxes which are allowed to persons located within the State or local jurisdiction.

SEC.___07. APPLICATION OF STATE LAW.

(a) PERSONS REQUIRED TO COLLECT STATE OR LOCAL SALES TAX.—Any person required by section ___03 to collect a State or local sales tax shall be subject to the laws of such State relating to such sales tax to the extent that such laws are consistent with the limitations contained in this title.

(b) LIMITATIONS.—Except as provided in subsection (a), nothing in this title shall be construed to permit a State—

(1) to license or regulate any person,

(2) to require any person to qualify to transact intrastate business, or

(3) to subject any person to State taxes not related to the sales of tangible personnel property.

(c) PREEMPTION.—Except as otherwise provided in this title, this title shall not be construed to preempt or limit any power exercised or to be exercised by a State or local jurisdiction under the law of such State or local jurisdiction or under any other Federal law.

SEC.___08. TOLL-FREE INFORMATION SERVICE.

A State shall not have power under this title to require any person to collect a State or local sales tax on any sale unless, at the time of such sale, such State has a toll-free telephone service available to provide such person information relating to collection of such State or local sales tax. Such information shall include, at a minimum, all applicable tax rates, return and remittance addresses and deadlines, and penalty and interest information. As part of the service, the State shall also provide all necessary forms and instructions at no cost to any person using the service. The State shall prominently display the toll-free telephone number on all correspondence with any person using the service. This service may be provided jointly with other States.

SEC.___09. DEFINITIONS.

For the purposes of this title—

(1) the term "compensating use tax" means a tax imposed on or incident to the use, storage, consumption, distribution, or other use within a State or local jurisdiction or other area of a State, of tangible personal property;

(2) the term "local sales tax" means a sales tax imposed in a local jurisdiction or area of a State and includes, but is not limited to—

(A) a sales tax or in-lieu fee imposed in a local jurisdiction or area of a State by the State on behalf of such jurisdiction or area, and

(B) a sales tax imposed by a local jurisdiction or other State-authorized entity pursuant to the authority of State law, local law, or both;

(3) the term "person" means an individual, a trust, estate, partnership, society, association, company (including a limited liability

company) or corporation, whether or not acting in a fiduciary or representative capacity, and any combination of the foregoing;

(4) the term "sales tax" means a tax, including a compensating use tax, that is—

(A) imposed on or incident to the sale, purchase, storage, consumption, distribution, or other use of tangible personal property as may be defined or specified under the laws imposing such tax, and

(B) measured by the amount of the sales price, cost, charge or other value of or for such property; and

(5) the term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

SEC.___ 10. EFFECTIVE DATE.

This title shall take effect 180 days after the date of the enactment of this Act. In no event shall this title apply to any sale occurring before such effective date.

AMENDMENT NO. 53

At the appropriate place, insert the following new title:

TITLE ___—CONSUMER PROTECTION TAX DISCLOSURE

SEC.___01. SHORT TITLE.

This title may be cited as the "Direct Marketing Consumer Protection Act of 1995".

SEC.___02. FINDINGS.

The Congress finds that—

(1) merchandise purchased from out-of-State firms is subject to State and local sales taxes in the same manner as merchandise purchased from in-State firms,

(2) many out-of-State firms, however, choose not to collect State and local taxes on merchandise delivered across State lines,

(3) moreover, many out-of-State firms fail to inform their customers that such taxes exist, and some firms even falsely claim that merchandise purchased out-of-State is tax-free,

(4) consequently, many customers unknowingly incur tax liabilities, including interest and penalty charges, and

(5) Congress has a duty to protect consumers from explicit or implicit misrepresentations of State and local sales tax obligations.

SEC.___03. DISCLOSURE REQUIREMENT.

(a) DISCLOSURE REQUIREMENT.—Any person selling tangible personal property who—

(1) delivers such property, or causes such property to be delivered, to a person in another State, and

(2) does not collect and remit all applicable State and local sales taxes pertaining to the sale and use of such property,

shall prominently display the notice described in subsection (b) on all applicable documents.

(b) DISCLOSURE NOTICE.—The notice described in this subsection is as follows:

"NOTICE REGARDING TAXES: You may be required by your State or local government to pay sales or use tax on these products. Such taxes are imposed in nearly all States. Failure to pay such taxes could result in civil or criminal penalties. For information on your tax obligations, contact your State taxation department."

(c) APPLICABLE DOCUMENTS.—For purposes of subsection (a), the term "applicable document" means any written or telecommunicated solicitation, order form, invoice, or sales document which a person presents, telecommunicates, mails, delivers, or causes to be presented, telecommunicated, mailed, or delivered to a purchaser or prospective purchaser.

(d) REGULATORY AUTHORITY.—The Secretary of Commerce may issue such regulations as are necessary to ensure compliance with this section, including regulations as to what constitutes prominently displaying a notice.

SEC.___04. PENALTIES.

Any person who willfully fails to include any notice under section _03 shall be fined not more than $100 for each such failure.

SEC.___05. DEFINITIONS.

For purposes of this title—

(1) the term "compensating use tax" means a tax imposed on or incident to the use, storage, consumption, distribution, or other use within a State or local jurisdiction or other area of a State, of tangible personal property,

(2) the term "local sales tax" means a sales tax imposed in a local jurisdiction or area of a State and includes, but is not limited to—

(A) a sales tax or in-lieu fee imposed in a local jurisdiction or area of a State by the State on behalf of such jurisdiction or area, and

(B) a sales tax imposed by a local jurisdiction or other State-authorized entity pursuant to the authority of State law, local law, or both,

(3) the term "person" means an individual, a trust, estate, partnership, society, association, company (including a limited liability company), or corporation, whether or not acting in a fiduciary or representative capacity, and any combination of the foregoing,

(4) the term "sales tax" means a tax, including a compensating use tax, that is—

(A) imposed on or incident to the sale, purchase, storage, consumption, distribution, or other use of tangible personal property as may be defined or specified under the laws imposing such tax, and

(B) measured by the amount of the sales price, cost, charge, or other value of or for such property, and

(5) the term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

SEC.___06. EFFECTIVE DATE.

This title shall take effect 180 days after the date of the enactment of this Act. In no event shall this Act apply to any sale occurring before such effective date.

BRADLEY AMENDMENT NO. 54

(Ordered to lie on the table.)

Mr. BRADLEY submitted an amendment intended to be proposed by him to the bill S. 1; supra; as follows:

On page 33, strike out line 9 and insert in lieu thereof the following:

SEC. 107. IMPACT ON LOCAL GOVERNMENTS.

(A) FINDINGS.—The Senate finds that—

(1) the Congress should be concerned about shifting costs from Federal to State and local authorities and should be equally concerned about the growing tendency of States to shift costs to local governments;

(2) cost shifting from States to local governments has, in many instances, forced local governments to raise property taxes or curtail sometimes essential services; and

(3) increases in local property taxes and cuts in essential services threaten the ability of many citizens to attain and maintain the American dream of owning a home in a safe, secure community.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the Federal Government should not shift certain costs to the State, and States should end the practice of shifting costs to local governments, which forces many local governments to increase property taxes;

(2) States should end the imposition, in the absence of full consideration by their legislatures, of State issued mandates on local governments without adequate State funding, in a manner that may displace other essential government priorities; and

(3) one primary objective of this Act and other efforts to change the relationship among Federal, State, and local governments should be to reduce taxes and spending at all levels and to end the practice of shifting costs from one level of government to another with little or no benefit to taxpayers.

SEC. 108. EFFECTIVE DATE.

LIEBERMAN AMENDMENTS NOS. 55–56

(Ordered to lie on the table.)

Mr. LIEBERMAN submitted two amendments intended to be proposed by him to the bill S. 1; supra; as follows:

AMENDMENT NO. 55

On page 25, after line 25, add the following:

"(6) EXCLUSION.—For purposes of paragraph (1)(B), the term 'Federal intergovernmental mandates' shall not include a provision in any bill, joint resolution, amendment, motion, or conference report that would apply in the same manner to the activities, facilities, or services of State, local, or tribal governments and the private sector.

AMENDMENT NO. 56

On page 25, after line 25, add the following:

"(6) EXCLUSION.—For purposes of paragraph (1)(B), the term 'Federal intergovernmental mandates' shall not include a provision in any bill, joint resolution, motion, or conference report that would apply in the same manner to the activities, facilities, or services of State, local, or tribal governments and the private sector.

HOLLINGS AMENDMENT NO. 57

(Ordered to lie on the table.)

Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill S. 1; supra; as follows:

SEC. . Sense of the Senate concerning Congressional Enforcement of a Balanced Budget.

It is the Sense of the Senate that prior to adopting in the first session of the 104th Congress a joint resolution proposing an amendment to the Constitution requiring a balanced budget—

(1) the Congress set forth with specificity the policies that achieving such a balanced federal budget by the year 2002 would require; and

(2) enforce through the Congressional budget process the requirement to achieve a balanced federal budget by the year 2002.

BOXER (AND MURRAY) AMENDMENT NO. 58

(Ordered to lie on the table.)

Mrs. BOXER (for herself and Mrs. MURRAY) submitted an amendment intended to be proposed by her to the bill S. 1; supra; as follows:

On page 13, line 5, strike "or" after the semicolon.

On page 13, line 8, strike the period and insert "; or".

On page 13, between lines 8 and 9, insert the following:

(7) provides for the protection of the health of children under the age of 5, pregnant women, or the frail elderly.

BOXER AMENDMENT NO. 59

(Ordered to lie on the table.)

Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 1; supra; as follows:

On page 6, line 10, strike "or".

On page 7, line 7, strike the period at the end and insert "; or".

On page 7, between lines 7 and 8, insert the following:

"(C)(i) any provision in legislation, statute, or regulation that would impose costs upon State, local, or tribal governments to provide services to illegal immigrants; or

"(ii) any failure of the Federal government to meet a Federal responsibility that results in costs to State, local or tribal governments with respect to illegal immigrants on or after the date of enactment of the Unfunded Mandate Reform Act of 1995.

On page 42, after line 25, insert the following:

(e) IMMIGRATION REPORT.—Not later than 3 months after the date of enactment of this Act, the Advisory Commission shall develop a plan for reimbursing State, local, and tribal governments for costs associated with providing services to illegal immigrants based on the best available cost and revenue estimates, including—

(1) education;

(2) incarceration; and

(3) health care.

BOXER (AND OTHERS) AMENDMENT NO. 60

(Ordered to lie on the table.)

Mrs. BOXER (for herself, Mrs. MURRAY, Mr. FEINGOLD, Mr. KENNEDY, Mr. CAMPBELL, Mr. SIMON, Mr. LAUTENBERG, Mr. DODD, Mr. BAUCUS, Mr. LEVIN, Mr. LIEBERMAN, Ms. MOSELEY-BRAUN, Mr. HARKIN, Mr. PELL, Mr. INOUYE, Ms. MIKULSKI, and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by her to the bill S. 1, supra; as follows:

In lieu of the matter proposed to be inserted by Committee amendment number , insert the following "considered on or after such date.

"SEC. 108. SENSE OF THE SENATE CONCERNING PROTECTION OF REPRODUCTIVE HEALTH CLINICS.

"(a) FINDINGS.—Congress finds that—

"(1) there are approximately 900 clinics in the United States providing reproductive health services;

"(2) violence directed at persons seeking to provide reproductive health services continues to increase in the United States, as demonstrated by the recent shootings at two reproductive health clinics in Massachusetts and another health care clinic in Virginia;

"(3) organizations monitoring clinic violence have recorded over 130 incidents of violence or harassment directed at reproductive health care clinics and their personnel in 1994 such as death threats, stalking, chemical attacks, bombings and arson;

"(4) there has been one attempted murder in Florida and four individuals killed at reproductive health care clinics in Florida and Massachusetts in 1994;

"(5) the Congress passed and the President signed the Freedom of Access to Clinic Entrances Act of 1994, a law establishing Federal criminal penalties and civil remedies for certain violent, threatening, obstructive and destructive conduct that is intended to injure, intimidate or interfere with persons seeking to obtain or provide reproductive health services;

"(6) violence is not a mode of free speech and should not be condoned as a method of expressing an opinion;

"(7) persons exercising their constitutional rights and acting completely within the law are entitled to full protection from the Federal Government;

"(8) the Freedom of Access to Clinic Entrances Act of 1994 imposes a mandate on the Federal Government to protect individuals seeking to obtain or provide reproductive health services; and

"(9) the President has instructed the Attorney General to order—

"(A) the United States Attorneys to create task forces of Federal, State and local law enforcement officials and develop plans to address security for reproductive health care clinics located within their jurisdictions; and

"(B) the United States Marshals Service to ensure coordination between clinics and Federal, State and local law enforcement officials regarding potential threats of violence.

"(b) SENSE OF THE SENATE.—It is the sense of the Senate that the United States Attorney General should fully enforce the law and take any further necessary measures to protect persons seeking to provide or obtain, or assist in providing or obtaining, reproductive health services from violence attack.".

• Mr. BAUCUS. Mr. President, I want to express my support for Senator BOXER's amendment to S.1, which asks the Attorney General to act immediately to protect womens' health care clinics.

The shootings last month at two clinics in Massachusetts and one in Virginia remind me of the problems we have experienced in my home State of Montana. In 1993, an arsonist burned and destroyed the Blue Mountain Women's Clinic in Missoula, the second clinic that closed in Montana due to arson in the span of a year and a half. And I recall Dr. Susan Wicklund from Bozeman, who was repeatedly harassed by life-threatening letters and calls. Prior to passage of the Freedom of Access to Clinic Entrances Act of 1994, the Federal Bureau of Investigations did not have the authority to protect Dr. Wicklund. Today, however, Federal law safeguards women who choose to exercise their constitutional right to have an abortion, and those who assist them in doing so.

Last year, Congress passed and the President signed the Freedom of Access to Clinic Entrances Act of 1994. I cosponsored this legislation, establishing new penalties for individuals threatening, obstructing, injuring, intimidating, or interfering with any person obtaining or providing abortion services. Moreover, it protects health care clinics by allowing the Attorney General to bring Federal criminal charges against any person who damages or attempts to damage a medical facility that provides abortion services.

This amendment, which I am cosponsoring, asks the Attorney General to fully enforce the Freedom of Access to Clinic Entrances Act. In 1994, over 130 incidents of violence and intimidation were recorded by reproductive health care clinics. Furthermore, we cannot permit the recent shootings in Massachusetts and Virginia to pass us by without taking action.

I ask my colleagues to support this amendment and help curb the violence surrounding our reproductive health care clinics.•

BROWN AMENDMENTS NOS. 61–62

(Ordered to lie on the table.)

Mr. BROWN submitted two amendments intended to be proposed by him to the bill, S. 1, supra, as follows:

AMENDMENT NO. 61

Strike title IV of the bill and insert the following:

TITLE IV—JUDICIAL REVIEW

SEC. 401. JUDICIAL REVIEW.

(A) IN GENERAL.—Any statement or report prepared under titles I or III of this Act, and any compliance or noncompliance with the provisions of titles I or III of this Act, and any determination concerning the applicability of the provisions of titles I or III of this Act shall not be subject to judicial review.

(b) RULE OF CONSTRUCTION.—No provision of titles I or III of this Act or amendment made by titles I or III of this Act shall be construed to create any right or benefit, substantive or procedural, enforceable by any person in any administrative or judicial action. No ruling or determination made under the provisions of this Act or amendments made by this Act shall be considered by any court in determining the intent of Congress or for any other purpose.

AMENDMENT NO. 62

On page 13, insert between lines 13 and 14 the following new section:

SEC. 6. REVIEW OF IMPLEMENTATION.

It is the sense of the Senate that before the adjournment of the 106th Congress, the appropriate committees of the Senate should review the implementation of the provisions of this Act with respect to the conduct of the business of the Senate and report thereon to the Senate.

DORGAN (AND KASSEBAUM) AMENDMENT NO. 63

(Ordered to lie on the table.)

Mr. DORGAN (for himself and Mrs. KASSEBAUM) submitted an amendment intended to be proposed by him to the bill, S. 1, supra, as follows:

On page 38, after line 25, insert the following:

(A) TREATMENT.—For purposes of paragraphs (1) and (2), the Commission shall consider requirements for metric systems of measurement to be unfunded Federal mandates.

(B) DEFINITION.—In this paragraph, the term "requirements for metric systems of measurement" means requirements of the

departments, agencies, and other entities of the Federal Government that State, local, and tribal governments utilize metric systems of measurement.

SEC. 205. TERMINATION OF REQUIREMENTS FOR METRIC SYSTEM OF MEASUREMENT.

(a) IN GENERAL.—Subject to subsections (b) and (c) and notwithstanding any other provision of law, no department, agency, or other entity of the Federal Government may require that any State, local, or tribal government utilize a metric system of measurement.

(b) EXCEPTION.—A department, agency, or other entity of the Federal Government may require the utilization of a metric system of measurement by a State, local, or tribal government in a particular activity, project, or transaction that is pending on the date of the enactment of this Act if the head of such department, agency, or other entity determines that the termination of such requirement with respect to such activity, project, or transaction will result in a substantial additional cost to the Federal Government in such activity, project, or transaction.

(c) SUNSET.—Subsection (a) shall cease to be effective on October 1, 1997.

On page , between lines and , insert the following:

(4) TREATMENT OF REQUIREMENTS FOR METRIC SYSTEMS OF MEASUREMENT.—

DORGAN (AND OTHERS) AMENDMENT NO. 64

(Ordered to lie on the table.)

Mr. DORGAN (for himself, Mrs. KASSEBAUM, and Mr. REID) submitted an amendment intended to be proposed by him to the bill S. 1; supra; as follows:

On page 38, after line 25, insert the following:

SEC. 205. TERMINATION OF REQUIREMENTS FOR METRIC SYSTEM OF MEASUREMENT.

(a) IN GENERAL.—Subject to subsections (b) and (c) and notwithstanding any other provision of law, no department, agency, or other entity of the Federal Government may require that any State, local, or tribal government utilize a metric system of measurement.

(b) EXCEPTION.—A department, agency, or other entity of the Federal Government may require the utilization of a metric system of measurement by a State, local, or tribal government in a particular activity, project, or transaction that is pending on the date of the enactment of this Act if the head of such department, agency, or other entity determines that the termination of such requirement with respect to such activity, project, or transaction will result in a substantial additional cost to the Federal Government in such activity, project, or transaction.

(c) SUNSET.—Subsection (a) shall cease to be effective on October 1, 1997.

DORGAN (AND OTHERS) AMENDMENT NO. 65

(Ordered to lie on the table.)

Mr. DORGAN (for himself, Mrs. KASSEBAUM, and Mr. REID) submitted an amendment intended to be proposed by them to the bill, S. 1, supra; as follows:

On page 4, between lines 2 and 3, insert the following:

(4) TREATMENT OF REQUIREMENTS FOR METRIC SYSTEMS OF MEASUREMENT.—

(A) TREATMENT.—For purposes of paragraphs (1) and (2), the Commission shall consider requirements for metric systems of measurement to be unfunded Federal mandates.

(B) DEFINITION.—In this paragraph, the term "requirements for metric systems of measurement" means requirements of the departments, agencies, and other entities of the Federal Government that State, local, and tribal governments utilize metric systems of measurement.

NICKLES (AND DOMENICI) AMENDMENT NO. 66

(Ordered to lie on the table.)

Mr. NICKLES (for himself and Mr. DOMENICI) submitted an amendment intended to be proposed by them to the bill, S. 1, supra; as follows:

Page 35, line 11 strike the word "intergovernmental".

DOMENICI AMENDMENT NO. 67

(Ordered to lie on the table.)

Mr. DOMENICI submitted an amendment intended to be proposed by him to the bill, S. 1, supra; as follows:

On page 12, lines 1 and 2, strike out "but does not include independent regulatory agencies" and insert in lieu thereof "and shall include the Consumer Product Safety Commission, Federal Communications Commission, Federal Energy Regulatory Commission, Federal Trade Commission, and the Interstate Commerce Commission, but shall not include any other independent regulatory agency".

BOXER AMENDMENTS NOS. 68–69

(Ordered to lie on the table.)

Mrs. BOXER submitted two amendments intended to be proposed by her to the bill, S. 1, supra; as follows:

AMENDMENT NO. 68

On page 12, between lines 6 and 7, insert the following:

(22) The term "direct savings"—

(A) in the case of a federal intergovernmental mandate, means the aggregate estimated reduction in costs or burdens to any State, local government, tribal government, or the citizens of such government as a result of compliance with the federal intergovernmental mandate.

(B) in the case of a Federal private sector mandate, means the aggregate estimated reduction in costs or burdens to the private sector as a result of compliance with the Federal private sector mandate.

(C) shall include, without being limited to, any reduction as a result of compliance with the Federal mandate in—

(i) the costs or burden of complying with any other law, regulation, or requirement imposed by the Federal government or any State, local or tribal government;

(ii) the cost or burden of attaining any goal identified in or established pursuant to any Federal, State, local or tribal government.

(D) shall include, without being limited to, benefits as referred to in paragraph (3)(B) of Section 408(a) of this Act.

AMENDMENT NO. 69

It is the sense of the Senate that the term "direct savings" as used in this Act—

(A) in the case of a federal intergovernmental mandate, means the aggregate estimated reduction in costs or burdens to any State, local government, tribal government, or the citizens of such government as a result of compliance with the federal intergovernmental mandate.

(B) in the case of a Federal private sector mandate, means the aggregate estimated reduction in costs or burdens to the private sector as a result of compliance with the Federal private sector mandate.

(C) shall include, without being limited to, any reduction as a result of compliance with the Federal mandate in—

(i) the costs or burden of complying with any other law, regulation, or requirement imposed by the Federal government or any State, local or tribal government;

(ii) the cost or burden of attaining any goal identified in or established pursuant to any Federal, State, local or tribal government.

(D) shall include, without being limited to, benefits as referred to in paragraph (3)(B) of Section 408(a) of this Act.

GORTON AMENDMENT NO. 70

(Ordered to lie on the table.)

Mr. GORTON submitted an amendment intended to be proposed by him to the bill S. 1, supra; as follows:

At the end of the bill, add the following:

SEC. . NATIONAL HISTORY STANDARDS.

(a) IN GENERAL.—Notwithstanding any other provision of law, the National Education Goals Panel shall disapprove, and the National Education Standards and Improvement Council shall not certify, any voluntary national content standards, voluntary national student performance standards, or criteria for the certification of such content and student performance standards, on the subject of world and United States history, developed prior to the date of enactment of this Act.

(b) PROHIBITION.—No Federal funds shall be awarded to, or expended by, the National Center for History in the Schools, after February 1, 1995, for the development of voluntary national content standards, voluntary national student performance standards, or criteria for the certification of such content and student performance standards, on the subject of such history.

(c) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) voluntary national content standards, voluntary national student performance standards, and criteria for the certification of such content and student performance standards, on the subject of world and United States history, established under title II of the Goals 2000: Educate America Act should not be based on standards developed by the National Center for History in the Schools; and

(2) if the Department of Education, the National Endowment for the Humanities, or any other Federal agency provides funds for the development of the standards and criteria described in paragraph (1), the recipient of such funds should have a decent respect for the contributions of western civilization, and United States history, ideas, and institutions, to the increase of freedom and prosperity around the world.

GRAMM AMENDMENTS NOS. 71–72

(Ordered to lie on the table.)

Mr. GRAMM submitted two amendments intended to be proposed by him to the bill S. 1, supra; as follows:

AMENDMENT NO. 71

On page 21, between lines 13 and 15, insert the following:

"(2) AMENDED BILLS AND JOINT RESOLUTIONS: CONFERENCE REPORTS.—If a 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 text of a bill or joint resolution from the other House) or is reported by a committee of conference in amended form, the committee of conference shall ensure, to the greatest extent practicable, that the Director shall prepare a statement as provided in paragraph (1) or a supplemental statement for the bill or joint resolution in that amended form."

AMENDMENT NO. 72

On page 26, line 6, redesignate subsection (b) as subsection (c), and insert the following:

(b) WAIVER.—Subsections (c) and (d) of section 904 of the Congressional Budget and Impoundment Control Act of 1974 are amended by inserting "408(c)," after "313,".

D'AMATO (AND SARBANES) AMENDMENT NO. 73

(Ordered to lie on the table.)

Mr. D'AMATO (for himself and Mr. SARBANES) submitted an amendment intended to be proposed by himself to the bill S. 1, supra; as follows:

On page 13, lines 1–6, redesignate paragraphs (5) and (6) as paragraphs (6) and (7) and insert the following new paragraph:

"(5) ensures the safe and sound operation of an insured depository institution or insured credit union (as those terms are defined in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)) or section 101(7) of the Federal Credit Union Act (12 U.S.C. 1752(7)), respectively) or protects the insurance funds that insure the deposits or member accounts in those depository institutions or credit unions;".

WELLSTONE AMENDMENTS NOS. 74–81

(Ordered to lie on the table.)

Mr. WELLSTONE submitted eight amendments intended to be proposed by him to the bill S. 1, supra; as follows:

AMENDMENT NO. 74

At the appropriate place, insert the following:

"( ) The terms 'Federal mandate direct costs' and 'direct costs'—

"( ) shall be determined on the assumption that State, local, and tribal governments, and the private sector are in compliance with all Federal laws in effect at the time of the adoption of the Federal mandate and have incurred all costs necessary to achieve such compliance; and

"( ) shall not include re-authorizations or renewals of existing mandates to the extent that such re-authorizations or renewals do not increase the cost of compliance on State, local, and tribal governments."

AMENDMENT NO. 75

Insert at the appropriate place, the following:

"( ) Notwithstanding any other provision of this Act, this title shall expire on October 1 of the fiscal year for which the Senate Budget Committee determines that the fiscal appropriation to the Congressional Budget Office is not adequate to carry out the requirements of this title."

AMENDMENT NO. 76

At the appropriate place, insert the following:

"( ) Consideration of any bill or joint resolution of a public character reported by any committee of the Senate or of the House of Representatives that is accompanied by a committee report that does not contain a detailed analysis of the probable impact of the bill or resolution on children, including whether such bill or joint resolution will increase the number of children who are hungry or homeless, shall not be in order."

AMENDMENT NO. 77

At the end of the language proposed to be inserted, add the following:

"on and after such date. Consideration of any bill or joint resolution of a public character reported by any committee of the Senate or of the House of Representatives that is accompanied by a committee report that does not contain a detailed analysis of the probable impact of the bill or resolution on children, including whether such bill or joint resolution will increase the number of children who are hungry or homeless, shall not be in order"

AMENDMENT NO. 78

At the appropriate place, add the following new title:

TITLE —IMPACT OF LEGISLATION ON CHILDREN

SEC. 1. SENSE OF CONGRESS.

It is the sense of Congress that Congress should not enact or adopt any legislation that will increase the number of children who are hungry or homeless.

AMENDMENT NO. 79

At the end of the language proposed to be inserted, add the following:

"on and after such date. It is the sense of Congress that Congress should not enact or adopt any legislation that will increase the number of children who are hungry or homeless,".

AMENDMENT NO. 80

Insert at the appropriate place the following:

"( ) The term 'direct savings' shall be interpreted both as narrowly and as broadly as the terms 'Federal mandate direct costs' and 'direct costs.'"

AMENDMENT NO. 81

Onpage 26, between lines 10 and 11, insert the following:

(c) ROLLCALL VOTE REQUIREMENT.—Section 904(b) of the Congressional Budget Act of 1974 is amended by—

(1) striking "Any" and inserting "Except as provided in the second sentence of this subsection, any"; and

(2) adding at the end the following: "Section 408(c) may only be waived or suspended by a rollcall vote.".

GLENN AMENDMENTS NOS. 82–105

(Ordered to lie on the table.)

Mr. GLENN submitted 24 amendments intended to be proposed by him to the bill S. 1, supra; as follows:

AMENDMENT NO. 82

On page 12, strike lines 17 through 19 and insert "that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, or handicap or disability;".

AMENDMENT NO. 83

On page 21, strike beginning with line 16 through line 4 on page 22 and insert the following:

"(1) IN GENERAL.—

"(A) STATEMENT REQUIRED FOR REPORTED BILL.—It shall not be in order in the Senate to consider any bill or joint resolution that is reported by a committee unless the committee has published a statement of the Director on the direct costs of Federal mandates in accordance with subsection (a)(6) before such consideration.

"(B) LEGISLATION OF THRESHOLD.—(i) It shall not be in order in the Senate to consider any bill, joint resolution, amendment, motion, or conference report—

"(I) after third reading or at any other time when no further amendments are in order, if the enactment of such bill or resolution as amended; or

"(II) if such bill or resolution in the form recommended by such conference report differs from the bill or resolution as passed by the Senate, and if the enactment of such bill or resolution in the form recommended in such conference report,

would increase the direct costs of Federal intergovernmental mandates by an amount that causes the thresholds specified in subsection (b)(1)(A)(i) to be exceeded, unless the conditions specified in clause (ii) are satisfied.

"(ii) The conditions referred to in clause (i) shall be satisfied if—

Redesignate the clauses following accordingly.

AMENDMENT NO. 84

On page 21, strike beginning with line 16 through line 4 on page 22 and insert the following:

"(1) IN GENERAL.—

"(A) STATEMENT REQUIRED FOR REPORTED BILL.—It shall not be in order in the Senate to consider any bill or joint resolution that is reported by a committee unless the committee has published a statement of the Director on the direct costs of Federal mandates in accordance with subsection (a)(6) before such consideration.

"(B) STATEMENT OR THRESHOLD.—(i) It shall not be in order in the Senate to consider any bill, joint resolution, amendment, motion, or conference report—

"(I) if the enactment of such bill or resolution as reported;

"(II) after third reading or at any other time when no further amendments are in order, if such bill or resolution has been amended and if the enactment of such bill or resolution as amended; or

"(III) if such bill or resolution in the form recommended by such conference report differs from the bill or resolution as passed by the Senate, and if the enactment of such bill or resolution in the form recommended in such conference report,

would increase the direct costs of Federal inter-governmental mandates by an amount that causes the thresholds specified in subsection (b)(1)(A)(i) to be exceeded, unless the conditions specified in clause (ii) are satisfied.

"(ii) The conditions referred to in clause (i) shall be satisfied if—

Redesignate the clauses following accordingly.

AMENDMENT NO. 85

On page 25, insert between lines 10 and 11 the following:

"(4) DETERMINATIONS OF APPLICABILITY TO PENDING LEGISLATION.—For purposes of this subsection, the presiding officer of the Senate shall consult the Committee on Governmental Affairs on questions concerning the applicability of this section and the Unfunded Mandate Reform Act of 1995 to a pending bill, joint resolution, amendment, motion, or conference report.

"(5) DETERMINATIONS OF FEDERAL MANDATE LEVELS.—For purposes of this subsection, the levels of Federal mandates for a fiscal year shall be determined based on estimates made by the Committee on the Budget of the Senate on questions concerning the levels of Federal mandates for a fiscal year."

AMENDMENT NO. 86

On page 25, insert between lines 10 and 11 the following:

"(4) DETERMINATIONS OF APPLICABILITY TO PENDING LEGISLATION.—For purposes of this subsection, the presiding officer of the Senate shall consult the Committee on Governmental Affairs on all questions concerning the applicability of this section and the Unfunded Mandate Reform Act of 1995 to a pending bill, joint resolution, amendment, motion, or conference report.

"(5) DEPARTMENT OF FEDERAL MANDATE LEVELS.—For purposes of this subsection, the presiding officer of the Senate shall consult the Committee on the Budget on questions concerning the estimates of the levels of Federal mandates for a fiscal year."

AMENDMENT NO. 87

On page 33, lines 21 and 22, strike out "and the private sector".

On page 36, line 7, strike out "and" after the semi-colon.

On page 36, line 12, insert "and" after the semicolon.

On page 36, insert between lines 12 and 13 the following new subparagraph:

"(C) the effect of the Federal intergovernmental mandate on the national economy, including the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services;".

On page 36, line 17, insert "and" after the semicolon.

On page 36, strike out lines 18 through 22.

On page 36, line 23, strike out "(5)" and insert in lieu thereof "(4)".

AMENDMENT NO. 88

On page 36, insert between lines 12 and 13 the following new subparagraph:

"(C) the effect of the Federal intergovernmental mandate on the national economy, including the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services;".

AMENDMENT NO. 89

On page 36, line 17, insert "and" after the semicolon.

AMENDMENT NO. 90

On page 36, strike out liens 18 through 22.

AMENDMENT NO. 91

On page 36, line 23, strike out "(5)" and insert in lieu thereof "(4)".

AMENDMENT NO. 92

On page 33, lines 21 and 22, strike out "and the private sector".

AMENDMENT NO. 93

On page 36, line 7, strike out "and" after the semicolon.

AMENDMENT NO. 94

On page 36, line 12, insert "and" after the semicolon.

AMENDMENT NO. 95

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 "Federal Mandate Accountability and Reform Act of 1995".

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 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.

(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; and

(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.

(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.

(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.

(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.

(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.

(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.

(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.

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, 1996.

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) 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 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.

This Act shall expire December 31, 1998.

AMENDMENT NO. 96

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 "Federal Mandate Accountability and Reform Act of 1995".

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, 1996.

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.

This Act shall expire December 31, 1998.

AMENDMENT NO. 97

On page 5, line 19, strike "impose an" and insert "establish a new or increased".

On page 7, line 11, strike "impose an" and insert "establish a new or increased".

On page 8, line 5, before "amounts" insert "new or increased".

On page 8, line 15, before "amounts" insert "new or increased".

On page 9, line 7, strike "or".

On page 9, between lines 7 and 8, insert the following:

"(II) to comply with or carry out any applicable federal law or regulation (whether expired or still in effect) that would be reauthorized, reenacted, readopted, replaced, or revised by the same bill or joint resolution or proposed or final Federal regulation containing the relevant mandate; or".

On page 10, line 4, strike "and".

On page 10, between lines 4 and 5, insert the following:

"(III) any reduction in the duties or responsibilities of States, local governments, and tribal governments, or the private sector from levels previously required under any Federal law or regulation (whether expired or still in effect) that is reauthorized, reenacted, readopted, replaced, or revised by the same bill or joint resolution or proposed or final Federal regulation containing the relevant mandate; and".

AMENDMENT NO. 98

On page 5, line 19, strike "impose an" and insert "establish a new or increased".

AMENDMENT NO. 99

On page 7, line 11, strike "impose an" and insert "establish a new or increased".

AMENDMENT NO. 100

On page 8, line 5, before "amounts" insert "new or increased".

AMENDMENT NO. 101

On page 8, line 15, before "amounts" insert "new or increased".

AMENDMENT NO. 102

On page 9, line 7, strike "or".

AMENDMENT NO. 103

On page 9, between lines 7 and 8, insert the following:

"(II) to comply with or carry out any applicable federal law or regulation (whether expired or still in effect) that would be reauthorized, reenacted, readopted, replaced, or revised by the same bill or joint resolution or proposed or final Federal regulation containing the relevant mandate; or".

AMENDMENT NO. 104

On page 10, line 4, strike "and".

AMENDMENT NO. 105

On page 10, between lines 4 and 5, insert the following:

"(III) any reduction in the duties or responsibilities of States, local governments,

and tribal governments, or the private sector from levels previously required under any Federal law or regulation (whether expired or still in effect) that is reauthorized, reenacted, readopted, replaced, or revised by the same bill or joint resolution or proposed or final Federal regulation containing the relevant mandate; and".

LEVIN AMENDMENTS NOS. 106–117

(Ordered to lie on the table.)

Mr. LEVIN submitted 12 amendments intended to be proposed by him to the bill S. 1, supra; as follows:

AMENDMENT NO. 106

On page 12, line 18, insert "age" after "gender,".

AMENDMENT NO. 107

On page 33, strike out lines 9 through 12 and insert in lieu thereof the following:

SEC. 107. SENATE JOINT HEARINGS ON UNFUNDED FEDERAL MANDATES.

No later than December 31, 1998, the Senate Governmental Affairs Committee and the Senate Budget Committee shall hold joint hearings on the operations of the amendments made by this title and report to the full Senate on their findings and recommendations.

SEC. 108. EFFECTIVE DATE.

This title and the amendments made by this title shall—

(1) take effect on January 1, 1996;

(2) apply only to legislation considered on or after January 1, 1996; and

(3) have no force or effect on and after January 1, 2002.

AMENDMENT NO. 108

On page 5, beginning with line 22, strike out all through line 2 on page 6 and insert in lieu thereof:

"(I) a condition of Federal assistance;

"(II) a duty arising from participation in a voluntary Federal program, except as provided in subparagraph (B)); or

"(III) for purposes of section 408 (c)(1)(B) and (d) only, a duty that establishes or enforces any statutory right of employee in both the public and private sectors with respect to their employment; or".

AMENDMENT NO. 109

On page 38, after line 25 insert the following:

"SEC. 205. EFFECTIVE DATE.

"This title and the amendments made by this title shall take effect with respect to regulations proposed on or after January 1, 1996."

AMENDMENT NO. 110

On page 17, insert between lines 17 and 18 the following new paragraph:

"(7) COMMITTEE DETERMINATION OF MANDATE DISADVANTAGEOUS TO PRIVATE SECTOR; WAIVER OF POINT OF ORDER.—If a committee of authorization of the Senate or the House of Representatives determines based on the statement required under paragraph (3)(C) that there would be a significant competitive disadvantage to the private sector if a Federal mandate contained in the legislation to which the statement applies were waived for State, local, and tribal governments or the costs of such mandate to the State, local, and tribal governments were paid by the Federal Government, then no point of order under subsection (c)(1)(B) will lie."

AMENDMENT NO. 111

On page 24, line 18, strike out "ineffective" and insert in lieu thereof the following: "ineffective as applied to State, local, and tribal governments".

AMENDMENT NO. 112

On page 19, insert between lines 10 and 11 the following new clause:

"(iii) If the Director determines that it is not feasible to make a reasonable estimate that would be required under clauses (i) and (ii), the Director shall not make the estimate, but shall report in the statement that the reasonable estimate cannot be made and shall include the reasons for that determination in the statement. For purposes of subsection (c), a point of order may be raised as though an estimate was reported that exceeded clause (i)."

AMENDMENT NO. 113

On page 14, line 19 strike "expected".

On page 22, line 12 strike "estimated".

On page 22, line 22 strike "estimated".

On page 23, line 2 strike "estimated".

On page 23, lines 4 and 5 strike "a specific dollar amount estimate of the full" and insert in lieu thereof "the".

On page 24, line 8 strike "estimated".

On page 24, line 15 strike "estimated".

AMENDMENT NO. 114

On page 24, line 21, insert the following before the period: "as estimated in the authorization bill".

AMENDMENT NO. 115

On page 25 after line 10 insert the following:

"(4) DETERMINATION OF APPLICABILITY.—For purposes of this subsection, the Committee on Governmental Affairs of the Senate, or the Committee on Government Reform and Oversight of the House of Representatives, as applicable, shall be consulted by the Presiding Officer of the Senate in determining whether a bill, joint resolution, amendment, motion or conference report contains a Federal intergovernmental mandate."

"(5) DETERMINATION OF FEDERAL MANDATE LEVELS.—For purposes of this subsection, the levels of Federal mandates for a fiscal year shall be determined based on the estimates made by the Committee on the Budget of the Senate or the House of Representatives, as the case may be."

AMENDMENT NO. 116

On page 29, line 8, insert after the comma the following: "or at the request of an individual Member of the Senate or the House of Representatives,".

AMENDMENT NO. 117

On page 26, after line 5, add the following:

"(e) LIMITATION ON APPLICATION OF SUBSECTION (C).—Subsection (c) shall not apply to any bill, joint resolution, amendment, or conference report that reauthorizes appropriations for carrying out, or that amends, any statute if enactment of the bill, joint resolution, amendment, or conference report—

"(1) would not result in a net increase in the aggregate amount of direct costs of Federal intergovernmental mandates; and

"(2)(A) would not result in a net reduction or elimination of authorizations of appropriations for Federal financial assistance that would be provided to States, local governments, or tribal governments for use to comply with any Federal intergovernmental mandate; or

"(B) in the case of any net reduction or elimination of authorizations of appropriations for such Federal financial assistance that would result from such enactment, would reduce the duties imposed by the Federal intergovernmental mandate by a corresponding amount."

DORGAN (AND HARKIN) AMENDMENT NO. 118

(Ordered to lie on the table.)

Mr. DORGAN (for himself and Mr. HARKIN) submitted an amendment intended to be proposed by them to the bill, S. 1, supra; as follows:

At the end of the bill, add the following:

TITLE V—INTEREST RATE REPORTING REQUIREMENT

SEC. 501. REPORT BY BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

(a) REPORT REQUIRED.—Not later than 30 days after the Board or the Committee takes any action to change the discount rate or the Federal funds rate, the Board shall submit a report to the Congress and to the President which shall include a detailed analysis of the projected costs of that action, and the projected costs of any associated changes in market interest rates, during the 5-year period following that action.

(b) CONTENTS.—The report required by subsection (a) shall include an analysis of the costs imposed by such action on—

(1) Federal, State, and local government borrowing, including costs associated with debt service payments; and

(2) private sector borrowing, including costs imposed on—

(A) consumers;

(B) small businesses;

(C) homeowners; and

(D) commercial lenders.

(c) DEFINITIONS.—for purposes of this section—

(1) the term "Board" means the Board of Governors of the Federal Reserve System; and

(2) the term "Committee" means the Federal Open Market Committee established under section 12A of the Federal Reserve Act.

DORGAN AMENDMENT NO. 119

(Ordered to lie on the table.)

Mr. DORGAN submitted an amendment intended to be proposed by him to the bill, S. 1, supra, as follows:

At the appropriate place, insert the following:

SEC. . CALCULATIONS OF THE CONSUMER PRICE INDEX.

(a) FINDINGS.—The Senate makes the following findings:

(1) The Chairman of the Board of Governors of the Federal Reserve System has maintained that the current Consumer Price Index overstates inflation by as much as 50 percent.

(2) Other expert opinions on the Consumer Price Index range from estimates of a modest overstatement to the possibility of an understatement of the rate of inflation.

(3) Some leaders in the Congress have called for an immediate change in the way in which the Consumer Price Index is calculated.

(4) Changing the Consumer Price Index in the manner recommended by the Board of Governors of the Federal Reserve System would result in both reductions in Social Security benefits and increases in income taxes.

(5) The Bureau of Labor Statistics, which has responsibility for the Consumer Price Index, has been working to identify and correct problems with the way in which the Consumer Price Index is now calculated.

(6) Calculation of the Consumer Price Index should be based on sound economic principles and not on political pressure.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) a precipitous change in the calculation of the Consumer Price Index that would result in an increase in income taxes and a decrease in Social Security benefits is not the appropriate way to resolve this issue; and

(2) any change in the calculation of the Consumer Price Index should result from thoughtful study and analysis and should be a result of a consensus reached by the experts, not pressure exerted by politicians.

GRAHAM AMENDMENTS NOS. 120–122

(Ordered to lie on the table.)

Mr. GRAHAM submitted three amendments intended to be proposed by him to the bill, S. 1, supra, as follows:

AMENDMENT NO. 120

On page 16, line 3, strike "and".

On page 16, line 12, strike "mandates." and insert "mandates; and".

On page 16, between lines 12 and 13, insert the following:

"(iii) if funded in whole or in part, a statement of whether and how the committee has created a mechanism to allocate the funding in a manner that is reasonably consistent with the expected direct costs to each State, local, and tribal government."

AMENDMENT NO. 121

At the appropriate place, insert the following:

SEC. . EFFECTIVE DATE.

Title shall take effect on July 1, 1995.

Purpose: To provide a budget point of order if a bill, resolution, or amendment reduces or eliminates funding for duties that are the constitutional responsibility of the Federal Government.

AMENDMENT NO. 122

On page 6, strike line 3 and all that follows through line 10, and insert the following:

"(ii) would reduce or eliminate the amount of authorization of appropriations for—

"(I) 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 unless such duty is reduced or eliminated by a corresponding amount; or

"(II) the exercise of powers relating to immigration that are the responsibility or under the authority of the Federal Government and whose reduction or elimination would result in a shifting of the costs of addressing immigration expenses to the States, local governments, and tribal governments; or".

ROTH AMENDMENT NO. 123

(Ordered to lie on the table.)

Mr. ROTH submitted an amendment intended to be proposed by him to the bill S. 1, supra; as follows:

On page 19, insert between lines 10 and 11 the following new clause:

"(iii) If the Director determines that it is not feasible to make a reasonable estimate that would be required under clauses (i) and (ii), the Director shall not make the estimate, but shall report in the statement that the reasonable estimate cannot be made and shall include the reasons for that determination in the statement. However, for the purposes of subsection (c), such report shall not fulfill the requirements for an estimate under clauses (i) and (ii)."

BRADLEY AMENDMENT NO. 124

(Ordered to lie on the table.)

Mr. BRADLEY submitted an amendment intended to be proposed by him to the bill S. 1, supra; as follows:

On page 13, insert between lines 13 and 14 the following new section:

SEC. 6. FINDINGS ON THE IMPACT ON LOCAL GOVERNMENTS.

The Senate finds that—

(1) the Congress should be concerned about shifting costs from Federal to State and local authorities and should be equally concerned about the growing tendency of States to shift costs to local governments;

(2) cost shifting from States to local governments has, in many instances, forced local governments to raise property taxes or curtail sometimes essential services; and

(3) increases in local property taxes and cuts in essential services threaten the ability of many citizens to attain and maintain the American dream of owning a home in a safe, secure community.

On page 21, insert between lines 13 and 14 the following new paragraph:

"(2) ESTIMATE OF POSSIBLE LOCAL PROPERTY TAX RELIEF.—The Director shall include in each statement submitted to a committee of the Congress under this subsection an estimate of the amount by which additional Federal funding or alleviation of the applicable mandate could be used to lower property taxes of a local government, if—

"(A) such additional funding were first applied to relief of such taxes; or

"(B) such State or local government funds previously used to help pay for a mandate which is proposed to be alleviated were first applied to relief of such taxes.

LAUTENBERG AMENDMENT NO. 125

(Ordered to lie on the table.)

Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 1, supra; as follows:

On page 13, line 5, strike out "or".

On page 13, line 8, strike out the period and insert in lieu thereof a semicolon and "or".

On page 13, insert between lines 8 and 9 the following new paragraph:

(7) limits exposure to known human (Group A) carcinogens, as defined in the Environmental Protection Agency's Risk Assessment Guidelines of 1986.

HARKIN AMENDMENTS NOS. 126–127

(Ordered to lie on the table.)

Mr. HARKIN submitted two amendments intended to be proposed by him to the bill S. 1, supra; as follows:

AMENDMENT NO. 126

At the appropriate place insert the following:

SEC. . DIRECTIVE TO THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY CONCERNING REGULATION OF FISHING LURES.

(a) FINDINGS.—Congress finds that—

(1) millions of Americans of all ages enjoy recreational fishing; fishing is one of the most popular sports;

(2) lead and other types of metal sinkers and fishing lures have been used by Americans in fishing for hundreds of years;

(3) the Administrator of the Environmental Protection Agency has proposed to issue a rule under section 6 of the Toxic Substances Control Act, to prohibit the manufacturing, processing, and distribution in commerce in the United States, of certain smaller size fishing sinkers containing lead and zinc, and mixed with other substances, including those made of brass;

(4) the Environmental Protection Agency has based its conclusions that lead fishing sinkers of a certain size present an unreasonable risk of injury to human health or the environment on less than definitive scientific data, conjecture and anecdotal information;

(5) alternative forms of sinkers and fishing lures are considerably more expensive than those made of lead; consequently, a ban on lead sinkers would impose additional costs on millions of Americans who fish;

(6) in the absence of more definitive evidence of harm to the environment, the Federal Government should not take steps to restrict the use of lead sinkers; and

(7) alternative measures to protect waterfowl from lead exposure should be carefully reviewed.

(b) FISHING SINKERS AND LURES.—

(1) DIRECTIVE.—The Administrator of the Environmental Protection Agency shall not, under purported authority of section 6 of the Toxic Substances Control Act (15 U.S.C. 2605), take action to prohibit or otherwise restrict the manufacturing, processing, distributing, or use of any fishing sinkers or lures containing lead, zinc, or brass.

(2) FURTHER ACTION.—If the Administrator obtains a substantially greater amount of evidence of risk of injury to health or the environment than that which was adduced in the rulemaking proceedings described in the proposed rule dated February 28, 1994 (59 Fed. Reg. 11122 (March 9, 1994)), the Administrator shall report those findings to Congress, with any recommendation that the Administrator may have for legislative action.

AMENDMENT NO. 127

On page 50, add after line 6 the following new title:

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. SENSE OF THE SENATE REGARDING BALANCED BUDGET AMENDMENT.

(a) FINDINGS.—The Senate finds that—

(1) social security is a contributory insurance program supported by deductions from workers' earnings and matching contributions from their employers that are deposited into an independent trust fund;

(2) over 42,000,000 Americans, including over 3,000,000 children and 5,000,000 disabled workers and their families, receive social security benefits;

(3) social security is the only pension program for 60 percent of older Americans;

(4) almost 60 percent of older beneficiaries depend on social security for at least half of their income and 25 percent depend on social security for at least 90 percent of their income;

(5) without social security an additional 15,000,000 Americans, mostly senior citizens, would be thrown into poverty;

(6) 138,000,000 American workers participate in the social security system and are insured in case of retirement, disability, or death;

(7) social security is a contract between workers and the Government;

(8) social security is a self-financed program that is not contributing to the current Federal budget deficit; in fact, the social security trust funds currently have over $400,000,000,000 in reserves and that surplus will increase during fiscal year 1995 alone by an additional $70,000,000,000;

(9) this surplus is necessary to pay monthly benefits for current and future beneficiaries;

(10) recognizing that social security is a self-financed program, Congress took social security completely "off-budget" in 1990; however, unless social security is explicitly excluded from a balanced budget amendment to the United States Constitution, such an amendment would, in effect, put the program back into the Federal budget by referring to all spending and receipts in calculating whether the budget is in balance;

(11) raiding the social security trust funds to reduce the Federal budget deficit would be devastating to both current and future beneficiaries and would further undermine confidence in the system among younger workers;

(12) the American people in poll after poll have overwhelmingly rejected cutting social security benefits to reduce the Federal deficit and balance the budget; and

(13) social security beneficiaries throughout the nation are gravely concerned that their financial security is in jeopardy because of possible social security cuts and deserve to be reassured that their benefits will not be subject to cuts that would likely be required should social security not be excluded from a balanced budget amendment to the United States Constitution.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that any joint resolution providing for a balanced budget amendment to the United States Constitution passed by the Senate shall specifically exclude social security from the calculations used to determine if the Federal budget is in balance.

LEAHY AMENDMENT NO. 128

(Ordered to lie on the table.)

Mr. LEAHY submitted an amendment intended to be proposed by him to the bill, S. 1, supra, as follows:

At the appropriate place, insert the following:

( ) A law or regulation which protects the citizens, businesses or property in a State from the actions of persons, businesses or governments in another State or States is excluded from the provisions of this Act.

BYRD AMENDMENT NO. 129

(Ordered to lie on the table.)

Mr. BYRD submitted an amendment intended to be proposed by him to the bill, S. 1, supra, as follows:

On page 23, strike beginning with line 24 through line 21 on page 24.

BINGAMAN AMENDMENT NOS. 130–132

(Ordered to lie on the table.)

Mr. BINGAMAN submitted three amendments intended to be proposed by him to the bill, S. 1, supra, as follows:

AMENDMENT NO. 130

On page 7, insert:

"(iii) any requirement for a license or permit for the treatment or disposal of hazardous waste".

AMENDMENT NO. 131

On page 6, insert before lines 2 and 3 the following:

"iii any requirement for a license or permit for the treatment or disposal of nuclear and hazardous waste".

AMENDMENT NO. 132

On page 5, line 23, after "or" insert "a condition of receipt of a Federal license; or".

KEMPTHORNE AMENDMENTS NOS. 133–134

(Ordered to lie on the table.)

Mr. KEMPTHORNE submitted two amendments intended to be proposed by him to the bill S. 1; supra; as follows:

AMENDMENT NO. 133

At the appropriate place in the bill insert the following new section:

LIMITATION ON APPLICATION.—This Act shall not apply to any bill, joint resolution, amendment, or conference report that reauthorizes appropriations to carry out, or that amend, any statute if enactment of the bill, joint resolution, amendment, or conference report—

(1) would not result in a net increase in the aggregate amount of direct costs of Federal intergovernmental mandates; and

(2)(A) would not result in a net reduction or elimination of authorizations of appropriations for Federal financial assistance that would be provided to States, local governments, or tribal governments for use to comply with any Federal intergovernmental mandate; or

(B) in the case of any net reduction or elimination of authorizations of appropriations for such Federal financial assistance that would result from such enactment, would reduce the duties imposed by the Federal intergovernmental mandate by a corresponding amount.

AMENDMENT NO. 134

On page 24, insert between lines 21 and 22 the following new section:

"(cc) If a bill, joint resolution, amendmet, motion, or conference report contains a Federal private sector mandate and a Federal intergovernmental mandate that would, if enacted, impose identical duties on both State and local governments and on the private sector, in such cases in which Federal private sector mandates apply to private sector entities which are competing directly or indirectly with State and local governments for the purpose of providing substantially similar goods or services to the public, then this part shall apply to the Federal private sector mandate in that measure or matter in the same manner and to the same extent as it does to the Federal intergovernmental mandate."

DOMENICI AMENDMENT NOS. 135–136

(Ordered to lie on the table.)

Mr. KEMPTHORNE (for Mr. DOMENICI) submitted two amendments intended to be proposed by him to the bill S. 1; supra; as follows:

AMENDMENT NO. 135

On page 23, line 12, strike "(3)" and insert "5".

AMENDMENT NO. 136

On page 23, line 12, strike "(3)" and insert "this section".

KEMPTHORNE AMENDMENT NO. 137

(Ordered to lie on the table.)

Mr. KEMPTHORNE submitted an amendment intended to be proposed by him to the bill S. 1; supra; 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 "Unfunded Mandate Reform Act of 1995".

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 and the House of Representatives before the Senate and the House of Representatives vote on proposed legislation;

(4) to promote informed and deliberate decisions by Congress on the appropriateness of Federal mandates in any particular instance;

(5) to require that Congress consider whether to provide funding to assist State, local, and tribal governments in complying with Federal mandates, to require analyses of the impact of private sector mandates, and through the dissemination of that information provide informed and deliberate decisions by Congress and Federal agencies and retain competitive balance between the public and private sectors;

(6) to establish a point-of-order vote on the consideration in the Senate and House of Representatives of legislation containing significant Federal mandates; and

(7) 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) the terms defined under section 408(f) of the Congressional Budget and Impoundment Control Act of 1974 (as added by section 101 of this Act) shall have the meanings as so defined; and

(2) the term "Director" means the Director of the Congressional Budget Office.

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, or tribal government or any official of a State, local, or tribal government;

(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 the Director may reasonably request to assist the Director in carrying out this Act.

TITLE I—LEGISLATIVE ACCOUNTABILITY AND REFORM

SEC. 101. LEGISLATIVE MANDATE ACCOUNTABILITY AND REFORM .

(a) IN GENERAL.—Title IV of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding at the end thereof the following new section:

"SEC. 408. LEGISLATIVE MANDATE ACCOUNTABILITY AND REFORM .

"(a) DUTIES OF CONGRESSIONAL COMMITTEES.—

"(1) IN GENERAL.—When a committee of authorization of the Senate or the House of Representatives reports a bill or joint resolution of public character that includes any Federal mandate, the report of the committee accompanying the bill or joint resolution shall contain the information required by paragraphs (3) and (4).

"(2) SUBMISSION OF BILLS TO THE DIRECTOR.—When a committee of authorization of the Senate or the House of Representatives orders reported a bill or joint resolution of a public character, the committee shall promptly provide the bill or joint resolution to the Director of the Congressional Budget Office and shall identify to the Director any Federal mandates contained in the bill or resolution.

"(3) REPORTS ON FEDERAL MANDATES.—Each report described under paragraph (1) shall contain—

"(A) an identification and description of any Federal mandates in the bill or joint resolution, including the expected direct costs to State, local, and tribal governments, and to the private sector, required to comply with the Federal mandates;

"(B) a qualitative, and if practicable, a quantitative assessment of costs and benefits anticipated from the Federal mandates (including the effects on health and safety and the protection of the natural environment); and

"(C) a statement of the degree to which a Federal mandate affects both the public and private sectors and the extent to which Federal payment of public sector costs or the modification or termination of the Federal mandate as provided under subsection (c)(1)(B)(iii)(IV) would affect the competitive balance between State, local, or tribal governments and privately owned businesses.

"(4) INTERGOVERNMENTAL MANDATES.—If any of the Federal mandates in the bill or joint resolution are Federal intergovernmental mandates, the report required under paragraph (1) shall also contain—

"(A)(i) a statement of the amount, if any, of increase or decrease 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 to pay for the costs to State, local, and tribal governments of the Federal intergovernmental mandate; 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; and

"(B) any existing sources of Federal assistance in addition to those identified in subparagraph (A) that may assist State, local, and tribal governments in meeting the direct costs of the Federal intergovernmental mandates.

"(5) PREEMPTION CLARIFICATION AND INFORMATION.—When a committee of authorization of the Senate or the House of Representatives 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.

"(6) PUBLICATION OF STATEMENT FROM THE DIRECTOR.—

"(A) Upon receiving a statement (including any supplemental statement) from the Director under subsection (b), a committee of the Senate or the House of Representatives shall publish the statement in the committee report accompanying the bill or joint resolution to which the statement relates if the statement is available at the time the report is printed.

"(B) 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 Senate or the House of Representatives 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.

"(b) DUTIES OF THE DIRECTOR; STATEMENTS ON BILLS AND JOINT RESOLUTIONS OTHER THAN APPROPRIATIONS BILLS AND JOINT RESOLUTIONS.—

"(1) FEDERAL INTERGOVERNMENTAL MANDATES IN REPORTED BILLS AND RESOLUTIONS.—For each bill or joint resolution of a public character reported by any committee of authorization of the Senate or the House of Representatives, the Director of the Congressional Budget Office shall prepare and submit to the committee a statement as follows:

"(A) If the Director estimates that the direct cost of all Federal intergovernmental mandates in the bill or joint resolution will equal or exceed $50,000,000 (adjusted annually for inflation) 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.

"(B) The estimate required under subparagraph (A) shall include estimates (and brief explanations of the basis of the estimates) of—

"(i) the total amount of direct cost of complying with the Federal intergovernmental mandates in the bill or joint resolution; and

"(ii) 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 State, local, or tribal governments for activities subject to the Federal intergovernmental mandates.

"(2) FEDERAL PRIVATE SECTOR MANDATES IN REPORTED BILLS AND JOINT RESOLUTIONS.—For each bill or joint resolution of a public character reported by any committees of authorization of the Senate or the House of Representatives, the Director of the Congressional Budget Office shall prepare and submit to the committee a statement as follows:

"(A) If the Director estimates that the direct cost of all Federal private sector mandates in the bill or joint resolution will equal or exceed $200,000,000 (adjusted annually for inflation) 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, specify the estimate, and briefly explain the basis of the estimate.

"(B) Estimates required under this paragraph shall include estimates (and a brief explanation of the basis of the estimates) of—

"(i) the total amount of direct costs of complying with the Federal private sector mandates in the bill or joint resolution; and

"(ii) 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 usable by the private sector for the activities subject to the Federal private sector mandates.

"(C) If the Director determines that it is not feasible to make a reasonable estimate that would be required under subparagraphs (A) and (B), the Director shall not make the estimate, but shall report in the statement that the reasonable estimate cannot be made and shall include the reasons for that determination in the statement.

"(3) LEGISLATION FALLING BELOW THE DIRECT COSTS THRESHOLDS.—If the Director estimates that the direct costs of a Federal mandate will not equal or exceed the thresholds specified in paragraphs (1) and (2), the Director shall so state and shall briefly explain the basis of the estimate.

"(c) LEGISLATION SUBJECT TO POINT OF ORDER IN THE SENATE.—

"(1) IN GENERAL.—It shall not be in order in the Senate to consider—

"(A) any bill or joint resolution that is reported by a committee unless the committee has published a statement of the Director on the direct costs of Federal mandates in accordance with subsection (a)(6) before such consideration; and

"(B) any bill, joint resolution, amendment, motion, or conference report that would increase the direct costs of Federal intergovernmental mandates by an amount that causes the thresholds specified in subsection (b)(1)(A) to be exceeded, unless—

"(i) the bill, joint resolution, amendment, motion, or conference report provides direct spending authority for each fiscal year for

the Federal intergovernmental mandates included in the bill, joint resolution, amendment, motion, or conference report in an amount that is equal to the estimated direct costs of such mandate;

"(ii) the bill, joint resolution, amendment, motion, or conference report provides an increase in receipts and an increase in direct spending authority for each fiscal year for the Federal intergovernmental mandates included in the bill, joint resolution, amendment, motion, or conference report in an amount equal to the estimated direct costs of such mandate; or

"(iii) the bill, joint resolution, amendment, motion, or conference report includes an authorization for appropriations in an amount equal to the estimated direct costs of such mandate, and—

"(I) identifies a specific dollar amount estimate of the full direct costs of the mandate for each year or other period during which the mandate shall be in effect under the bill, joint resolution, amendment, motion or conference report, and such estimate is consistent with the estimate determined under paragraph (3) for each fiscal year;

"(II) identifies any appropriation bill that is expected to provide for Federal funding of the direct cost referred to under subclause (IV)(aa);

"(III) identifies the minimum amount that must be appropriated in each appropriations bill referred to in subclause (II), in order to provide for full Federal funding of the direct costs referred to in subclause (I); and

"(IV)(aa) designates a responsible Federal agency and establishes criteria and procedures under which such agency shall implement less costly programmatic and financial responsibilities of State, local, and tribal governments in meeting the objectives of the mandate, to the extent that an appropriation Act does not provide for the estimated direct costs of such mandate as set forth under subclause (III); or

"(bb) designates a responsible Federal agency and establishes criteria and procedures to direct that, if an appropriation Act does not provide for the estimated direct costs of such mandate as set forth under subclause (III), such agency shall declare such mandate to be ineffective as of October 1 of the fiscal year for which the appropriation is not at least equal to the direct costs of the mandate.

"(2) RULE OF CONSTRUCTION.—The provisions of paragraph (1)(B)(iii)(IV)(aa) shall not be construed to prohibit or otherwise restrict a State, local, or tribal government from voluntarily electing to remain subject to the original Federal intergovernmental mandate, complying with the programmatic or financial responsibilities of the original Federal intergovernmental mandate and providing the funding necessary consistent with the costs of Federal agency assistance, monitoring, and enforcement.

"(3) COMMITTEE ON APPROPRIATIONS.—Paragraph (1) shall not apply to matters that are within the jurisdiction of the Committee on Appropriations of the Senate or the House of Representatives.

"(d) ENFORCEMENT IN THE HOUSE OF REPRESENTATIVES.—It shall not be in order in the House of Representatives to consider a rule or order that waives the application of subsection (c) to a bill or joint resolution reported by a committee of authorization.

"(e) EXCLUSIONS.—This section 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, or tribal government or any official of a State, local, or tribal government;

"(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.

"(f) DEFINITIONS.—For purposes of this section:

"(1) The term 'Federal intergovernmental mandate' means—

"(A) any provision in legislation, statute, or regulation that—

"(i) would impose an enforceable duty upon States, local governments, or tribal governments, except—

"(I) a condition of Federal assistance; or

"(II) 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 unless such duty is reduced or eliminated by a corresponding amount; or

"(B) any provision in legislation, statute, or 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, if the provision—

"(i)(I) 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 legislation, statute or regulation.

"(2) The term 'Federal private sector mandate' means any provision in legislation, statute, or regulation that—

"(A) would impose an enforceable duty upon the private sector except—

"(i) a condition of Federal assistance; or

"(ii) 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 purposes of ensuring compliance with such duty.

"(3) The term 'Federal mandate' means a Federal intergovernmental mandate or a Federal private sector mandate, as defined in paragraphs (1) and (2).

"(4) The terms 'Federal mandate direct costs' and 'direct costs'—

"(A)(i) in the case of a Federal intergovernmental mandate, mean 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

"(ii) in the case of a provision referred to in paragraph (1)(A)(ii), mean the amount of Federal financial assistance eliminated or reduced;

"(B) in the case of a Federal private sector mandate, mean the aggregate estimated amounts that the private sector will be required to spend in order to comply with the Federal private sector mandate;

"(C) shall 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 in effect at the time of the adoption of the Federal mandate for the same activity as is affected by that Federal mandate; or

"(II) to comply with or carry out State, local governmental, and tribal governmental programs, or private-sector business or other activities in effect at the time of the adoption of the Federal mandate for the same activity as is affected by that mandate; or

"(ii) expenditures to the extent that such expenditures will be offset by any direct savings to the States, local governments, and tribal governments, or by the private sector, as a result of—

"(I) 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; and

"(D) shall be determined on the assumption that State, local, and 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. Reasonable steps to mitigate the costs shall not include increases in State, local, or tribal taxes or fees.

"(5) The term 'private sector' means all persons or entities in the United States, except for State, local, or tribal governments, including individuals, partnerships, associations, corporations, and educational and nonprofit institutions.

"(6) The term 'local government' has the same meaning as in section 6501(6) of title 31, United States Code.

"(7) The term 'tribal government' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (83 Stat. 688; 43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians.

"(8) The term 'small government' means any small governmental jurisdictions defined in section 601(5) of title 5, United States Code, and any tribal government.

"(9) The term 'State' has the same meaning as in section 6501(9) of title 31, United State Code.

"(10) The term 'agency' has the meaning as defined in section 551(1) of title 5, United

States Code, but does not include independent regulatory agencies, as defined in section 3502(10) of title 44, United States Code.

"(11) The term 'regulation' or 'rule' has the meaning of 'rule' as defined in section 601(2) of title 5, United States Code.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding after the item relating to section 407 the following new item:

"Sec. 408. Legislative mandate accountability and reform.".

SEC. 102. ENFORCEMENT IN THE HOUSE OF REPRESENTATIVES.

(a) MOTIONS TO STRIKE IN THE COMMITTEE OF THE WHOLE.—Clause 5 of rule XXIII of the Rules of the House of Representatives is amended by adding at the end the following:

"(c) In the consideration of any measure for amendment in the Committee of the Whole containing any Federal mandate the direct costs of which exceed the threshold in section 408(c) of the Congressional Budget and Impoundment Control Act of 1974, it shall always be in order, unless specifically waived by terms of a rule governing consideration of that measure, to move to strike such Federal mandate from the portion of the bill then open to amendment.".

(b) COMMITTEE ON RULES REPORTS ON WAIVED POINTS OF ORDER.—The Committee on Rules shall include in the report required by clause 1(d) of rule XI (relating to its activities during the Congress) of the Rules of the House of Representatives a separate item identifying all waivers of points of order relating to Federal mandates, listed by bill or joint resolution number and the subject matter of that measure.

(c) DETERMINATIONS.—

(1) DETERMINATION OF APPLICABILITY TO PENDING LEGISLATION.—For purposes of the application of this section in the House of Representatives, on questions regarding the applicability of this Act to a pending bill, joint resolution, amendment, motion, or conference report, the Committee on Government Reform and Oversight of the House of Representatives shall have the authority to make the final determination.

(2) DETERMINATIONS OF FEDERAL MANDATE LEVELS.—For the purposes of the application of this section in the House of Representatives, the levels of Federal mandates for a fiscal year shall be determined based on the estimates made by the Committee on the Budget of the House of Representatives.

SEC. 103. ASSISTANCE TO COMMITTEES AND STUDIES.

The Congressional Budget and Impoundment Control Act of 1974 is amended—

(1) in section 202—

(A) in subsection (c)—

(i) by redesignating paragraph (2) as paragraph (3); and

(ii) by inserting after paragraph (1) the following new paragraph:

"(2) At the request of any committee of the Senate or the House of Representatives, the Office shall, to the extent practicable, consult with and assist such committee in analyzing the budgetary or financial impact of any proposed legislation that may have—

"(A) a significant budgetary impact on State, local, or tribal governments; or

"(B) a significant financial impact on the private sector.";

(B) by amending subsection (h) to read as follows:

"(h) STUDIES.—

"(1) CONTINUING STUDIES.—The Director of the Congressional Budget Office shall conduct continuing studies to enhance comparisons of budget outlays, credit authority, and tax expenditures.

"(2) FEDERAL MANDATE STUDIES.—

"(A) At the request of any Chairman or ranking member of the minority of a Committee of the Senate or the House of Representatives, the Director shall, to the extent practicable, conduct a study of a Federal mandate legislative proposal.

"(B) In conducting a study on intergovernmental mandates under subparagraph (A), the Director shall—

"(i) solicit and consider information or comments from elected officials (including their designated representatives) of State, local, or tribal governments as may provide helpful information or comments;

"(ii) consider establishing advisory panels of elected officials or their designated representatives, of State, local, or tribal governments if the Director determines that such advisory panels would be helpful in performing responsibilities of the Director under this section; and

"(iii) if, and to the extent that the Director determines that accurate estimates are reasonably feasible, include estimates of—

"(I) the future direct cost of the Federal mandate to the extent that such costs significantly differ from or extend beyond the 5-year period after the mandate is first effective; and

"(II) any disproportionate budgetary effects of Federal mandates upon particular industries or sectors of the economy, States, regions, and urban or rural or other types of communities, as appropriate.

"(C) In conducting a study on private sector mandates under subparagraph (A), the Director shall provide estimates, if and to the extent that the Director determines that such estimates are reasonably feasible, of—

"(i) future costs of Federal private sector mandates to the extent that such mandates differ significantly from or extend beyond the 5-year time period referred to in subparagraph (B)(iii)(I);

"(ii) any disproportionate financial effects of Federal private sector mandates and of any Federal financial assistance in the bill or joint resolution upon any particular industries or sectors of the economy, States, regions, and urban or rural or other types of communities; and

"(iii) the effect of Federal private sector mandates in the bill or joint resolution on the national economy, including the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services."; and

(2) in section 301(d) by adding at the end thereof the following new sentence: "Any Committee of the House of Representatives or the Senate that anticipates that the committee will consider any proposed legislation establishing, amending, or reauthorizing any Federal program likely to have a significant budgetary impact on any State, local, or tribal government, 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 include its views and estimates on that proposal to the Committee on the Budget of the applicable House.".

SEC. 104. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Congressional Budget Office $4,500,000 for each of the fiscal years 1996, 1997, 1998, 1999, 2000, 2001, and 2002 to carry out the provisions of this Act.

SEC. 105. EXERCISE OF RULEMAKING POWERS.

The provisions of sections 101, 102, 103, 104, and 107 are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, 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. 106. REPEAL OF CERTAIN ANALYSIS BY CONGRESSIONAL BUDGET OFFICE.

(a) IN GENERAL.—Section 403 of the Congressional Budget Act of 1974 (2 U.S.C. 653) is repealed.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by striking out the item relating to section 403.

SEC. 107. EFFECTIVE DATE.

This title shall take effect on January 1, 1996 and shall apply only to legislation considered on and after such date.

TITLE II—REGULATORY ACCOUNTABILITY AND REFORM

SEC. 201. REGULATORY PROCESS.

(a) IN GENERAL.—Each agency shall, to the extent permitted in law—

(1) assess the effects of Federal regulations on State, local, and tribal governments (other than to the extent that such regulations incorporate requirements specifically set forth in legislation), and the private sector including specifically the availability of resources to carry out any Federal intergovernmental mandates in those regulations; and

(2) seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving statutory and regulatory objectives.

(b) STATE, LOCAL, AND TRIBAL GOVERNMENT INPUT.—Each agency shall, to the extent permitted in law, develop an effective process to permit elected officials (or their designated representatives) of State, local, 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, including the provisions of chapters 5, 6, and 7 of title 5, United States Code (commonly referred to as the Administrative Procedure Act).

(c) AGENCY PLAN.—

(1) EFFECTS ON STATE, LOCAL AND TRIBAL GOVERNMENTS.—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 under subsection (b); and

(C) inform, educate, and advise small governments on compliance with the requirements.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are 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 mandate that may result in the expenditure by State, local, or tribal governments, and the private sector, 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 State, local, and tribal governments and the private sector of complying with the Federal intergovernmental mandate, 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 the Federal intergovernmental mandate; and

(B) any disproportionate budgetary effects of the Federal intergovernmental mandate upon any particular regions of the Nation or particular State, local, or 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 mandate (such as the enhancement of health and safety and the protection of the natural environment);

(4) the effect of the Federal private sector mandate on the national economy, including the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services; and

(5)(A) a description of the extent of the agency's prior consultation with elected representatives (or their designated representatives) of the affected State, local, and tribal governments;

(B) a summary of the comments and concerns that were presented by State, local, 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 under 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—

(1) collect from agencies the statements prepared under section 202; and

(2) periodically forward copies of such statements 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—REVIEW OF UNFUNDED FEDERAL MANDATES

SEC. 301. ESTABLISHMENT.

There is established a commission which shall be known as the "Commission on Unfunded Federal Mandates" (in this title referred to as the "Commission").

SEC. 302. REPORT ON UNFUNDED FEDERAL MANDATES BY THE COMMISSION.

(a) IN GENERAL.—The Commission shall in accordance with this section—

(1) investigate and review the role of unfunded Federal mandates in intergovernmental relations and their impact on State, local, tribal, and Federal government objectives and responsibilities;

(2) make recommendations to the President and the Congress regarding—

(A) allowing flexibility for State, local, and tribal governments in complying with specific unfunded Federal mandates for which terms of compliance are unnecessarily rigid or complex;

(B) reconciling any 2 or more unfunded Federal mandates which impose contradictory or inconsistent requirements;

(C) terminating unfunded Federal mandates which are duplicative, obsolete, or lacking in practical utility;

(D) suspending, on a temporary basis, unfunded Federal mandates which are not vital to public health and safety and which compound the fiscal difficulties of State, local, and tribal governments, including recommendations for triggering such suspension;

(E) consolidating or simplifying unfunded Federal mandates, or the planning or reporting requirements of such mandates, in order to reduce duplication and facilitate compliance by State, local, and tribal governments with those mandates; and

(F) establishing common Federal definitions or standards to be used by State, local, and tribal governments in complying with unfunded Federal mandates that use different definitions or standards for the same terms or principles; and

(3) identify in each recommendation made under paragraph (2), to the extent practicable, the specific unfunded Federal mandates to which the recommendation applies.

(b) CRITERIA.—

(1) IN GENERAL.—The Commission shall establish criteria for making recommendations under subsection (a).

(2) ISSUANCE OF PROPOSED CRITERIA.—The Commission shall issue proposed criteria under this subsection not later than 60 days after the date of the enactment of this Act, and thereafter provide a period of 30 days for submission by the public of comments on the proposed criteria.

(3) FINAL CRITERIA.—Not later than 45 days after the date of issuance of proposed criteria, the Commission shall—

(A) consider comments on the proposed criteria received under paragraph (2);

(B) adopt and incorporate in final criteria any recommendations submitted in those comments that the Commission determines will aid the Commission in carrying out its duties under this section; and

(C) issue final criteria under this subsection.

(c) PRELIMINARY REPORT.—

(1) IN GENERAL.—Not later than 9 months after the date of the enactment of this Act, the Commission shall—

(A) prepare and publish a preliminary report on its activities under this title, including preliminary recommendations pursuant to subsection (a);

(B) publish in the Federal Register a notice of availability of the preliminary report; and

(C) provide copies of the preliminary report to the public upon request.

(2) PUBLIC HEARINGS.—The Commission shall hold public hearings on the preliminary recommendations contained in the preliminary report of the Commission under this subsection.

(d) FINAL REPORT.—Not later than 3 months after the date of the publication of the preliminary report under subsection (c), the Commission shall submit to the Congress, including the Committee on Government Reform and Oversight of the House of Representatives and the Committee on Governmental Affairs of the Senate, and to the President a final report on the findings, conclusions, and recommendations of the Commission under this section.

SEC. 303. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 9 members appointed from individuals who possess extensive leadership experience in and knowledge of State, local, and tribal governments and intergovernmental relations, including State and local elected officials, as follows:

(1) 3 members appointed by the Speaker of the House of Representatives, in consultation with the minority leader of the House of Representatives.

(2) 3 members appointed by the majority leader of the Senate, in consultation with the minority leader of the Senate.

(3) 3 members appointed by the President.

(b) WAIVER OF LIMITATION ON EXECUTIVE SCHEDULE POSITIONS.—Appointments may be made under this section without regard to section 5311(b) of title 5, United States Code.

(c) TERMS.—

(1) IN GENERAL.—Each member of the Commission shall be appointed for the life of the Commission.

(2) VACANCIES.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(d) BASIC PAY.—

(1) RATES OF PAY.—Members of the Commission shall serve without pay.

(2) PROHIBITION OF COMPENSATION OF FEDERAL EMPLOYEES.—Members of the Commission who are full-time officers or employees of the United States may not receive additional pay, allowances, or benefits by reason of their service on the Commission.

(e) TRAVEL EXPENSES.—Each member of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(f) CHAIRPERSON.—The President shall designate a member of the Commission as Chairperson at the time of the appointment of that member.

(g) MEETINGS.—

(1) IN GENERAL.—Subject to paragraph (2), the Commission shall meet at the call of the Chairperson or a majority of its members.

(2) FIRST MEETING.—The Commission shall convene its first meeting by not later than 45 days after the date of the completion of appointment of the members of the Commission.

(3) QUORUM.—A majority of members of the Commission shall constitute a quorum but a lesser number may hold hearings.

SEC. 304. DIRECTOR AND STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.

(a) DIRECTOR.—The Commission shall have a Director who shall be appointed by the Commission. The Director shall be paid at the rate of basic pay payable for level IV of the Executive Schedule.

(b) STAFF.—With the approval of the Commission, and without regard to section 5311(b) of title 5, United States Code, the Director may appoint and fix the pay of such staff as is sufficient to enable the Commission to carry out its duties.

(c) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Director and staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate payable under section 5376 of title 5, United States Code.

(d) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services of experts or consultants under section 3109(b) of title 5, United States Code.

(e) STAFF OF FEDERAL AGENCIES.—Upon request of the Director, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this title.

SEC. 305. POWERS OF COMMISSION.

(a) HEARINGS AND SESSIONS.—The Commission may, for the purpose of carrying out this title, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Commission considers appropriate.

(b) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

(c) OBTAINING OFFICIAL DATA.—The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this title, except information—

(1) which is specifically exempted from disclosure by law; or

(2) which that department or agency determines will disclose—

(A) matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

(B) information relating to trade secrets or financial or commercial information pertaining specifically to a given person if the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(C) personnel or medical data or similar data the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

unless the portions containing such matters, information, or data have been excised.

Upon request of the Chairperson of the Commission, the head of that department or agency shall furnish that information to the Commission.

(d) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(e) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its duties under this title.

(f) CONTRACT AUTHORITY.—The Commission may, subject to appropriations, contract with and compensate government and private agencies or persons for property and services used to carry out its duties under this title.

SEC. 306. TERMINATION.

The Commission shall terminate 90 days after submitting its final report pursuant to section 302(d).

SEC. 307. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission $1,000,000 to carry out this title.

SEC. 308. DEFINITION.

As used in this title, the term "Federal mandate" means any provision in statute or regulation that imposes an enforceable duty upon States, local governments, or tribal governments including a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

SEC. 309. EFFECTIVE DATE.

This title shall take effect 60 days after the date of the enactment of this Act.

TITLE IV—JUDICIAL REVIEW

SEC. 401. JUDICIAL REVIEW.

(a) IN GENERAL.—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.

(b) RULE OF CONSTRUCTION.—No provision of this Act or amendment made by this Act shall be construed to create any right or benefit, substantive or procedural, enforceable by any person in any administrative or judicial action. No ruling or determination made under the provisions of this Act or amendments made by this Act shall be considered by any court in determining the intent of Congress or for any other purpose.

BINGAMAN AMENDMENT NO. 138

(Ordered to lie on the table.)

Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill, S. 1, supra, as follows:

On page 7, line 13, after "assistance" insert "or a condition of receipt of a Federal license."

DOLE (AND OTHERS) AMENDMENT NO. 139

Mr. DOLE (for himself, Mr. BYRD, and Mr. GORTON) proposed an amendment to amendment No. 31 proposed by Mr. GORTON to the bill, S. 1, supra, as follows:

Strike all after "SEC." and add the following:

". . NATIONAL HISTORY STANDARDS.

"(a) IN GENERAL.—Notwithstanding any other provision of law, the National Education Goals Panel shall disapprove, and the National Education Standards and Improvement Council shall not certify, any voluntary national content standards, voluntary national student performance standards, and criteria for the certification of such content and student performance standards, regarding the subject of history, that have been developed prior to February 1, 1995.

"(b) PROHIBITION.—No Federal funds shall be awarded to, or expended by, the National Center for History in the Schools, after the date of enactment of this Act, for the development of the voluntary national content standards, the voluntary national student performance standards, and the criteria for the certification of such content and student performance standards, regarding the subject of history.

"(c) SENSE OF THE SENATE.—It is the sense of the Senate that—

"(1) the voluntary national content standards, the voluntary national student performance standards, and the criteria for the certification of such content and student performance standards, regarding the subject of history, that are established under title II of the Goals 2000: Educate America Act should not be based on standards developed by the National Center for History in the Schools; and

"(2) if the Department of Education, the National Endowment for the Humanities, or any other Federal agency provides funds for the development of the standards and criteria described in paragraph (1), the recipient of such funds should have a decent respect for United States history's roots in western civilization."

MURRAY AMENDMENT NO. 140

(Ordered to lie on the table.)

Mrs. MURRAY submitted an amendment intended to be proposed by her to the bill S. 1, supra; as follows:

At the appropriate place, add the following:

( ) The provisions of this Act and the amendments made by this Act also shall not apply to any agreement between the Federal Government and a State, local, or tribal government, or the private sector for the purpose of carrying out environmental restoration or waste management activities of the Department of Defense or the Department of Energy.

BRADLEY (AND OTHERS) AMENDMENT NO. 141

Mr. BRADLEY (for himself, Mr. CHAFEE, Mr. DORGAN, Mr. SIMPSON, Mr. ROBB, Mr. DOLE, Mr. NICKLES, Mr. LAUTENBERG, Mr. KEMPTHORNE, and Mr. WELLSTONE) proposed an amendment to amendment No. 31 proposed by Mr. GORTON to the bill S. 1, supra; as follows:

At the end of the pending amendment insert the following:

SEC. 107. IMPACT ON LOCAL GOVERNMENTS.

(a) FINDINGS.—The Senate finds that—

(1) the Congress should be concerned about shifting costs from Federal to State and local authorities and should be equally concerned about the growing tendency of States to shift costs to local governments:

(2) cost shifting from States to local governments has, in many instances, forced local governments to raise property taxes or curtail sometimes essential services; and

(3) increases in local property taxes and cuts in essential services threaten the ability of many citizens to attain and maintain the American dream of owning a home in a safe, secure community.

(b) SENSE OF THE SENATE.—it is the sense of the Senate that—

(1) the Federal Government should not shift certain costs to the State, and States should end the practice of shifting costs to local governments, which forces many local governments to increase property taxes;

(2) States should end the imposition, in the absence of full consideration by their legislatures, of State issued mandates on local governments without adequate State funding, in a manner that may displace other essential government priorities; and

(3) one primary objective of this Act and other efforts to change the relationship among Federal, State, and local governments should be to reduce taxes and spending at all levels and to end the practice of shifting costs from one level of government to another with little or no benefit to taxpayers.

SEC. 108. EFFECTIVE DATE.

BOXER (AND OTHERS) AMENDMENT NO. 142

Mrs. BOXER (for herself, Mrs. MURRAY, Mr. FEINGOLD, Mr. KENNEDY, Mr. CAMPBELL, Mr. SIMON, Mr. LAUTENBERG, Mr. DODD, Mr. BAUCUS, Mr. LEVIN, Mr. LIEBERMAN, Ms. MOSELEY-BRAUN, Mr. HARKIN, Mr. PELL, Mr. INOUYE, Ms. MIKULSKI, Mrs. FEINSTEIN, Mr. REID, Mr. WELLSTONE, Mr. ROBB, Mr. KOHL, Mr. BRYAN, and Mr. KERRY) proposed an amendment to amendment No. 31 proposed by Mr. GORTON to the bill S. 1, supra; as follows:

At the end of the amendment add the following:

"SEC. 108. SENSE OF THE SENATE CONCERNING PROTECTION OF REPRODUCTIVE HEALTH CLINICS.

"(a) FINDINGS.—Congress finds that—

"(1) there are approximately 900 clinics in the United States providing reproductive health services

"(2) violence directed at persons seeking to provide reproductive health services continues to increase in the United States, as demonstrated by the recent shootings at two reproductive health clinics in Massachusetts and another health care clinic in Virginia;

"(3) organizations monitoring clinic violence have recorded over 130 incidents of violence or harassment directed at reproductive health care clinics and their personnel in 1994 such as death threats, stalking, chemical attacks, bombings and arson;

"(4) there has been one attempted murder in Florida and four individuals killed at reproductive health care clinics in Florida and Massachusetts in 1994;

"(5) the Congress passed and the President signed the Freedom of Access to Clinic Entrances Act of 1994, a law establishing Federal criminal penalties and civil remedies for certain violent, threatening, obstructive and destructive conduct that is intended to injure, intimidate or interfere with persons seeking to obtain or provide reproductive health services;

"(6) violence is not a mode of free speech and should not be condoned as a method of expressing an opinion; and

"(7) the President has instructed the Attorney General to order—

"(A) the United States Attorneys to create task forces of Federal, State and local law enforcement officials and develop plans to address security for reproductive health care clinics located within their jurisdictions; and

"(B) the United States Marshals Service to ensure coordination between clinics and Federal, State and local law enforcement officials regarding potential threats of violence.

"(b) SENSE OF THE SENATE.—It is the sense of the Senate that the United States Attorney General should fully enforce the law and protect persons seeking to provide or obtain, or assist in providing or obtaining, reproductive health services from violent attack.

"(c) Nothing in this resolution shall be construed to prohibit any expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the First Amendment to the Constitution.".

LEVIN (AND OTHERS) AMENDMENT NO. 143

Mr. LEVIN (for himself, Mr. KEMPTHORNE, and Mr. GLENN) proposed an amendment to the bill S. 1, supra; as follows:

On page 19, insert between lines 10 and 11 the following new clause:

"(iii) If the Director determines that it is not required under clauses (i) and (ii), the Director shall not make the estimate, but shall report in the statement that the reasonable estimate cannot be made and shall include the reasons for that determination in the statement. If such determination is made by the Director, a point of order shall lie only under (c)(1)(A) and as if the requirement of (c)(1)(A) had not been met.

BUMPERS AMENDMENT NO. 144

Mr. BUMPERS proposed an amendment to amendment No. 31 proposed by Mr. GORTON to the bill S. 1, supra; as follows:

In lieu of the matter proposed to be inserted by the pending amendment, insert the following new title:

TITLE COLLECTION OF STATE AND LOCAL SALES TAXES

SEC. ___01. SHORT TITLE.

This title may be cited as the "Consumer and Main Street Business Protection Act of 1995".

SEC. ___02. FINDINGS.

The Congress finds that—

(1) merchandise purchased from out-of-State firms is subject to State and local sales taxes in the same manner as merchandise purchased from in-State firms,

(2) State and local governments generally are unable to compel out-of-State firms to collect and remit such taxes, and consequently, many out-of-State firms choose not to collect State and local taxes on merchandise delivered across State lines,

(3) moreover, many out-of-State firms fail to inform their customers that such taxes exist, with some firms even falsely claim that merchandise purchased out-of-State is tax-free, and consequently, many consumers unknowingly incur tax liabilities, including interest and penalty charges,

(4) Congress has a duty to protect consumers from explicit or implicit misrepresentations of State and local sales tax obligations,

(5) small businesses, which are compelled to collect State and local sales taxes, are subject to unfair competition when out-of-State firms cannot be compelled to collect and remit such taxes on their sales to residents of the State,

(6) State and local governments provide a number of resources to out-of-State firms including government services relating to disposal of tons of catalogs, mail delivery, communications, and bank and court systems,

(7) the inability of State and local governments to require out-of-State firms to collect and remit sales taxes deprives State and local governments of needed revenue and forces such State and local governments to raise taxes on taxpayers, including consumers and small businesses, in such State,

(8) the Supreme Court ruled in Quill Corporation v. North Dakota, 112 S. Ct. 1904 (1992) that the due process clause of the Constitution does not prohibit a State government from imposing personal jurisdiction and tax obligations on out-of-State firms that purposefully solicit sales from residents therein, and that the Congress has the power to authorize State governments to require out-of-State firms to collect State and local sales taxes, and

(9) as a matter of federalism, the Federal Government has a duty to assist State and local governments in collecting sales taxes on sales from out-of-State firms.

SEC. ___03. AUTHORITY FOR COLLECTION OF SALES TAX.

(a) IN GENERAL.—A State is authorized to require a person who is subject to the personal jurisdiction of the State to collect and remit a State sales tax, a local sales tax, or both, with respect to tangible personal property if—

(1) the destination of the tangible personal property is in the State,

(2) during the 1-year period ending on September 30 of the calendar year preceding the calendar year in which the taxable event occurs, the person has gross receipts from sales of such tangible personal property—

(A) in the United States exceeding $3,000,000, or

(B) in the State exceeding $100,000, and

(3) the State, on behalf of its local jurisdictions, collects and administers all local sales taxes imposed pursuant to this title.

(b) STATES MUST COLLECT LOCAL SALES TAXES.— Except as provided in section ___04(d), a State in which both State and local sales taxes are imposed may not require State sales taxes to be collected and remitted under subsection (a) unless the State also requires the local sales taxes to be collected and remitted under subsection (a).

(c) AGGREGATION RULES.—All persons that would be treated as a single employer under section 52 (a) or (b) of the Internal Revenue Code of 1986 shall be treated as one person for purposes of subsection (a).

(d) DESTINATION.—For purposes of subsection (a), the destination of tangible personal property is the State or local jurisdiction which is the final location to which the seller ships or delivers the property, or to which the seller causes the property to be shipped or delivered, regardless of the means of shipment or delivery or the location of the buyer.

SEC.___04. TREATMENT OF LOCAL SALES TAXES.

(a) UNIFORM LOCAL SALES TAXES.—

(1) IN GENERAL.—Sales taxes imposed by local jurisdictions of a State shall be deemed to be uniform for purposes of this title and shall be collected under this title in the same manner as State sales taxes if—

(A) such local sales taxes are imposed at the same rate and on identical transactions in all geographic areas in the State, and

(B) such local sales taxes imposed on sales by out-of-State persons are collected and administered by the State.

(2) APPLICATION TO BORDER JURISDICTION TAX RATES.—A State shall not be treated as failing to meet the requirements of paragraph (1)(A) if, with respect to a local jurisdiction which borders on another State, such State or local jurisdiction—

(A) either reduces or increases the local sales tax in order to achieve a rate of tax equal to that imposed by the bordering State on identical transactions, or

(B) exempts from the tax transactions which are exempt from tax in the bordering State.

(b) NONUNIFORM LOCAL SALES TAXES.—

(1) IN GENERAL.—Except as provided in subsection (d), nonuniform local sales taxes required to be collected pursuant to this title shall be collected under one of the options provided under paragraph (2).

(2) ELECTION.—For purposes of paragraph (1), any person required under authority of this title to collect nonuniform local sales taxes shall elect to collect either—

(A) all nonuniform local sales taxes applicable to transactions in the State, or

(B) a fee (at the rate determined under paragraph (3)) which shall be in lieu of the nonuniform local sales taxes described in subparagraph (A).

Such election shall require the person to use the method elected for all transactions in the State while the election is in effect.

(3) RATE OF IN-LIEU FEE.—For purposes of paragraph (2)(B), the rate of the in-lieu fee for any calendar year shall be an amount equal to the product of—

(A) the amount determined by dividing total nonuniform local sales tax revenues collected in the State for the most recently completed State fiscal year for which data is available by total State sales tax revenues for the same year, and

(B) the State sales tax rate.

Such amount shall be rounded to the nearest 0.25 percent.

(4) NONUNIFORM LOCAL SALES TAXES.—For purposes of this title, nonuniform local sales taxes are local sales taxes which do not meet the requirements of subsection (a).

(c) DISTRIBUTION OF LOCAL SALES TAXES.—

(1) IN GENERAL.—Except as provided in subsection (d), a State shall distribute to local jurisdictions a portion of the amounts collected pursuant to this title determined on the basis of—

(A) in the case of uniform local sales taxes, the proportion which each local jurisdiction receives of uniform local sales taxes not collected pursuant to this title,

(B) in the case of in-lieu fees described in subsection (b)(2)(B), the proportion which each local jurisdiction's nonuniform local sales tax receipts bears to the total nonuniform local sales tax receipts in the State, and

(C) in the case of any nonuniform local sales tax collected pursuant to this title, the geographical location of the transaction on which the tax was imposed.

The amounts determined under subparagraphs (A) and (B) shall be calculated on the basis of data for the most recently completed State fiscal year for which the data is available.

(2) TIMING.—Amounts described in paragraph (1) (B) or (C) shall be distributed by a State to its local jurisdictions in accordance with State timetables for distributing local sales taxes, but not less frequently than every calendar quarter. Amounts described in paragraph (1)(A) shall be distributed by a State as provided under State law.

(3) TRANSITION RULE.—If, upon the effective date of this title, a State has a State law in effect providing a method for distributing local sales taxes other than the method under this subsection, then this subsection shall not apply to that State until the 91st day following the adjournment sine die of that State's next regular legislative session which convenes after the effective date of this title (or such earlier date as State law may provide). Local sales taxes collected pursuant to this title prior to the application of this subsection shall be distributed as provided by State law.

(d) EXCEPTION WHERE STATE BOARD COLLECTS TAXES.—Notwithstanding section ___03(b) and subsections (b) and (c) of this section, if a State had in effect on January 1, 1995, a State law which provides that local sales taxes are collected and remitted by a board of elected States officers, then for any period during which such law continues in effect—

(1) the State may require the collection and remittance under this title of only the State sales taxes and the uniform portion of local sales taxes, and

(2) the State may distribute any local sales taxes collected pursuant to this title in accordance with State law.

SEC.___05. RETURN AND REMITTANCE REQUIREMENTS.

(a) IN GENERAL.—A State may not require any person subject to this title—

(1) to file a return reporting the amount of any tax collected or required to be collected under this title, or to remit the receipts of such tax, more frequently than once with respect to sales in a calendar quarter, or

(2) to file the initial such return, or to make the initial such remittance, before the 90th day after the person's first taxable transaction under this Act.

(b) LOCAL TAXES.—The provisions of subsection (a) shall also apply to any person required by a State acting under authority of this title to collect a local sales tax or in-lieu fee.

SEC.___06. NONDISCRIMINATION AND EXEMPTIONS.

Any State which exercises any authority granted under this title shall allow to all persons subject to this title all exemptions or other exceptions to State and local sales taxes which are allowed to persons located within the State or local jurisdiction.

SEC.___07. APPLICATION OF STATE LAW.

(a) PERSONS REQUIRED TO COLLECT STATE OR LOCAL SALES TAX.—Any person required by section ___03 to collect a State or local sales tax shall be subject to the laws of such State relating to such sales tax to the extent that such laws are consistent with the limitations contained in this title.

(b) LIMITATIONS.—Except as provided in subsection (a), nothing in this title shall be construed to permit a State—

(1) to license or regulate any person,

(2) to require any person to qualify to transact intrastate business, or

(3) to subject any person to State taxes not related to the sales of tangible personnel property.

(c) PREEMPTION.—Except as otherwise provided in this title, this title shall not be construed to preempt or limit any power exercised or to be exercised by a State or local jurisdiction under the law of such State or local jurisdiction or under any other Federal law.

SEC.___08. TOLL-FREE INFORMATION SERVICE.

A State shall not have power under this title to require any person to collect a State or local sales tax on any sale unless, at the time of such sale, such State has a toll-free telephone service available to provide such person information relating to collection of such State or local sales tax. Such information shall include, at a minimum, all applicable tax rates, return and remittance addresses and deadlines, and penalty and interest information. As part of the service, the State shall also provide all necessary forms and instructions at no cost to any person using the service. The State shall prominently display the toll-free telephone number on all correspondence with any person using the service. This service may be provided jointly with other States.

SEC.___09. DEFINITIONS.

For the purposes of this title—

(1) the term "compensating use tax" means a tax imposed on or incident to the use, storage, consumption, distribution, or other use within a State or local jurisdiction or other area of a State, of tangible personal property;

(2) the term "local sales tax" means a sales tax imposed in a local jurisdiction or area of a State and includes, but is not limited to—

(A) a sales tax or in-lieu fee imposed in a local jurisdiction or area of a State by the State on behalf of such jurisdiction or area, and

(B) a sales tax imposed by a local jurisdiction or other State-authorized entity pursuant to the authority of State law, local law, or both;

(3) the term "person" means an individual, a trust, estate, partnership, society, association, company (including a limited liability company) or corporation, whether or not acting in a fiduciary or representative capacity, and any combination of the foregoing;

(4) the term "sales tax" means a tax, including a compensating use tax, that is—

(A) imposed on or incident to the sale, purchase, storage, consumption, distribution, or other use of tangible personal property as may be defined or specified under the laws imposing such tax, and

(B) measured by the amount of the sales price, cost, charge or other value of or for such property; and

(5) the term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

SEC.___ 10. EFFECTIVE DATE.

This title shall take effect 180 days after the date of the enactment of this Act. In no event shall this title apply to any sale occurring before such effective date.

BINGAMAN AMENDMENTS NOS. 145–147

(Ordered to lie on the table.)

Mr. BINGAMAN submitted three amendments intended to be proposed by him to the bill S. 1, supra; as follows:

AMENDMENT NO. 145

Insert at an appropriate place:

"For purposes of this Act, a condition of receipt of a Federal license shall not be considered a Federal private sector mandate or a Federal intergovernmental mandate."

AMENDMENT NO. 146

Insert at an appropriate place:

"For purposes of this Act, any law enforcement provision relating to organized crime

shall not be considered a Federal private sector mandate or a Federal intergovernmental mandate."

AMENDMENT NO. 147

Insert at an appropriate place:

"For purposes of this Act, any requirement for a license or permit for the treatment and disposal of nuclear and hazardous waste shall not be considered a Federal private sector mandate or a Federal intergovernmental mandate."

KERRY AMENDMENT NO. 148

(Ordered to lie on the table.)

Mr. KERRY submitted an amendment intended to be proposed by him to the bill S. 1, supra; as follows:

In the pending amendment, strike all after the first word and insert the following:

"(6) For purposes of paragraph (1)(B), the term 'Federal intergovernmental mandates' shall not include a provision in any bill, joint resolution, amendment, motion, or conference report that would apply in the same manner to the activities, facilities, or services of State, local, or tribal governments and the private sector."

SENATE RESOLUTION 62—ORIGINAL RESOLUTION REPORTED AUTHORIZING EXPENDITURES BY THE COMMITTEE ON LABOR AND HUMAN RESOURCES

Mrs. KASSEBAUM, from the Committee on Labor and Human Resources, reported the following original resolution; which was referred to the Committee on Rules and Administration:

S. RES. 62

Resolved, That, in carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Labor and Human Resources is authorized from March 1, 1995, through February 28, 1996, and March 1, 1996, through February 28, 1997, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable or non-reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee for the period March 1, 1995, through February 28, 1996, under this resolution shall not exceed $4,018,405, of which amount not to exceed $22,500 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended).

b. For the period March 1, 1996, through February 28, 1997, expenses of the committee under this resolution shall not exceed $4,111,256, of which amount not to exceed $22,500 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1996, and February 28, 1997, respectively.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required (1) for the disbursement of salaries of employees paid at an annual rate, or (2) for the payment of telecommunications provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (3) for the payment of stationery supplies purchased through the Keeper of the Stationery, United States Senate, or (4) for payments to the Postmaster, United States Senate, or (5) for the payment of metered charges on copying equipment provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (6) for the payment of Senate Recording and Photographic Services.

SEC. 5. There are authorized such sums as may be necessary for agency contributions related to the compensation of employees of the committee from March 1, 1995, through February 28, 1996, and March 1, 1996, through February 28, 1997, to be paid from the Appropriations account for "Expenses of Inquiries and Investigations."

SENATE RESOLUTION 63—RELATIVE TO THE CONSUMER PRICE INDEX

Mr. DORGAN (for himself, Mr. DODD, and Mr. HARKIN) submitted the following resolution, which was referred to the Committee on Banking, Housing, and Urban Affairs:

S. RES. 63

Whereas the Board of Governors of the Federal Reserve System has maintained that the current Consumer Price Index overstates the rate of inflation by as much as 50 percent;

Whereas other expert opinions on the accuracy of the Consumer Price Index range from those indicating a modest overstatement of the rate of inflation to those indicating the possibility of an understatement of the rate of inflation;

Whereas several leaders in the Congress have called for an immediate change in the way in which the Consumer Price Index is calculated;

Whereas changing the Consumer Price Index in the manner recommended by the Board of Governors of the Federal Reserve System would result in both a reduction in Social Security benefits and an increase in income taxes;

Whereas the Board of Governors of the Federal Reserve System estimates that a 1-percentage point reduction in the Consumer Price Index, effected today, would generate $150,000,000,000 in revenue over the next 5 years, including $55,000,000,000 generated during the year 2000 alone;

Whereas the Board of Governors of the Federal Reserve System estimates that, of the $55,000,000,000 in revenue estimated to be generated during the year 2000, $27,500,000,000 would result from a reduction in Social Security benefits and $21,400,000,000 would result from an increase in personal income taxes, which would primarily impact families with children;

Whereas the Bureau of Labor Statistics, which has responsibility for the Consumer Price Index, is working to identify and correct problems with the way in which the Consumer Price Index is currently calculated; and

Whereas calculation of the Consumer Price Index should be based on sound economic principles and not on political pressure: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) a precipitous change in the calculation of the Consumer Price Index that would result in an increase in income taxes and a decrease in Social Security benefits is not the appropriate way to resolve this issue; and

(2) any change in the calculation of the Consumer Price Index should result from thoughtful study and analysis and should be the result of a consensus reached by the experts, not pressure exerted by politicians.

Mr. DORGAN. Mr. President, today I join my colleagues Senator DODD and Senator HARKIN to submit a sense-of-the-Senate resolution opposing any precipitous change in the way the Consumer Price Index [CPI] is calculated that is based on politics rather than sound economic analysis.

The discussion in recent days by the Speaker of the House and some others about the calculation of the Consumer Price Index reaffirms the understanding that just because a person is thoughtless doesn't mean they can't also be reckless.

The precipitous call for a change in the Consumer Price Index by the Speaker and others shows again how attracted they are to gimmicks and illusions to prop up the house of cards they call an economic strategy.

This latest suggestion that they dub as technical is one that would cut Social Security COLA's for America's elderly and increase taxes for most of America's taxpayers—all of this under something that they would describe as a technical change.

Let's review what's been said about this. Recently, Chairman Alan Greenspan of the Federal Reserve Board testified before Congress and said that in his judgment the CPI calculation overstates the CPI by 0.5 to 1.5 percent.

I will leave aside, for the moment, the question that begs to be answered. What on earth are Alan Greenspan and his buddies at the Fed doing raising interest rates six times if they think the real rate of inflation is only 1.2 to 1.7 percent.

As to the question about the calculation of the CPI, the studies that have been done—and there have been several—stem mostly from research done by the Bureau of Labor Statistics that calculates the CPI. The Fed study shows it overstates inflation by one-half to 1½ percent. The Congressional Budget Office thinks it overstates inflation by two-tenths of 1 percent to eight-tenths of 1 percent. And there are others in the academic community that think it may actually understate inflation.

This weekend, when asked about Greenspan's comments, the Speaker of the House said that he would give the

Bureau of Labor Statistics people "30 days to get it right" or he would fire them and give the job to the Fed. And DICK ARMEY, the House majority leader, said he wants to change the CPI immediately. Of course the motive for both is that if they can use a gimmick like changing the CPI they will reduce the deficit by cutting Social Security COLA's and by increasing taxes and claim it's all just technical.

The appetite to play these games to justify their economic proposals seems boundless. First they propose to change the way proposals in Congress are scored so that their proposals will look less radical. Now they do half-gainers at Alan Greenspan's suggestion that they change the CPI because they think that will be an easy fix to show a reduced deficit even though someone else—the elderly and the wage earners—will pay the price.

Because the Speaker indicated he would mandate the Bureau of Labor Statistics to make this change in 30 days or he would "zero them out of the budget" the three of us will propose today a sense-of-the-Senate amendment to the mandates bill now on the floor expressing the sense of the Senate that changes in the CPI should be a result of consensus reached by experts; not pressure exerted by politicians.

SENATE RESOLUTION 64—ORIGINAL RESOLUTION REPORTED AUTHORIZING EXPENDITURES BY THE COMMITTEE ON VETERANS' AFFAIRS

Mr. SIMPSON, from the Committee on Veterans' Affairs, reported the following original resolution; which was referred to the Committee on Rules and Administration:

S. RES. 64

Resolved, That in carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Veterans' Affairs is authorized from March 1, 1995, through February 29, 1996, and March 1, 1996, through February 28, 1997, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable or nonreimbursable basis the services of personnel of any such department or agency.

SEC. 2. (a) The expenses of the committee for the period March 1, 1995, through February 29, 1996, under this resolution shall not exceed $1,036,481, of which not to exceed $3,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

(b) For the period March 1, 1996, through February 28, 1997, expenses of the committee under this resolution shall not exceed $1,060,341, of which not to exceed $3,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

SEC. 3. The committee shall report its findings, together with such recommendation for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 29, 1996, and February 28, 1997, respectively.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required for (1) the disbursement of salaries of employees paid at the annual rate, or (2) the payment of telecommunications provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (3) for the payment for stationery supplies purchased through the Keeper of Stationery, United States Senate, or (4) for payments to the Postmaster, United States Senate, or (5) for the payment of metered charges on copying equipment provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (6) for the payment of Senate Recording and Photographic Services.

SEC. 5. There are authorized such sums as may be necessary for agency contributions related to the compensation of employees of the committee from March 1, 1995, through February 29, 1996, and March 1, 1996, through February 28, 1997, to be paid from the appropriations account for "Expenses of Inquiries and Investigations."

NOTICE OF HEARING

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. LUGAR. Mr. President, I would like to announce that the Senate Committee on Agriculture, Nutrition, and Forestry will hold a hearing on the reauthorization of the Commodity Futures Trading Commission. The hearing will be held on Thursday, January 26, 1995, at 9:30 a.m. in SR–332.

For further information, please contact Chuck Conner at 224–0005.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON THE JUDICIARY

Mr. LOTT. 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 Wednesday, January 18, 1995, to consider Senate Joint Resolution 1 and Senate Joint Resolution 19.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for an executive session, during the session of the Senate on Wednesday, January 18, 1995, at 9:30 a.m.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a hearing on Oversight of Job Corps, during the session of the Senate on Wednesday, January 18, 1995, at 10 a.m.

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

COMMITTEE ON RULES AND ADMINISTRATION

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Wednesday, January 18, 1995, at 9:30 a.m., to hold hearings on Senate Committee Funding Resolutions. The committee will receive testimony from the chairmen and ranking members of the following committees: Budget, Energy, Finance, Agriculture, Aging, Judiciary, Foreign Relations, Small Business, and Intelligence.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. LOTT. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, January 18, 1995, at 2 p.m. to hold a closed hearing on Intelligence matters.

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

ADDITIONAL STATEMENTS

GOV. PETE WILSON'S INAUGURAL ADDRESS

• Mr. WARNER. Mr. President, our former colleague, California's Governor Pete Wilson delivered a powerful address on the occasion of his second inaugural on January 7, 1995.

Appropriately titled "Forging America's Future," Governor Wilson's address urges a recommitment "to that miracle we call democracy."

Mr. President, Governor Wilson's eloquent speech is timely and pertinent for all Americans. I commend it to my colleagues' attention.

The address follows:

CALIFORNIA: FORGING AMERICA'S FUTURE

This is a day of renewal. Today, we recommit ourselves to that miracle we call democracy, and to the spirit and promise we call California.

That spirit and promise burn brightest not here in the Capitol, but in the hearts and minds of California's people—in our factories and on our farms, in our factories and on our farms, in our churches and our temples, in our classrooms and around our kitchen tables.

This morning's ceremony is a celebration, and also a vindication: a vindication not of an individual or political party, but of a resilient and sturdy people blessed with courage and character. Though tested and tempered in the forge of adversity, they came through the fire, their faith intact, clinging tenaciously to the promise of California.

When the earth shook and the hills burned, when rivers overflowed and riots scarred our

cities, when drought seared the earth and fiscal crises tested our confidence in government itself, a lesser people would have just given up.

But not Californians. That's not the California Way.

When confronted with the worst, we respond with our best.

That is the California Way.

Californians have always answered adversity with bold thoughts and challenged convention with fresh ideas. They have always dared to dream.

The poet Carl Sandburg wrote, "The Republic is a dream. Nothing happens unless first a dream."

In the 1850s, a dream led pioneers West in wagon trains across a desolate prairie and over frozen mountains.

These early pioneers risked their lives crossing the mighty Sierra, till one day they crossed a ridge to find themselves gazing down from the heights upon a golden valley that held the promise of California.

Most of us are not the lineal descendents of those pioneers. We came later. We came by ship from Asia and by station wagon from Ohio. We came during the Great Depression from the Dust Bowl in pick-ups piled high with our possessions. And we came by jetliner last year, last month, and last week.

Today, we too stand on that same ridge, with a valley of promise spread before us, inviting us to partake of the good life.

But ours is a generation that cannot take for granted the good life, the historically generous bounty of California, unless we are prepared to make dramatic change.

We must act, and act quickly, because we live in a time of great and accelerating change; because we live in a shrinking and more competitive global marketplace; and because, as we rush toward the 21st century, we are at a crossroads and must choose what kind of California we will have.

We must choose whether California will be the Golden State—or a welfare state. It can't be both.

On that, my fellow citizens, there can be no question.

We must be wise enough, tough-minded and honest enough to repeal programs that fail their stated noble purpose and fail expensively, incurring fiscal and human costs that are unaffordable.

The people agree. They are out of patience with misfired good intentions that defy sense or fairness.

They ask: Is it fair that the welfare system taxes working people who can't afford children and pays people who don't work for having more children?

They ask: Why should federal law reward illegal immigrants for violating the law and punish California taxpayers and needy legal residents?

They ask: Why have schools that reward poor teachers for promoting—even graduating—students who can't adequately speak and write English?

And they ask: Why do our laws put dangerous criminals back on our street, and put us behind barred windows and locked doors?

The last refuge of those who call these questions unfair is to assert their compassion, and to deny ours.

The ultimate compassion is to build an economy that works, one that grows and provides the jobs working Californians need to feed their families, build their homes and pay their taxes.

To produce that economy and all the work our people need, we must lift the burdens that government has placed on risk-takers, on the people who create California's jobs. If we over-tax and over-regulate, if our workers are not well-educated and our streets are not safe, we will drive these job-creators to other states.

California can't afford to do that. If we do, we will deserve to lose the talent, the entrepreneurial drive, the energy and innovation that make California all that it is.

So we will not put up with bad schools, or violence on our streets, or regulations that impose costs greater than their benefits, or taxes that dwarf those levied by our neighbors.

We must free our people, and release their creative energy.

By lifting from them the restraints, regulations, and burdens that government has imposed, we free them to seize opportunity and create more.

And they will.

And all of California will succeed.

So, we will deliberately shrink government to expand opportunity.

We will demand that all citizens meet the test of common decency, respecting the rights of others, and we will demand that those who can, pull their own weight and meet the test of personal responsibility.

We will make clear that welfare is to be a safety net, not a hammock—and absolutely not a permanent way of life.

We will correct our laws to make clear that bringing a child into the world is an awesome personal responsibility for both the mother and the father.

The costs are simply too high for society to continue tolerating the promiscuity and irresponsibility that have produced generations of unwed teen mothers.

It is monstrously unfair to the children; to their sad, ill-equipped teen mothers; and certainly to working taxpayers, who must support them at a cost to their own children.

We will insist that those who receive public assistance earn it. We will give them help and support to escape from dependency to the independence and self-respect of work. We want them to see in the eyes of their children that special look of respect and pride that only working parents can know.

We will not tolerate the selfishness of "dead-beat dads" who casually father a child and walk away from their responsibility. Their child is their obligation, not the taxpayer's.

If they lack the basic decency to send love to their child, they must at least send money. If they don't, we will track them down and dock their pay for child support.

We will demand accountability and personal responsibility. Now the teen predator who does violence to his victim will be prosecuted not as a juvenile, but as an adult.

But as I said four years ago—how much better it is to prevent crime than to punish it.

That kind of prevention is fundamentally a father's responsibility. Too often the fatherless child of a teen mother becomes a teen predator, and the trigger man for his gang.

We are paying for too many prisons because absent fathers have failed to take responsibility to socialize and civilize their children. That must change.

For those who become so brutalized that they can't respect themselves or the rights of others, prison must be the answer to violence.

The fundamental right of every Californian is not to become a crime victim, and it is the first responsibility of government to safeguard that right.

We will do so. Those who commit violent crimes will pay heavily for their brutality.

But we must at the same time work to alter the behavior of parents who default on their responsibility as parents. When we succeed, we can build more laboratories and libraries—and fewer prisons.

We must also change our schools. Something's wrong with our schools. Something important and basic.

Some are superb. Too many are not. Despite the dedication and skill of many teachers, the quality of our schools is erratic.

Our schools must be safe: free of guns and drugs and free of kids who bring them.

We must insist on order and discipline in the classroom, or teaching and learning cannot occur.

Recognizing the enormous importance and the influence of good teaching in a child's life, we must recognize and reward excellence, and removed from the classroom those teachers whose performance is inadequate.

Children must learn the basics. And we must be assured that they have learned by standardized tests that measure individual student performance.

We must raise our standards high enough to challenge our children to meet the competition they will all too soon encounter in the international marketplace. The standards we enforce must be high and clear, not imprecise and politically correct.

And if our kids have not learned what they must know to compete in this increasingly demanding job market, we must not do them the serious disservice of pretending that they have.

Social promotion is the worst form of false kindness. We must not promote them.

If they can't do arithmetic, don't understand rudimentary science, and especially if they cannot read, write and speak English, our children won't be hired, much less promoted.

Much is written and spoken about the importance of self-esteem to a child's success. Self-esteem is important. But it cannot be conferred. It must be earned by performance, by meeting standards, and by having been honestly tested and honestly judged to have met or exceeded clear, high standards.

Anything less is not honest, and not fair. It is deception, and cannot be the basis for success. Not for a school child, not even for a nation-state that boasts the world's seventh largest economy.

We must reward effort and achievement. We must honor those who work hard, who meet life's test playing by the rules; who respect themselves and the rights of others; who honor their obligations as parents and citizens; who raise their children to obey the law.

And just as we demand that citizens meet these standards of decency and responsibility, we must demand at least as much from government—in Sacramento and in Washington.

California will not submit its destiny to faceless federal bureaucrats or even Congressional barons.

We declare to Washington that California is a proud and sovereign state, not a colony of the federal government.

We will set our own course.

We will return both dollars and decisions to Californians who are working hard this very day to build a better future.

We will perform radical surgery to undo two decades of mischief, which, though wrought with good intentions, have imposed an intolerable burden on our people.

We will break the bonds of restraint which government has placed on those strong enough to create opportunity, and break the

chains of dependency on those addicted to government's largesse.

We will make these changes and empower Californians.

We will meet the challenge of building the first society to embrace every culture, every language, every ethnic group on the planet.

We will not allow ourselves to be divided into divergent interests who simply rub up against one another like the tectonic plates of the San Andreas fault.

We will meet the tests that lie ahead, as a people proud of our many pasts, who now share a common future, a proud future.

And what makes our success all the more critical is that a nation—indeed a world—challenged by constant change looks to us for new lessons in democratic renewal.

America has always asked a special role from California: to seek out the American future by trying new ideas, rejecting what doesn't work, and building on what does.

The historian Kevin Starr wrote, "California [is] the prism through which America glimpses its unfolding identity."

The California Way has always been to shape the future with courage and creativity, embracing change, while still clinging to the unchanging values of faith and family, of individual effort and personal responsibility without which no republic can long endure.

Our role, our responsibility, is to assure that California chooses greatness, to guarantee those seeking opportunity that we will provide it, and that we can and will take the steps required to do so.

This, then, is the California Way: seeing possibilities where others see only problems, forging a new future of opportunity from the flames of adversity. Where others suffer change, or patiently await it, California will invent the future—and export it.

In a time of grave peril Abraham Lincoln declared: "The occasion is piled high with difficulty, and we must rise with the occasion."

Time and again, America has seen California rise with the occasion and triumph over peril. Through every difficulty, California has offered a dream to be realized. We will make real again the dream of a republic where work is respected and rewarded, where every right is balanced by responsibility, where freedom thrives and opportunity burns bright.

We choose to be victors, not victims.

We are, after all Californians.

California's favorite son, Ronald Reagan, has for all his life embodied that special unbridled optimism that is at the heart of the California dream. He is again teaching us new lessons about courage, candor and dignity.

In his moving letter to the American people, President Reagan wrote:

"For America, there will always be a bright dawn ahead."

My friends, let us vow that we will keep faith with Ronald Reagan's vision for America.

Let us assure him and our children that we will make California that shining city on the hill, where America's bright dawn is always breaking.●

BUTTE AND MICRON TECHNOLOGY

● Mr. BAUCUS. Mr. President, I would like to express my support for two amendments adopted unanimously by the Senate on Friday, January 13, 1995—the Dorgan modified amendment No. 1 and the Kempthorne amendment No. 19. Due to an issue of great importance to my home State of Montana, and the possible creation of thousands of jobs, I felt it was more important for me to be home during Friday's Senate session, and therefore was not able to be present during the votes.

Although it is very rare for me to miss a vote, on Friday, January 13, 1995, I traveled home to attend a task force meeting in Butte, organized with the aim of bringing one of the United States preeminent high tech companies, Micron Technology Inc., to Butte. Butte is on the finalist list for a new Micron semiconductor manufacturing facility, which would employ 3,000 to 4,000 Montanans. The city of Butte asked that I be part of this important task force meeting.

Butte and Micron are a match made in heaven. There is no community in the United States where I have seen a higher level of work ethic, loyalty and community spirit than in Butte. The possibility of a major semiconductor manufacturing company locating in Montana—particularly one which has based its success on the western ideals of hard work and thinking big—has energized the community of Butte and my State of Montana. We are all doing everything possible to convince Micron that its new manufacturing plant could have no better home anywhere in the United States.●

A MILESTONE FOR THE C–17

● Mr. BOND. Mr. President, the State of Missouri is very proud of the enormous contribution more than 2,000 of its aerospace workers have made in producing the C–17 Globemaster III at the McDonnell Douglas Corp. plant in St. Louis. Yesterday, Gen. Robert Rutherford, Air Mobility Command Commander, declared the initial operational capability of the first C–17 squadron at Charleston Air Force Base, SC. The C–17's capability to airlift in excess of 160,000 pounds strategic distances and land on runways as short as 3,000 feet is now available for everyday operations anywhere in the world. I am very proud that the skilled aerospace workers in Missouri had a part in this significant achievement. But, more so, I am encouraged that we are seeing the achievement of another major step in the plan toward building a fleet of 120 critically needed C–17's.

As the centerpiece of America's ability to respond in a crisis quickly with the right military force or humanitarian aid, the C–17 will take this Nation well into the 21st century as the most capable and flexible airlifter ever to take flight. The declaration of initial operational capability of the C–17 is a milestone we can all be proud of.●

THE ALBION COLLEGE FOOTBALL CHAMPIONS

● Mr. LEVIN. Mr. President, I want to recognize and congratulate the Albion College Britons football team, the 1994 NCAA Division III National Champions.

On a rainy Saturday afternoon in December, the Britons met the Washington and Jefferson Presidents in the 22d annual Amos Alonzo Stagg Bowl in Salem, VA. Coming into the game, the Presidents had the Nation's top-ranked defense in Division III. The Britons, winners of six consecutive Michigan Intercollegiate Athletic Association titles, rose to the occasion to win a 38–15 victory. The victory capped an impressive drive through four playoff games which included victories over three former national champions.

At one point, the Britons scored 31 unanswered points. The aggressive Albion defense and special teams forced three turnovers and returned an interception for a touchdown. Tailback Jeff Robinson rushed for 166 yards on the soggy field and scored three touchdowns.

The Albion players and coaches have faced many challenges this year as they went to an undefeated 13–0 record. They overcame them by pulling together as a team and playing their hearts out. I admire their spirit and applaud them for giving it their all in every game.

I want to extend my warmest congratulations to each of the players, coaches, parents, and supporters of this championship team as well as to President Melvin Vulgamore and the entire Albion College community.

Mr. President, the people of Michigan are proud of the Albion College Britons. They have shown character and determination. They were winners long before the final score of the football game was known.●

ORDERS FOR TOMORROW

Mr. LOTT. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 9 a.m. on Thursday, January 19, 1995; that following the prayer, the Journal of proceedings be deemed approved to date and the time for the two leaders be reserved for their use later in the day; that there then be a period for the transaction of morning business, not to extend beyond the hour of 11 a.m., with Senators permitted to speak therein for not more than 5 minutes each, with the exception of the following Senators:

Senator COHEN for 10 minutes; Senator ASHCROFT for 15 minutes; Senator GRASSLEY for 10 minutes; Senator NUNN for 10 minutes; Senator BREAUX for 15 minutes; Senator LIEBERMAN for 10 minutes; Senator PRYOR for 10 minutes; Senator BIDEN for 15 minutes; and Senator DORGAN for 15 minutes.

I further ask that at 11 a.m., the Senate resume consideration of S. 1, the unfunded mandates bill, and that there then be 30 minutes of debate, equally divided between Senators KEMPTHORNE and BYRD; and that at the hour of 11:30 a.m., the Senate then proceed to vote on the Levin amendment regarding feasibility.

I finally ask unanimous consent that immediately following the conclusion of the Levin amendment, the Senate proceed to the cloture vote on S. 1; and that the mandatory quorum under rule XXII be waived.

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

RECESS UNTIL TOMORROW AT 9 A.M.

Mr. LOTT. Mr. President, observing no other Senator wishing to be recognized to speak, I move that the Senate now recess under the previously agreed to order.

The motion was agreed to, and at 9:17 p.m., the Senate recessed until Thursday, January 19, 1995, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate January 18, 1995:

U.S. POSTAL SERVICE

S. DAVID FINEMAN, OF PENNSYLVANIA, TO BE A GOVERNOR OF THE U.S. POSTAL SERVICE FOR THE TERM EXPIRING DECEMBER 8, 2003, VICE NORMA PACE, TERM EXPIRED.