SENATE—*Thursday, February 16, 1995*

(Legislative day of Monday, January 30, 1995)

The Senate met at 9:30 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's prayer will be offered by our guest chaplain, the Reverend Barbara D. Henry, of the Episcopal Diocese of Washington.

PRAYER

The guest chaplain, the Reverend Barbara D. Henry, of the Episcopal Diocese of Washington, offered the following prayer:

Let us pray:

Almightly and everlasting God, Creator of the universe with all its marvelous order and complexity; You have made us in Your image and given us dominion over all the Earth. Give us reverence for all Your creation—for the Earth which supports us, for all the myriad forms of life which inhabit this planet, and especially for the wonderful diversity of people and cultures in this world.

Give to all those who hold authority in this land, we pray, an awareness of the many blessings You have bestowed upon them. May our Senators be blessed, in all their deliberations, with ever new insight into Your purposes for the human race, and with wisdom and determination in making provisions for the future of our Nation. Direct and guide them in their words, which are heard by so many, and in their decisions, which will affect so many.

For You, O God, are the source of all wisdom, all power, all grace, and we give You glory for ever and ever. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. Under the previous order, the acting majority leader is recognized.

SCHEDULE

Mr. LOTT. Mr. President, this morning following the time for the two leaders, the time until 10:30 will be equally divided between the two leaders or their designees for debate on the motion to invoke cloture on the constitutional balanced budget amendment.

For the information of all our colleagues, at the hour of 10:30 this morning, there will be a rollcall on invoking cloture on the balanced budget amendment.

I now ask unanimous consent that at the hour of 10 a.m., Senator DASCHLE be recognized for up to 15 minutes, to be followed by Senator DOLE for up to 15 minutes.

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

Mr. LOTT. I further ask, Mr. President, that Senators have until 10:30 this morning to file any second-degree amendments to House Joint Resolution 1, the constitutional balanced budget amendment.

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

Mr. LOTT. Mr. President, I would like to observe once again, as the leader pointed out last night, he did file cloture motions last night. Two of them were filed. Those would ripen or be available next Wednesday, the 22d, and the leader indicated that we should expect votes on those two cloture motions, if necessary to have the second one, and other amendments during that day unless some other agreement is reached. I yield the floor.

RECOGNITION OF DEMOCRATIC LEADER

The PRESIDENT pro tempore. Under the previous order, the Democratic leader is recognized.

Mr. DASCHLE. I thank the President pro tempore. I wish him a good morning.

(Mr. COVERDELL assumed the chair.)

COMMITMENT TO HONEST BALANCED BUDGET AMENDMENT

Mr. DASCHLE. Mr. President, the first legislative action I took when I came to Congress in 1979 was to introduce a constitutional amendment to require a balanced budget.

I believed 16 years ago, as I believe today, that Government must learn to live within its means. I believed then, as I believe now, that we must trim the fat, cut the waste, and make the tough choices necessary to control spending.

I supported a balanced budget amendment then and I remain committed to an honest, fair, and forthright amendment now.

However, I have concluded I cannot support the one which is now being pushed through the body, without amendment or compromise.

The magnitude of the decision about how we propose to amend the Constitution should not be lost on anyone. A balanced budget amendment, if passed and ratified, will have a dramatic effect on the very nature of government and its relationship to the American people in all perpetuity. We cannot come back next year or next Congress and clean up our mistakes.

When we embark on such a path—to amend the Constitution—we must know that it is the best amendment we can write, that it incorporates the best ideas and the most carefully written words we have to offer.

It is critical now, as we contemplate amending the Constitution for only the 28th time, that we refuse to succumb to the notion that what we do is, as the old adage goes, "good enough for Government work."

This effort had a noble beginning. It was the result of the tireless work of the Senator from Illinois, the Senator from Utah, the Senator from Idaho, and many others to enforce fiscal discipline, something we all recognize is necessary.

The refusal to consider legitimate amendments, amendments that would make this constitutional amendment even stronger, has reduced this effort to something far less than our best.

When this debate began I expressed my concerns about the balanced budget amendment proposal before Members. I expressed a sincere hope that we could work together to address them and craft the best constitutional amendment this Senate could write on behalf of all the American people.

First, as many argued last year, Social Security should be viewed as an indelible contract between the Government and the American people, funded by a dedicated trust fund that should be left out of budgetary calculations. As written, it is clear that the current proposal uses the Social Security trust fund to mask the true size of the deficit, something that is patently inconsistent with our goal to balance the budget.

As a result it is estimated that $705 billion of Social Security trust fund revenue will be used to mask the real size of the national deficit between now and the year 2002. In fact, that very issue was confirmed again this morning in the Wall Street Journal.

A speech that the majority leader gave yesterday to a group indicated that he saw the size of the deficit over the course of the next 7 years to be somewhere in the vicinity of $685 billion, which would require some form of health care reductions to reduce that deficit to below the $685 billion mark he suggests. Mr. President, $685 billion, if that is the size of the deficit as my Republican colleagues would see it,

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

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clearly implies that the $705 billion for Social Security is still on the table in spite of all of the best efforts made by many Members on the other side to indicate the contrary.

Second, I believe that budgetary discipline, common sense, and our long-term investment goals warrant the establishment of a budget that distinguishes between investment and consumption. We ought to use this opportunity once and for all to establish the same budgetary principles used by businesses and by most State governments.

Finally, as we have argued at some length during this debate, the American people have an absolute right to know how we plan to fulfill the promise of a balanced budget before they are called upon to ratify it. Working with my Democratic colleagues, we have proposed three balanced budget constitutional amendment approaches in a good-faith attempt to address those concerns and make the underlying amendment more sound.

Unfortunately, each of those amendments has been rejected essentially along party lines. The only way I can interpret those votes is that the majority is saying, "We want our balanced budget amendment or no amendment at all." They are telling the American people to put their trust in good intentions and to live with consequences that are yet unknown.

We should support a balanced budget amendment. But we should never violate America's contract with its senior citizens merely because we are unwilling to make the tough choices now. Balancing the budget by cutting Social Security is no balanced budget at all.

Making tough choices is also an important part of what every family and every business must do. When a family balances its budget, we separate investments in our future, our home, our savings for our children's education, from the day-to-day expenditures on things like food and clothing. We are willing to borrow money to buy a home or pay for college but we cannot afford to take on too much debt because the interest is part of our day-to-day expenses and cannot exceed our income.

In short, we separate our capital budget from our operating budget. Nearly every State, nearly every business, small or large, does exactly the same thing. Everybody separates these two budgets except for the Federal Government. Just yesterday we proposed an amendment that said, let's be honest with the American people about the budget process. Separate investment from daily operating expenses. Do at the Federal level what has always been done in the States. But that proposal, too, was rejected.

I support a balanced budget amendment, but I also share the belief that we owe it to the American people to tell them how we will do what the amendment requires. We must not substitute political slogans for straight talk. We must not cover up the reality with rhetoric. We must not ask South Dakotans, or any Americans, to trust us or future Congresses if we are not willing to give them good reason to do so.

We cannot build a house of credibility if we do not produce the blueprint first. Neither can we build that house without knowing what tools to use. The American people have a right to know how we are going to achieve a balanced budget by the year 2002.

Two years ago when a Democratic Congress cut $500 billion from the deficit, we gave the Congress and the country a blueprint of our list of budget-cutting tools—page after page of painful cuts. Everyone recognizes what an unpopular vote that was, how difficult it was to make those choices, to lay out with specificity, line by line, item by item, exactly what we were going to do over the course of the next 5 years to reduce spending by $500 billion. And because it was tough, because it was specific, it passed by a single vote.

Today the American people have the same right to know. They have a right to know what is in the plan. They have a right to know whether the majority plans to cut Medicare, student loans, or veterans benefits.

Our deficit reduction target is at least $1.2 trillion—$1.2 trillion—over the course of the next 7 years. It is not going to get smaller, and with each year of delay, it is going to be exacerbated. It is a daunting goal, we all recognize that, but we all recognize, too, that it must be met.

The question, frankly, is how. How are we going to do it? How are we going to do what the speech by the majority leader yesterday suggested? Are we going to keep Social Security on the table and talk about a debt that is only $685 billion? Are we going to include everything, put it on the table, recognize that if we are going to increase defense spending, if we are going to cut taxes, if we are going to protect Social Security and do all of this in the next 7 years, that we are going to do it using the tools that we have available to us?

Americans have a right to know. We have a responsibility to tell them.

I proposed the right-to-know amendment to the Constitution that would both require a balanced budget and require Democrats and Republicans to work together to draft a plan and make it public. But the amendment was defeated, and the result will be that this Congress will collectively say "no" to being honest with the American people, leaving us with only the hope—only the hope—that we can accomplish our goals. No blueprint, no mechanism in place, no real plan. Just a hope that somehow we can do something in 7 years that we have not been able to do in decades.

Everyone would agree that the idea of a balanced budget in the abstract has universal support. But no budget is balanced in the abstract. Budgets are balanced in the context of existing circumstances. We have a new majority in Congress that claims it will cut taxes, increase defense spending and balance the budget, but refuses to explain how and refuses to guarantee that it will be accomplished fairly.

Last year, I supported a balanced budget amendment. This year, in this context, I cannot.

Last year, a Democratic Congress was committed to protecting Social Security and Medicare. This year, the new majority has been unwilling to do so in law. Last year, Congress honored the people's right to know. Last year, Congress was committed to an open, honest debate about how to reduce Government spending.

Last year, Congress leveled with the American people. This year, the majority refuses to acknowledge Americans' right to know.

This country is in need of a serious, principled debate about our future and our increasing national indebtedness. It should be a debate about the generational debt that we owe our children and how best to discharge it. It should be a debate about the ways past Government commitments to Americans will always be kept. It should be a debate about rational fiscal policy, about consumption versus investment, savings over spending, and all of the elements that together make up a sound basis for future economic growth. It should be a debate about what we hold to be most important now and in the future.

That debate may never come. Yet, I deeply hope it will come, and when it does, I hope we will have an opportunity to write an amendment to the Constitution that represents our best effort, one which will stand the test of time, a balanced budget amendment that honors our past commitments, protects our future investment, and tells the American people the truth. It must be a serious obligation, not merely a statement made of good intentions.

Finally, while I believe we need an honest and fair balanced budget amendment, I know we need an honest and fair balanced budget even more. We can and we must get immediately to the real work of deficit reduction. I know I speak for my Democratic colleagues when I say we are ready to work with the majority right now to develop a budget resolution that cuts spending and balances the budget. It is an effort which requires bipartisan cooperation as well as concentration.

So, Mr. President, whatever the fate of this amendment, it is time for us to work together to fulfill that promise and renew the hope of all American people that at long last—at long last—

we can accomplish what we all want and what our children deserve.

I yield the floor.

Mr. LOTT addressed the Chair.

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

Mr. LOTT. Mr. President, I ask unanimous consent that I be allowed to proceed for up to 10 minutes as in morning business.

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

BALANCED BUDGET AMENDMENT

Mr. LOTT. Mr. President, I listened very carefully to the distinguished Democratic leader's remarks. I know he is very serious about the issue of debts and the deficit that we have each year. I know he is serious about a constitutional amendment for a balanced budget because he voted for it just 1 year ago. And I believe and certainly hope that in the end, he will vote for the balanced budget amendment this year.

I believe this has been a very serious, principled debate. This legislation, which is identical to the balanced budget amendment the Democratic leader voted for last year, has been carefully drafted. I remind my colleagues that it passed the other body by a vote of 300 to 132—an overwhelming bipartisan vote after serious consideration in the debate before the House of Representatives. Our own Senate Judiciary Committee reported it out after careful consideration on a bipartisan vote.

A number of amendments have been offered, considered, debated, and voted on, and all of them have been defeated by bipartisan votes. On one of the votes yesterday, there were actually nine Democrats who voted to table it, while eight Republicans voted against tabling it. So we are having a very serious debate here with Members voting their conscience.

We are now in the 18th day of debate on this constitutional amendment for a balanced budget. Last year, we had an extended floor debate and a vote on this exact amendment. I think the high water mark, up until this year, for debate on a constitutional amendment for a balanced budget has been about 11 days. So we certainly are giving it plenty of time for thoughtful consideration. And because of delays in getting an agreement when we might bring this to a conclusion, we apparently will still be on this amendment next week. It will have been a full month that we have taken to consider this legislation. That is fine because, in the end, I believe we are going to pass it with a good, strong bipartisan vote.

Let me quote some very strong words in support of the balanced budget amendment:

> To remedy our fiscal situation, we must stop spending beyond our means. This will not require the emasculation of important domestic priorities as some suggest.
>
> In this debate on a balanced budget amendment, we are being forced to face the consequences of our inaction. Quite simply, we are building a legacy of debt for our children and grandchildren and hamstringing our ability to address pressing national priorities.

Those are the words of the distinguished Democratic leader just last year, February 28, 1994, in support of a balanced budget amendment to the Constitution.

With regard to the right to know, we need to work together on this. We cannot say today everything that we are going to do in a budget resolution this year or next year or in 5 or 7 years. It will depend on the Budget Committee, the vote and actions on the floor of the Senate. It will take all of us working together, no matter where we are from, what party or what philosophy.

With regard to the right to know, this is what the distinguished Democratic leader said just last year:

> Congress and the President will have 7 years to address the current deficit and reach a consensus on our Nation's budget priorities. We will have time to find ways to live within our means and still meet existing obligations to our citizens, particularly the elderly.

I agree.

But this year, we debated the right-to-know amendment, and it was rejected with 56 votes against it—again a bipartisan vote.

With regard to protecting our seniors, minority leader DASCHLE last year said:

> Requiring the Government to operate within its budget does not mean * * * we would be forced to renege on our current obligations to America's seniors. For my part, such a requirement would not lessen our commitment to * * * protecting Social Security.

I agree. Last year, the minority leader also said:

> By the year 2020, most of the baby boom generation will have retired, and those retirees will be supported by a smaller working population. In order to ensure that we can meet our commitments to future retirees without jeopardizing the standard of living of working men and women, we must seek to maximize economic growth during the early 21st century. Our current budget deficit is eating away at that growth and undermining our economic potential.

The point the minority leader made last year is that if we do not have a balanced budget amendment, if we do not get our fiscal house in order, the people who will suffer the most are our seniors. So I think the minority leader's comments—and I have many others—just 1 year ago on the constitutional amendment for a balanced budget were excellent. I agree with them. I voted with him then, and I hope we are going to vote together this time because this is exactly the same amendment we both voted for just last year.

I remind my colleagues, too, that just 1 year ago when I offered an amendment to try to block tax increases on Social Security retirees, some of the same people who are now pleading their concern for our seniors and their Social Security benefits, where were they when we were trying to block on a bipartisan vote tax increases on their retirement benefits? Where were they last year? Why were they not worried about Social Security retirees, Medicare and Medicaid, then?

Where were they last year when the President proposed billions of dollars in cuts in Medicare in his health care proposal? President Clinton proposed to cut Medicare by $124 billion over 5 years in his health care plan. And in 1993, the President cut $53 billion from Medicare as a part of his tax bill. Were they not worried about the seniors then? Were they not worried about Medicare then?

Look, the issue of right-to-know is another red herring; it is simply an attempt to scare seniors about Social Security. It boils down to a very simple question: Are you for a constitutional amendment for a balanced budget or not? If you are, you vote yes. If you are not, vote no. And the people will know how you feel about this. Are you prepared to explain how this year you are against the balanced budget amendment but last year you voted for it? Why? Is it because there is a different majority? I cannot believe that.

We have an opportunity here to do what is right for our country—to have the additional pressure on Congress to control spending, not raise taxes.

Everybody keeps saying, Oh, we reduced the deficit in 1993. The so-called 1993 deficit reduction bill was attempted to reduce the deficit through massive tax increases. We can move this whole debate in a different direction. And I have been here through 22 years of trying to deal with the deficit—through Gramm-Rudman, through the Gang of 17, and through the budget negotiations at Andrews Air Force Base. Congress has tried time and time again to balance the budget, but we never quite carry through with it.

We need this constitutional amendment for a balanced budget. The American people support it overwhelmingly. This is our opportunity. And we must, must find a way to come together to pass it. I know it is going to be a bipartisan vote; one of our key proponents of the balanced budget amendment has been the distinguished Senator from Illinois, Senator SIMON.

The balanced budget amendment has already passed the House. It is up to the Senate. If we vote now, it goes to the States. The people will have a chance to decide. The only thing standing between the people's opportunity to vote on this and its passage is how the Senate will vote.

I urge my colleagues, let us begin to bring this to a conclusion. Let us quit talking about red herrings. Let us face

up to the real issue and vote for a constitutional amendment for a balanced budget.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the minority leader.

Mr. DASCHLE. My friend, the distinguished Senator from Mississippi, made reference to some comments I made last year. Let me respond briefly because I know there are others waiting.

I made them in earnest last year, and I stand by them this year. Nothing the Senator from Mississippi said with regard to my comments last year are any less true this year. What I said then applies now, and that is my whole point. If we are going to have a balanced Federal budget, good intentions are not enough. It is not enough to just say we are going to do it. We must be serious about it, and that is the question.

When I made those comments last year, we were serious, and we proved we were serious with a $500 billion deficit reduction plan that laid out with specificity exactly what we were going to do.

Where is the plan this year? How are we going to do it this year? On just a hope, somehow the expectation that it is all going to magically come together?

That is what we are saying. That is why this right to know amendment is so important.

The PRESIDING OFFICER. The Chair might intervene for a moment to say to the distinguished Democratic leader, his time has expired under the previous order, and the time is now under the control of the acting majority leader. If he chooses to yield time to the minority leader to complete his remarks, up until 10 o'clock, he may do so.

Mr. LOTT. Mr. President, I know our two leaders will be speaking at 10 a.m. for 15 minutes each. Unless there is a problem with his other colleagues, I will be glad to yield the remaining 4 minutes to the leader to conclude his remarks.

Mr. DASCHLE. I appreciate very much the willingness of the whip to do so.

The PRESIDING OFFICER. The Democratic leader may proceed, then.

Mr. DASCHLE. Let me finish very briefly.

Mr. President, I agree with exactly what the distinguished Senator from Mississippi said about what the issue is, with the exception of one word. He said the issue is very simply do we support a balanced Federal budget, a constitutional amendment to balance the budget.

I think that is a legitimate question, and the answer should be yes. But it should not be are we willing to support any constitutional amendment to balance the Federal budget, any constitutional amendment. The answer is no. This is going to be with us for all perpetuity, all posterity, and if it is going to be with us that long and if it is that important and will have that far-reaching a consequence, we had better do it right because we will not get a second chance.

With that, again, I thank the Senator for yielding, and I yield the floor.

Mr. LOTT. Mr. President, if I may respond.

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

Mr. LOTT. Again, I refer to the distinguished Democratic leader's comments last year because they were so persuasive then, and I believe they are now. I will just quote these two paragraphs and yield the time for others.

> Some of my colleagues feel, as does President Clinton—

This is Senator DASCHLE speaking.

> that we can make these tough budget choices without amending the Constitution. I wish they were right, but history indicates they are not.
>
> By adding a balanced budget amendment to the Constitution, we as a nation are embracing the principle that government should not spend beyond its means. This is a principle worthy of inclusion in the document that sets forth the limits of governmental power and protects the rights of individual citizens.

Those are the words of Senator DASCHLE, the distinguished Democratic leader. They were only 1 year ago. They were right then, and they are right now. We must pass this balanced budget amendment.

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

Mr. HEFLIN. I ask the minority leader if he will yield me about 6 minutes of time to speak on the Iwo Jima anniversary.

Mr. DASCHLE. Mr. President, I will be happy to yield to the Senator from Alabama.

Mr. LOTT. Mr. President, may I inquire whether this would be from the 15 minutes the leader has?

Mr. DASCHLE. That would be my expectation, that I will yield 6 minutes I have available on the cloture vote to the Senator from Alabama to speak on an issue of his choosing.

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

THE DEADLY BATTLE ON IWO JIMA

Mr. HEFLIN. Mr. President, I rise today to remind Americans of one of the costliest battles of World War II, and the sacrifices made by the men of the United States Marine Corps. This Sunday will be the 50th anniversary of the Marine Corps landing on Iwo Jima, a place where, as Admiral Nimitz said "Uncommon valor was a common virtue."

After 36 days of fighting and at a cost of 6,821 Americans killed and 19,217 wounded, the island was captured. The cost to the Japanese defenders was over 22,000 lives. Only about 1,000 Japanese survived the battle.

The Japanese had long prepared for the February 19, 1945, invasion. After the battle was over, it was revealed that the enemy had constructed 642 blockhouses, pillboxes, and other gun positions. The marines landing on Iwo Jima were certainly stepping into the very jaws of the enemy—and I might say, the very jaws of hell.

At 9 o'clock in the morning, the massive assault wave of the 4th and 5th Marine Divisions hit the beach at Iwo Jima. A Japanese observer watching the drama unfold from a cave on the slopes of Mount Suribachi reported: "At 9 in the morning, several hundred landing crafts with amphibious tanks in the lead rushed ashore like an enormous tidal wave." Within minutes, 6,000 marines were ashore, and initial casualties were lighter than expected.

Then the pounding started as the Japanese commander unleashed hundreds of heavy artillery pieces, giant mortars, rockets, and antitank weapons that had been carefully arranged around the landing beaches now clogged with troops and materials. The ensuing bombardment was as deadly and terrifying as the marines had ever experienced. Casualties mounted appallingly on what would become the costliest single day in the U.S. Marine Corps history. By the day's end, nearly 2,500 Marines were killed or wounded.

Typical of the marine heroism and sacrifice of that first day on Iwo Jima, and not unlike what I had witnessed while serving in the Marine Corps with the 9th Regiment in the Pacific, were the actions of legendary Marine Gunnery Sergeant John Basilone. "Manila John," as he was fondly called by his fellow marines, had been awarded the Congressional Medal of Honor in recognition of his outstanding heroism at Guadalcanal. On Iwo Jima, Basilone single-handedly destroyed a Japanese blockhouse while braving the deadly assault of enemy heavy caliber fire. For his exploits he was posthumously awarded the Navy cross.

The battle for Iwo Jima raged for 36 long days, and on many days the advances of the American forces could be measured in yards. Though I was not there because I was recovering from a wound I received during the battle of Guam, my outfit, the 3rd Division, served as the floating reserve for this battle.

Entering the fray on February 21, when the fighting was at its worst, the soldiers of the 3rd Marine Division were tasked with clearing the central plateau of the island. This area held

many prepared enemy defensive positions, but very little cover for the advancing Marines. By the time the plateau was taken, the regimental casualties exceeded 50 percent. Some companies suffered casualty rates in excess of 200 percent, including my old company, A Company, of the 9th Regiment.

Considering the magnitude of these casualties, one may wonder what drove these men to carry on. From my own experience, I would say these men drew their strength from the support of their fellow marines, an esprit de corps that is unique in military history, and the knowledge that taking this island was important to the war effort. Most important, however, they fought because they knew they had to fight. They had to take that hill, that they had to take that island. The Commander in Chief had said it, and these men knew it in their hearts, victory was the only way home.

On March 26, 1945, finally, the Japanese were defeated and the island was ours.

On Sunday, the 50th anniversary of the landing on Iwo Jima, approximately 5,000 survivors of the battle will gather at the Iwo Jima Memorial here in Washington to remember and to pay reverence to those who gave their lives.

Mount Suribachi, and the flag raising on that mount, stands as a symbol of the courage of the U.S. Marine Corps. Mount Suribachi was 556 feet high. It bristled with over 200 guns, and 21 blockhouses. It had to be taken, because it was delivering devastating fire on the beaches and to the marines that were below. The marines assigned were willing to risk their lives for the sake of their comrades and their country. So, through personal courage and esprit de corps, on February 23 the Japanese defending Mount Suribachi were overcome and the Stars and Stripes were raised.

And as the flag was raised on that mount, it gave additional strength to the marines below to move forward, on to victory. We salute the survivors of Iwo Jima and wish them well as they commemorate that very important battle of World War II.

The PRESIDING OFFICER (Mr. INHOFE). The Democratic leader.

THE CLOTURE VOTE

Mr. DASCHLE. Mr. President, at 10:30, in less than 25 minutes, there will be a vote on the majority leader's cloture motion. I want to take a couple of minutes to comment on that prior to the time we vote.

I regret we have to take a vote at this time. I believe, frankly, as I said the other day, it is unnecessary. I am concerned that it sends the wrong message to the American people about how seriously we consider the process of amending the U.S. Constitution.

The implicit suggestion behind the motion is that shutting off debate on this very serious and complicated issue is necessary because Democratic Senators are filibustering the balanced budget amendment and obstructing the debate, when the truth is just the opposite. There is no filibuster here. There have been very few quorum calls over the last several days. The Senate floor has been busy, virtually every minute. Senators have been on the floor. They have been here offering amendments, debating the issues. They have been busy doing exactly what we are all elected to do, to consider carefully some of the most far-reaching issues that they and the American people face.

Democratic Senators have not employed dilatory tactics. To the contrary, we have offered legitimate and very serious amendments that ought to be given serious consideration by all Senators—several amendments that, in my view, as I said just a moment ago, would have made this particular balanced budget amendment much stronger. Unfortunately, the obstruction has come from the other side. Every Democratic amendment has been tabled—virtually along party lines. Anyone who has been on or watched this debate over the last several days knows very well that the substance of these amendments has been seemingly of little concern. They have been tabled, not because of their content, but simply because they were offered.

This issue is far too serious to simply step aside and avoid the stampede. Amending the Constitution is just about the most serious step the Congress and States can take. It should not be taken lightly. And it should reflect the most thoughtful and inclusive debate that we have to offer. It should reflect the best ideas we have to offer. A vote to cut off this debate artificially is a vote to obstruct that thoughtful and inclusive process. It is premature, it is unnecessary, and, under these circumstances, I view it as a disservice to the American people.

It is also a direct threat to the rights of all Democratic Senators, each of whom have a right to offer amendments. As I said, there have been virtually no quorum calls; virtually every amendment has been relevant. In recent days nearly every Democratic Senator has agreed to a time limit on the debate on his or her amendment. And these have been important amendments.

We debated, as we again talked this morning, about the right to know, and spelling out to the American people how we are going to accomplish a balanced Federal budget—what kind of blueprint we are going to use, what kind of tools we will acquire and utilize to accomplish a balanced budget in just 7 years.

We talked about Social Security and the need to protect it, to take it off the table to ensure that we are not going to mask the size of the debt with the size of the Social Security trust fund.

We talked about enforcement. Simply saying we are going to balance the budget with no legal mechanism in place to ensure that we are going to enforce what we say we are going to do makes anyone wonder just how serious we are about doing it in the first place.

We talked about the need to separate operating capital from investments in the future—how we do that in business, how we do that in State governments, how we need to compare apples and apples when we compare the Federal Government to the State government and how a capital budget would allow us to do that.

We talked about circumstances relating to natural disasters. The Senator from California raised a very difficult issue. How do we address serious problems relating to the disasters that occur in every part of the country all too frequently once we have a balanced Federal budget?

It is very disconcerting that virtually every amendment was defeated on a near party-line vote. Regardless of the vote, there are many more very important, relevant amendments that deserve our careful consideration. Not all amendments that are pending will be offered. I know that mention was made yesterday about how many amendments are still pending. Some of those amendments were offered just to protect Democratic Senators in case there is a cloture vote and it passes. We know what happens when cloture votes are filed. Amendments are also filed simply to ensure that every Senator has a right to protect himself or herself. That is really what has gone on in the last couple of days. Senators want to know that they have the opportunity to be involved in this debate and to commit to a process by which these issues can be raised. That is what filing amendments is all about in situations as we have this morning.

We may be able to come to some agreement. In fact, I would almost ensure, to our colleagues on the other side, that we will come to some agreement with regard to a finite list of amendments and some way with which to work through them as we have done in several of our bills already this year.

The point is no one is trying to delay a final vote. We know that the final vote will come in the not too distant future. But it is absolutely critical, especially on an issue of this importance, that all Members have a right to be heard.

So this cloture vote is not necessarily reflective of how one will ultimately vote on the balanced budget amendment. This vote is about whether Democratic Senators have a right to raise legitimate issues that they believe would improve the amendment before us.

So I certainly urge my colleagues to reject the motion to invoke cloture at this time.

I yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I have a great deal of affection for the minority leader, both as a person and as a leader. I think he is doing a very good job for his side of the floor. I understand that this is an important vote and that it is more of a procedural vote this morning. We all know how it is going to turn out. But I will just say this. As someone who has conducted a few filibusters in my 18 years, some of which have been successful and some of which have not, I know a filibuster when I see one. I am sure the distinguished minority leader does not feel that his side is filibustering or the opposition to the amendment is filibustering. But last evening, for instance, we wanted to go to one more amendment before the evening was up. We could not find one person to offer an amendment that we could vote on that evening.

Be that as it may, I am not going to criticize what the distinguished minority leader has said, and we will have more days of debate. That is only fair. This is a very, very important amendment. And it involves the future of our country. It involves the future of our children and our grandchildren. It is going to make a difference, if we pass it, whether our children and grandchildren have a future. If we do not pass it, I just say, "Katie, bar the door."

Just to make that point a little bit better, we are now in our 18th day on this amendment. There are very few things in the history of the Senate that take 18 days. We are now in our 18th day on our balanced budget amendment debt tracker, the increase as we debate. There is a $4.8 trillion national debt that we start with, and we are now in our 18th day. I will put up the information indicating the additional debt that is going to accumulate by the end of this day for the taxpayers to pay and pay interest on it. It is almost $15 billion, just the amount of debt that has accumulated since we started 18 days ago.

Mr. President, what about the vote to bring this debate to a close? I think we need to stop talking and start working on getting our fiscal house in order by passing the balanced budget amendment and working together to balance the budget. The American people want and need us to do this.

Mr. President, our large national debt and the yearly deficits that help it grow hurt real people, average working people all across our country. And continuing down the path we are on will only make matters worse for all of us and our children.

Last week there was an article in the Washington Post by James Glassman, a person I have a great deal of regard for, who I believe did an excellent job of stating in an understandable way how and why the deficit hurts the average working American. He called this discussion "The Plain English Guide to the Federal Budget," and it began with the sage assertion that "Big deficits can make you poor. They tend to retard the growth of the private sector, raise interest rates, and weaken our economy."

We are talking about $15 billion just in the 18 days that we have debated here. We are fiddling while the country is burning. That is really what is happening.

He says, "They tend to retard the growth of the private sector, raise interest rates, and weaken our economy."

This is exactly why we need the balanced budget constitutional amendment—because Congress' fiscal madness is destroying the ability of the working American to make enough money to survive.

Every year hard-working Americans pay the price for our profligacy. The Tax Foundation has calculated that in 1994 the average American worked from January 1 to May 5 just to pay his or her taxes—January 4 to May 5. They did not get to keep 1 cent of the money they earned until May 6. Is not that incredible? Put another way, in an 8-hour work day, the average American works the first 2 hours and 45 minutes just to pay taxes. So for 8 hours we are working almost 3 to pay taxes. This is bad enough. But it is not the end of the story.

The increasing Federal debt will force us to raise taxes to astronomical rates just to keep the country solvent. The National Taxpayers Union has estimated that a child born today, on average, will pay over $100,000 in extra taxes over the course of his or her lifetime just to pay the interest on the national debt which accumulated in the first 18 years of that child's life. Just think, Mr. President. By the time the child becomes old enough to vote—I am talking about our children and our grandchildren—there will be a $100,000 tax bill looming on his or her horizon. And that is only to pay the interest on the debt accumulated in that child's first 18 years. That is pathetic. That is the legacy we are leaving to our children and grandchildren.

The National Taxpayers Union has determined that for every year we endure another $200 billion deficit—and the President's budget says we are going to endure them ad infinitum, $200 billion budget deficits for 12 years—for every year that we endure that, it costs the average child over $5,000 over his or her lifetime—every year we do that.

Mr. President, the budget submitted by President Clinton projects $200 billion deficits for each of the next 5 years—actually, each of the next 12 years. By conceding defeat on deficit reduction, President Clinton is condemning every child in America to an additional $25,000 in taxes racked up just over the next 5 years. There is no refuting that unless we do something about it. We are, too, as a Congress, unless we do something about it and change.

But the bad news about the debt does not end there either. The Competitiveness Policy Council has shown that rising budget deficits have led to a 15 percent decline in real wages in the last 15 years, and the National Taxpayers Union has further calculated that in the next 45 years, unless we get spending under control, after-tax incomes will rise over that 45 years, cumulatively rise, $125—average incomes—unless we get the debt under control or our spending under control. Can you imagine? In 45 years the most you are going to get out of the whole 45 years is an additional $125. That is not a year; that is over 45 years.

These deficits are strangling middle-class Americans throughout our country. How can people expect to bear the burden of stagnating wages and higher tax rates?

We simply cannot continue blindly down this road to economic oblivion. Look at those 18 days on the chart; 18 days, just going up like that. That is the debt that is accumulating while we fiddle here in Washington.

We must get the Government spending under control, and the only way to do that is to change the way Congress does business with a permanent unavoidable rule, and the only rule we can get is the balanced budget amendment. It will force Congress to consider the costs as well as the benefits of every program in the Federal Government. We will lower the unbelievable amount of Government spending and bring the deficit under control.

All other attempts to balance the budget have failed, and they have failed miserably. Over the full 19 years I have been here, we have had attempt after attempt, and they have all failed because they have been statutes and the minute somebody passes a 51-percent majority vote, they are changed. Every year the debt grows, relentlessly sapping the life of the American economy as it does. Under the President's latest plan, the debt is going to grow—under his best assertions, and these are assuming optimistic assertions—another $1 trillion. By the end of the next 5 years we will be over $6 trillion in debt, and we are complaining about $4.8 trillion now. Because it is going up almost $1 billion a day, we will be $6 trillion in debt. His budget is not an attempt to reduce the deficit. It is a recognition that unless we change the budget process to eliminate Congress spending bias, it is going to be impossible to reduce the deficit.

Mr. President, we have the opportunity to make a historic change here.

We can pass the balanced budget amendment and preserve the future for our children, our grandchildren, and this country. We can stop this runaway Federal train of spending and taxing that is out of control right now. I urge my colleagues to support the balanced budget amendment today so that we and our children will have a prosperous tomorrow.

This morning will end our third full week of debate on this amendment. We started debate on the subject matter even before the bill was brought to the floor during the unfunded mandates debate. We have had 11 votes on amendments and spent 14 days on floor debate on this constitutional amendment so far, more than we have ever spent debating a balanced budget amendment before. Back in 1982, which was the next toughest debate, we debated 11 days before passing the balanced budget amendment by 69 votes. I hope that our longer debate this year will mean our margin of victory will be proportionately higher.

As we have said, every day while we talk, the debt we leave our children and grandchildren continues going up to a shocking point. This must end and must end soon. Mr. President, let us tell the American people in this cloture vote when we will stop talking and start acting to bring this country to fiscal sanity. Let us pass the balanced budget amendment to the States for ratification and get on with balancing the budget.

We have had 11 votes, and every one we have won on a bipartisan vote. Democrats and Republicans have voted with us, every one. There is nothing partisan about this. Anybody who tries to say this is a partisan debate just has not watched it and has not looked at the voters and has not realized that this balanced budget amendment is a bipartisan consensus, a Democrat-Republican effort, to save our country, and to help our children and grandchildren have the futures that we all had when we were born.

I was born in poverty. We did not have indoor facilities. We lost our first home shortly after I was born. We did not have indoor facilities in the second home for years. I thought all homes were kind of brown and dark because my dad built our home out of a torn-down old burnt-out building. Frankly, I thought everyone had a Pillsbury flour sign on the side of their home. I thought that was a pretty unique thing, and it really was.

To make a long story short, I had a future even though I was born in the Depression, because Congresses had not run the country totally into the ground from a national debt standpoint. But we have done it now, and we have to change our way of doing things around here.

I emphasize again that the first vote was 56 to 44. There were a number of Democrats voting with us. The Dole amendment passed 87 to 10, a lot of Democrats. The Reid amendment was defeated on a motion to table, 57 to 41, a lot of Democrats with us. The next was 70 to 28, a lot of Democrats. Then 66 to 32, 52 to 45, Senator HOLLINGS, that was a close vote. Still a number of Democrats helped to defeat that. Then 59 to 40, 59 to 40, and 52 to 47 last night; eight or nine Democrats voted with us on that. Then 51 to 38, 61 to 33, the last vote, and a lot of Democrats voted on that. This is a bipartisan effort. There is no reason for a filibuster or delay here. There is no reason not to get about business. There is no reason not to come up with amendments when the time comes.

I am willing to proceed and happy to proceed in any way our colleagues want to do this. But do not try to present this as partisan, a Democrat-Republican difference here. This is a bipartisan effort. We have made it that. I am proud of my Democratic colleagues that are standing up on this amendment. All we need are 15 to stand up and we will pass this, 15 out of 47. That is all we need. Gee, there ought to be 15 Democrats in the Senate out of 47 who will help us. I know of 13. I think I know of 14. Who is going to be that 15th vote, or the one that defeats this, if that is what happens? I do not believe it will.

I do not believe that our colleagues, when we put forth this kind of a bipartisan, heartfelt, eager effort, are going to shoot this down for the one time in history, after the House of Representatives had the guts to pass it, with the help of I believe 78 courageous Democrats in the House. We need 15 courageous Democrats here and I think we will get them. I believe we will get them, because this is the time in history when we can make a statement against what has been going on, this runaway train of Federal spending, this abdication of responsibility, this rejection of our children's and grandchildrens' future. Let us do something about it and quit talking partisan politics, and let us work together to get it done.

To the extent that this delay and a final vote will continue after today, let us do the best we can to bring up as many amendments as we can and debate them, and we are happy to do that. I think the debate has been healthy. I commend Senators on both sides of the aisle for the excellent debate they have given to us, and I hope our colleagues will vote for cloture today so that we can end the delay and have the responsible amendments that are left brought up. And let us vote on them and then let us pass the balanced budget amendment for the benefit of everybody—Democrats, Republicans, all loyal Americans—but most of all, for our children and grandchildren.

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

The PRESIDING OFFICER. The Senate will resume consideration of House Joint Resolution 1, which the clerk will report.

The bill clerk read as follows:

A joint resolution (H.J. Res. 1) proposing a balanced budget amendment to the Constitution of the United States.

The Senate resumed consideration of the joint resolution.

Ms. MIKULSKI. Mr. President, I rise today to oppose invoking cloture on the balance budget amendment. Mr. President, the Senate should not rush to finish this measure—we are amending the Constitution of the United States and there is still much we do not know. We still do not know the impact of the balanced budget amendment on Social Security, Medicare, and many other vital programs. I am voting to continue with robust and vigorous debate so the American people fully understand the ramifications of what we are doing and how it will affect their lives.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the hour of 10:30 a.m. having arrived, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The bill 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 House Joint Resolution 1, the constitutional balanced budget amendment:

Bob Dole, Orrin G. Hatch, Larry Craig, Trent Lott, Bill Frist, R.F. Bennett, Kay Bailey Hutchison, Alfonse D'Amato, Jon Kyl, Fred Thompson, Ted Stevens, Olympia J. Snowe, John Ashcroft, Craig Thomas, Conrad Burns, Mike DeWine, Judd Gregg, Rick Santorum, Rod Grams, Lauch Faircloth.

CALL OF THE ROLL

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

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on House Joint Resolution 1, the balanced budget amendment

to the Constitution, shall be brought to a close? The yeas and nays are required.

The clerk will call the roll.

The bill clerk called the roll.

Mr. LOTT. I announce that the Senator from Kansas [Mrs. KASSEBAUM] is necessarily absent.

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

The yeas and nays resulted—yeas 57, nays 42, as follows:

[Rollcall Vote No. 74 Leg.]

YEAS—57

Abraham	Gorton	McConnell
Ashcroft	Gramm	Murkowski
Bennett	Grams	Nickles
Bond	Grassley	Packwood
Brown	Gregg	Pell
Burns	Hatch	Pressler
Campbell	Hatfield	Roth
Chafee	Heflin	Santorum
Coats	Helms	Shelby
Cochran	Hutchison	Simon
Cohen	Inhofe	Simpson
Coverdell	Jeffords	Smith
Craig	Kempthorne	Snowe
D'Amato	Kohl	Specter
DeWine	Kyl	Stevens
Dole	Lott	Thomas
Domenici	Lugar	Thompson
Faircloth	Mack	Thurmond
Frist	McCain	Warner

NAYS—42

Akaka	Exon	Leahy
Baucus	Feingold	Levin
Biden	Feinstein	Lieberman
Bingaman	Ford	Mikulski
Boxer	Glenn	Moseley-Braun
Bradley	Graham	Moynihan
Breaux	Harkin	Murray
Bryan	Hollings	Nunn
Bumpers	Inouye	Pryor
Byrd	Johnston	Reid
Conrad	Kennedy	Robb
Daschle	Kerrey	Rockefeller
Dodd	Kerry	Sarbanes
Dorgan	Lautenberg	Wellstone

NOT VOTING—1

Kassebaum

The PRESIDING OFFICER. On this vote, the yeas are 57, the nays are 42. Three-fifths of the Senators duly chosen and sworn, not having voted in the affirmative, the motion is rejected.

Under the previous order, the Senator from West Virginia is recognized to offer an amendment.

Mr. BYRD. I thank the Chair. Mr. President, it is my understanding that the Senator from Nevada [Mr. BRYAN] wishes to speak for not to exceed 7 minutes. I ask unanimous consent that I may yield to the distinguished Senator for that purpose, not to exceed 7 minutes, and that I retain my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Nevada is recognized for 7 minutes.

Mr. BRYAN. I thank the Chair.

(The remarks of Mr. BRYAN pertaining to the introduction of S. 429 are located in today's RECORD under Statements on Introduced Bills and Joint Resolutions.)

The PRESIDING OFFICER (Mrs. HUTCHISON). The Senator from West Virginia.

Mr. BYRD. Madam President, I thank the Chair.

May I take just a moment here to compliment the Republican Senators who have been sitting in the chair from the very beginning of this session. In the main, I think they have done very well. They have presided over the Senate with dignity, except in a few cases when there probably ought to be a little less talking up there at the desk because the cameras are often focused right on that desk. State legislators, professors, students, and the people at large expect this Senate to be the premier deliberative body in the world. It is not a State legislature. And I do not say that to cast any aspersions on State legislatures. I have been a member of both houses many years ago in West Virginia.

Generally speaking, the presiding officers have been alert and have been paying attention to the debate, as they should.

Madam President, the original Constitution and the amendments heretofore adopted serve two basic functions: One, they create a structure of government and establish three departments thereof: the Legislative, the Executive, and the Judicial, and they allocate the powers of government among the three branches of the Federal Government and between the two Houses of Congress.

The Constitution also prohibits the States from taking certain actions, and all powers that are not delegated to the Congress by the Constitution shall be reserved to the States or the people.

So this is a Constitutional system, with checks and balances and a separation of powers, thus establishing an equilibrium between and among the three departments—the Legislative, the Executive, and the Judicial.

Two, the original Constitution and the amendments thereto, protect the most fundamental individual rights, such as life, liberty, and property; free speech; freedom of assembly; freedom of religion; freedom of the press; and equal justice under law.

So the Framers wisely left the determination of fiscal policy to the elected representatives of the people. Deciding when or whether to balance the budget, and whether and when to risk a deficit, calls for a judgment of policy, the kind of political judgment left by the Founding Fathers to the majoritarian processes of representative democracy. The Constitution and the amendments thereto do not undertake to resolve questions of fiscal policy. And for 206 years, that Constitution has not been amended to include fiscal policy.

Under the constitutional amendment that the Senate has been debating, such a judgment of fiscal policy, and when or whether to apply countercyclical measures would, to a considerable degree, be inhibited. Section 3 of the amendment, for example, would fetter and hamstring the President in the proper exercise of his powers.

Let me read section 3 of the proposed amendment to the Constitution.

I quote. This is section 3, from the constitutional amendment to balance the budget.

> Section 3. Prior to each fiscal year, the President shall transmit to the Congress a proposed budget for the United States Government for that fiscal year in which total outlays do not exceed total receipts.

I think it is important that we recognize that this amendment to the Constitution, by virtue of section 3, would, if adopted, hamper the President. It would fetter the President. It would hamstring the President in the proper exercise of his powers by requiring him to submit a balanced budget even though he may consider a deficit to be necessary as a countercyclical measure to combat a recession that may be already underway. Countercyclical stabilizers are rendered even more difficult in a period of economic decline by the requirement of a supermajority vote to waive the section 1 mandate for a balanced budget in every fiscal year. Such requirement for a supermajority can prove to be a very troubling recipe for gridlock.

The amendment now being debated by the Senate provides that outlays in any given year shall not exceed receipts; that Congress may appropriate money in excess of anticipated revenues only by a three-fifths vote of the full membership of both Houses, and not by lesser majorities; that Congress may enact revenue increases only by majority votes of the full membership of both Houses on rollcall votes, and not by lesser majorities.

Let me state that again.

The constitutional amendment that is before the Senate requires that Congress may enact revenue increases only by majority votes of the full membership of both Houses—of both Houses—on rollcall votes.

In other words, in the Senate that would mean by no less than 51 votes and in the House that would mean no less than 218 votes.

The amendment also provides that Congress may raise the ceiling on the national debt, but only by a three-fifths vote of the full membership of both Houses, and not by lesser majorities.

Justice Oliver Wendell Holmes was right when he warned that the Constitution ought not "embody a particular economic theory." In keeping with that wisdom, the Framers remitted Federal fiscal policy, not to special supermajorities, but rather to the crucible of ordinary majoritarian democratic politics. Article I, Section 8, Clause 1, gives Congress the power to tax and spend for the common defense and general welfare, and to borrow money on the credit of the United States—all obviously by simple majorities.

So basic is the majoritarian premise of Article I of the United States Constitution that it is barely mentioned, except for the statement in Article I, Section 5, Clause 1, that "a majority of each House shall constitute a quorum to do business." The contemporaneous history supports the majoritarian premise, for the Framers entertained, but rejected, the idea requiring that ordinary legislation on any particular subject matter be passed by a supermajority. For example, Alexander Hamilton, in the Federalist No. 22, warned:

To give a minority a negative upon the majority—

Which is always the case where more than a majority is requisite to a decision—

is, in its tendency, to subject the sense of the greater number to that of the lesser number. . . . The public business must in some way or other go forward.

This is Hamilton speaking.

If a pertinacious minority can control the opinion of a majority respecting the best mode of conducting it—

Meaning the public business.

the majority, in order that something may be done, must conform to the views of the minority; and thus—

Says Hamilton.

the sense of the smaller number will overrule that of the greater, and give a tone to the national proceedings. Hence, tedious delays—continual negotiation and intrigue—contemptible compromises of the public good. . . . For upon some occasions, things will not admit of accommodation; and then the measures of government must be injuriously suspended or fatally defeated. It is often, by the impracticability of obtaining the concurrence of the necessary number of votes—

This is Hamilton speaking. Let me begin again that sentence.

It is often, by the impracticability of obtaining the concurrence of the necessary number of votes, kept in a state of inaction. Its situation must always savour a weakness—sometimes border upon anarchy.

That was Alexander Hamilton. Where are all these Senators who are proponents of this amendment? It would not hurt them to hear the Constitution read today, from the beginning to the end. I do not intend to inflict that kind of punishment on them, but they certainly would do well to read and to hear read those portions of the Constitution which impact upon this constitutional amendment on the balanced budget.

Madison added his warning against supermajorities, in the Federalist No. 58:

It has been said that more than a majority ought to have been required for a quorum, and in particular cases, if not in all, more than a majority of a quorum for a decision. . . . [But] . . . In all cases where justice or the general good might require new laws to be passed, or active measures to be pursued, the fundamental principle of free government would be reversed. It would be no longer the majority that would rule;

This is Madison speaking.

the power would be transferred to the minority. Were the defensive privilege limited to particular cases, an interested minority might take advantage of it to screen themselves from equitable sacrifices to the general weal, or in particular emergencies, to extort unreasonable indulgences.

That is Madison.

That is James Madison. He referred to particular emergencies and the supermajorities that are included in this nefarious constitutional amendment to balance the budget to deal with "particular emergencies." I am using Madison's words—"particular emergencies."

Let me read again what Madison said.

Were the defensive privilege limited to particular cases, an interested minority might take advantage of it to screen themselves from equitable sacrifices to the general weal, or in particular emergencies, to extort unreasonable indulgences.

Where are the proponents of this amendment? Why do they not interrogate James Madison? Why do they not hearken to his words and Hamilton's words? No. They do not want to hear. As was said in Homer's Iliad, "Not if I had 10 tongues and 10 mouths, a voice that could not tire, lung of brass in my bosom," would they hear me. They have eyes that cannot see and ears that cannot hear, and minds that are unwilling to comprehend the warnings of the Framers of the Constitution. Should one conclude that they pretend to be wiser men than those who wrote the Constitution?

Mr. President, the balanced budget amendment would reject the wisdom both of Hamilton and Madison by adopting supermajority requirements that would transfer power from majorities to minority factions. And George Washington in his Farewell Address warned against parties and factions. Sections 1 and 2 of the constitutional amendment to balance the budget would require that deficit spending and increases in the statutory debt limit be approved by three-fifths of the whole number of each House. Section 4 would impose a minisupermajority requirement, in that revenue increases must be authorized by a majority of the whole number of each House. Meaning in the Senate, 51 votes would be required to increase revenues, and in the House 218 votes would be required, 217 would not be enough, 218 votes would be required to pass legislation in the House to increase revenues—rather than, as is usual, by a majority of Members present and voting. Were the Framers wise? To ask the question is to answer it. This minisupermajority that is required for revenue increases flies in the face of Madison's warning against a requirement of "more than a majority of a quorum for a decision."

Defenders of the balanced budget amendment often say, what is so bad about supermajority requirements? After all, the Senate in its own rules requires a supermajority for cloture on filibusters. So why is it so bad to have in the Constitution a requirement of a supermajority? The proponents also refer to the supermajorities that are mentioned in the Constitution and the amendments thereto. But these existing supermajority requirements furnish no precedent for those in the balanced budget amendment, for they are fundamentally different in kind.

Rules on parliamentary procedures that the Senate adopts for its own governance are surely no model for an alteration of the Nation's fundamental charter. Anybody who argues that point simply does not, and has not stopped to think, knows very little about the Senate rules, and very little, in all likelihood, about the Constitution. Such rules of the Senate can be changed by the Senate acting itself alone, and are not comparable to an amendment to the Constitution, which requires the support of both Houses of Congress by a two-thirds vote and three-fourths of the State legislatures for adoption.

Although the Constitution does impose some supermajority requirements, it does so quite sparingly, and only for good reasons, namely, to provide one branch a check upon another branch—for example, treaty ratification and veto overrides. In the case of a treaty approval, the legislative branch—one component thereof; namely, the Senate—acts as a check upon the executive, in the ratification of treaties that bind this Nation in its relations with other nations. It is a check and balance. A supermajority is also required for a veto override, and again provides a check and balance between the executive and the legislative branch. One of the Framers stated that the one reason for the veto itself was that the President, the Executive, could provide protection for himself and his office, against the legislative branch. So he was given the veto. That is check and balance. Other supermajorities in the original Constitution were to protect individual rights. For example, in the case of the expulsion of a Member of the Senate or of the House, a Member cannot be expelled by a simple majority. It requires two-thirds of the Senate to expel a Senator, two-thirds of the House to expel a House Member. These supermajorities are provided for the protection of individual rights, the individual rights of the Members of the two bodies, else a simple majority could expel Members of the minority, get rid of them, send them home, expel them by a simple majority. A supermajority is there for the protection of the individual rights of the elected representatives of the people.

The same is the case with impeachment. Were there not a supermajority required, then an impulsive and partisan majority in the Senate could convict a President in an impeachment

trial. That almost happened with Andrew Johnson, as we all know. So that supermajority is required to protect individual rights, the rights of a President, the rights of other officers who may be impeached, the rights of Federal judges who may be impeached. The supermajority required in article V is to insure that the fundamental charter of this Republic not itself be too freely amended.

Amending the Constitution is provided for, but the Framers wisely established that amendments not be adopted and ratified too freely. Thus, we have only seen 17 amendments added to the original Constitution and Bill of Rights. They were wise men.

Then there are certain other supermajorities. Amendment XII of the Constitution deals with the election of a Vice President by the Senate. In the 14th amendment, a supermajority is required to waive the disability upon individuals who, having previously taken the oath of office to support the Constitution, later engage in rebellion against the United States. It requires a supermajority in both Houses to lift that disability from such individual. I am not against amending the Constitution. Our forefathers provide for that situation, and I have voted for five constitutional amendments to the Constitution.

Hence, there are nine supermajorities of one kind or another in the original Constitution and the amendments thereto. I think it is very unwise, however, to provide a constitutional amendment that requires a supermajority in the enactment of a fiscal policy.

There is one other supermajority, and that is the supermajority written into the original Constitution that dealt with the matter of a quorum in the election of a President when such election is thrown into the House of Representatives.

So there you have it. These are all structural concerns or, as I say, they provide basic protections for individual rights. They are structural concerns that deal with the structure of this form of government as established by the original Framers—and the States and people thereof, who ratified the Constitution—or they deal with rights of individuals.

The supermajority requirements of this balanced budget amendment embody no such structural concerns and no protections of individual rights. Rather, the supermajority requirements to the balanced budget amendment would for the first time in our constitutional history—the first time in 206 years—inject a minority veto into the ordinary processes of the determination of fiscal policy within the legislative branch. The danger of supermajority requirements in this policymaking context is that a minority of either House can hold the legislative agenda hostage, blocking majority choices until the minority factions obtain the policy concessions that they want. James Madison described this very danger in Federalist No. 58, where he warned that supermajority requirements permit the minority—permit the minority—to "extort unreasonable indulgences" from the majority. In the business of budget balancing, permitting such minority vetoes might actually be counterproductive if it fostered minority demands for expensive pet programs as the price of deficit spending authorizations.

The rules laid down, therefore, are those of parliamentary procedure, which may belong in the rules of the Senate and the House of Representatives, but not in the Constitution. To insert parliamentary rules into the Constitution cheapens—cheapens—that basic charter and erodes the respect upon which its vitality and usefulness depend.

There would be years in which three-fifths majorities of the full membership of both Houses of Congress authorized spending in excess of receipts, and there would be years in which expenditures outran receipts because actual receipts fell short of honest and careful estimates, or because actual expenditures exceeded the best and most careful estimates. As these deficit years occur down the road, what would be the reaction of the citizens who supported this amendment and who were told that the amendment would produce a balanced budget each year? The result surely would be disillusionment, cynicism, distrust of those who govern, and loss of confidence in our basic, fundamental, organic law: the Constitution of the United States.

The operation of the budget, appropriations, and revenue processes are so highly complex that disputes are bound to arise. Forecasts with regard to both receipts and outlays vary so widely that violations of the requirement that outlays shall not exceed receipts in a given year are bound—bound—to occur.

I have shown that. I have shown charts that demonstrate that fact time and time again.

Old disputes about the separation of powers, reminiscent of the impoundment controversy of the Nixon administration, would be reopened.

How many Senators here today were Members of this body when that controversy occurred? Very few.

The powers of the executive vis-a-vis the legislative branch will, in all likelihood, be substantially enlarged.

Who are the proponents of this balanced budget amendment? Are they monarchists? Are they monarchists who want to see the power shifted to the executive? Do they want an all-powerful, imperial President?

To rivet into the Constitution this amendment calling for a balanced budget annually would be to Constitutionalize fiscal policy, and would give rise to disputes cast in Constitutional terms, which must either go unresolved or bring the courts into the determination of fiscal policy. Few judges, if any, have expertise in such matters as fiscal policy, budgets, and appropriations, and lack the experience to guide their decisions. The courts would lack judicially manageable standards to guide their decisions, and drawing the Judiciary into budgetary, appropriations, revenue and other fiscal matters would mean an intrusion—an intrusion—into an area that Congress and the President have long regarded as their—their—exclusive domain. As a result, the stage would be set to injure the prestige and authority of the courts, as well as to impair the effectiveness of the Judiciary in preserving the ancient framework of republican government and protecting the Constitutional liberties of the nation's citizens. The people's faith in both the Judiciary and the Constitution would be seriously damaged.

Hence, the implications of an amendment for the constitutional structure of our Government and for the status of our Constitution as partisan law would be very, very serious.

That is what this amendment is. It is a partisan amendment. It is a political amendment supported by a political party. It is the Republican Party as of today in the Senate and the House that is pressing for this amendment. And they want to do it now, do it here—"Do it now; do it here; we can't wait"—because they have it in their so-called Contract With America. That so-called contract is supposed to supplant the Constitution when it comes to this amendment.

Should the measure be enforced by the judiciary, it would produce an unprecedented restructuring of the balance of power among the three branches of Government. There are no two ways about it. It would produce an unprecedented restructuring of the balance of power among the three branches of Government.

To crucify the Constitution upon the cross of the so-called Contract With America is of little consequence, provided you will give us the Barabbas of temporary partisan and political gain!

That Constitution bears the stains of blood from thousands of men and women throughout the history of this Nation—men and women who gave their lives at Valley Forge, at Saratoga, at Yorktown, at Lexington, and Concord.

Nathan Hale. Who is he? Never heard of him. Who was Nathan Hale?

Well, Nathan Hale was a young man, 21 years of age, who was a schoolteacher.

He responded to General George Washington's request for a volunteer to go behind the British lines and to bring

back the drawings of fortifications. Nathan Hale responded as that old patriarch did in biblical times, "Speak Lord, thy servant heareth." Nathan Hale responded, knowing that that task was fraught with danger and might cost him his life.

He went behind the British lines, disguised as a Dutch schoolmaster. His mission was almost finished when, on the night before he was ready to return to the American lines, he was discovered with notes and letters on his person, and he was arrested. The next morning, on September 22, 1776, he was brought before the gallows. He saw before him the gallows. He saw to one side, the wooden coffin which would soon claim his lifeless body. He requested a Bible. His request was refused.

The British officer, who was a major by the name of Cunningham said, "Do you have anything to say?" Nathan Hale replied, "I regret that I have only one life to lose for my country." The British officer angrily commanded, "String the rebel up," and Nathan Hale died. He only had one life to give for his country.

Yet, there are some who are unwilling to give one vote for their country—one vote. Not everybody sees this as I do, of course. I see it through the context of many, many years of dedicated service to this institution, having sworn 13 times to support and defend the Constitution—13 times over a period of 48 years. Some of those who support this amendment are undoubtedly—undoubtedly—sincere, and they conscientiously believe that this is the only way to get deficits under control.

But not all, I would say—and I attempt to be the judge of no man and no woman, but I have talked with many Senators around here on this matter, and some have expressed strange reasons for not supporting this amendment. Some think that we ought to just wash our hands of it, let it go to the States. "The States will not ratify it," they say. Some say if the States ratify it, the backlash will destroy the Republican Party in time.

Madam President, we cannot say, "Let this cup pass from me." Harry Truman, even if he were in the White House today, could not say, "The buck stops here." This constitutional amendment does not stop on its way to the President. It does not go to the President's desk. So where does the buck stop? The buck stops here—right here in the Senate.

I hope that Senators will think again, those who may be guided by political motives to vote for this amendment. I hope they will think again. Nathan Hale gave one life, and thousands have given their lives to sustain the freedoms that are guaranteed by the Constitution of the United States. That Constitution, as I say, is stained with the blood of thousands.

There is not one proponent of this amendment to the Constitution against whom the blood of that Constitution will not cry out as loudly as did the blood of Abel against Cain, if it is adopted. Not one!

There are those who say, "Well, he is the chairman of the Appropriations Committee. He is the chairman of the Appropriations Committee. You would not expect him to do anything else. He is the 'king of pork.' No wonder he is against this amendment."

Fie on such little men who think in such little terms, who have themselves, in all likelihood, never taken an oath to support and defend the Constitution of the United States. I have taken that oath, and every other Member here—man and woman—has taken that oath.

Montesquieu said when it came to the oath, the Romans were the most religious people on Earth. Marcus Atilius Regulus, a Roman consul, captured by the Carthaginians in the year 258 B.C., was sent by the Carthaginians with an embassy to Rome to plead the case of the Carthaginians before the Roman Senate and to attempt, if possible, to arrange for an exchange of prisoners, also, to endeavor to bring about a truce on terms that would be favorable to the Carthaginians. Marcus Atilius Regulus, however, when he spoke to the Roman Senate, advised the Senate against entering into any such arrangement or agreement or treaty with the Carthaginians, because such an arrangement would not be beneficial to Rome.

Regulus said, "I know that they will know what I have said here and that I will pay with my life." The Roman Senate offered to protect Regulus against his being returned to Carthage. But Regulus said, "No, I gave them my word. I swore an oath to them, which they made me do. I swore an oath to them that I would return." And he said, "I will keep my oath, even when given to the enemy."

Against the pleadings and the tears of his wife and children, Marcus Atilius Regulus returned to Carthage, and he was tortured. He was forced to lie on spikes in a specially-built enclosure from which he could only see the Sun. The Carthaginians cut off his eyelids, and he was forced to look at the Sun all day long. He soon perished!

He was a Roman who believed in keeping his oath. So we can understand what Montesquieu meant when he said that when it comes to the oath, the Romans are the most religious people in the world. I, too, am from a generation that believed in keeping its oath, when sworn before God and with one hand on the Bible.

Mr. President, if this constitutional amendment proves to be unenforceable, it would create an equally troubling hazard; namely, by inscribing an empty promise into the fundamental charter of our Government, thus breeding cynicism both toward our Government and the Constitution as well for the rule of law.

Before I diverted my thoughts to the Romans, I talked about what our constitutional form of Government would suffer in the event that the balanced budget amendment were to be ratified and enforced.

But now I say, on the other hand, if the amendment proved to be unenforceable, it would create an equally troubling hazard; namely, by inscribing an empty promise into the fundamental charter of our Government, thus breeding cynicism both toward our Government and the Constitution, as well as for the rule of law.

Keep in mind that not only would Federal judges—keep in mind that not only would Federal judges—become involved in fiscal policy, but State judges would also be required to make fundamental decisions about taxing and spending. And these are issues, I say to my friend from Georgia, these are issues that judges on both the State and Federal levels lack the institutional capacity to decide in any remotely satisfactory manner.

Some proponents of the amendment may be of the opinion that the "political question" doctrine or limitations on standing would preclude litigation that would ensnare the judiciary in the thicket of budgetary politics.

Some recent decisions of the Supreme Court, however, suggest that the Court is prepared—is prepared—to resolve questions that might once have been considered political. For example, in *Missouri* v. *Jenkins*, 1990, the Supreme Court upheld the power of a Federal district court to order a local board of education to levy higher taxes to build magnate schools in order to promote desegregation. And the Court even held open as a last resort the possibility that the district court might itself levy the taxes.

Now get that. "Oh," they say, "the courts won't enter that political thicket." It is not so much that it is a thicket, it is political. It is political. Judges are not elected by the people. Judges are not out there rubbing shoulders and elbows with the American people and hearing from them as to their advice on making law. But it is otherwise with the elected representatives of the people, who daily work and move in a political thicket.

It might not happen, but if the proposed amendment is adopted and ratified, no one, no man, no man—it reminds me, may I say to my good friend, one of the fine Senators who is on the "Republican response team"—and I love him, I think a lot of the senior Senator from New Hampshire, I really do—but it reminds me of Odysseus.

Odysseus, Senators will recall from that great story, the "Odyssey," written by Homer, who supposedly lived circa 800 years before Christ, was blind,

blind like Milton who wrote "Paradise Lost." Homer was blind. But he went around singing songs and poetry. Perhaps Homer's words have come down to us through the centuries, the early, early centuries, by repetition, by other men relating, speaking, and conveying the thoughts and words of Homer.

But let us say it was "written" by Homer. I think that is fair enough. The "Odyssey." In the "Odyssey," we will remember that Odysseus found himself imprisoned in a cave by the Cyclops, the giant with one eye in the middle of his forehead. He probably still had more vision than some of the proponents of this amendment. In any event, the Cyclopean giant asked Odysseus his name. Odysseus said, "No Man." His name was Noman. No-man.

Well, I will not proceed with the story, but let me just say that no man, and no woman, no one should be very surprised to find a Federal court made up of unelected judges, appointed for life, enjoining expenditures selected by the court or requiring the levy of a tax. People up in New Hampshire would not stand still for that, for unelected judges levying a tax. We fought one war over taxation without representation, and the people of New Hampshire know about that.

Even if taxpayers and Members of Congress were not granted standing, the amendment could lead to litigation by recipients whose benefits, mandated by law, were curtailed by the President through impoundment of funds or a line-item veto, in reliance upon the amendment. The President might well conclude that the Constitutional command that "total outlays for any fiscal year shall not exceed total receipts" must take precedence over mere statutes, including appropriation bills, entitlement laws, and the Impoundment Act of 1974.

If a Presidential decision were made to order a reduction in pension payments, or in social security payments, or in Medicare payments, or in veterans compensation payments, the President could argue in defense of his action that there was a conflict between the statutes requiring these outlays and the Constitutional provision commanding that "total outlays shall not exceed total receipts," and that to execute the spending statutes would result in the Constitution's being violated.

Assuming that a President concludes that his duty to comply with the Constitutional amendment implicitly includes the impoundment power or enhanced rescissions power or a line-item veto power necessary to ensure that the budget is in fact balanced, the result would be an inevitable shift of power from the Legislative Branch to the Executive Branch. At the very heart of our Constitutional system of government is the proposition that power over the raising of revenues and the appropriation of funds rests with the people's elected representatives in Congress. The shift to unrestrained Presidential impoundment and line-item veto or rescissions authority would effectively take from Congress the "power over the purse" and confer that power on the President.

The placing of the power of the purse in the hands of the Legislative Branch—and not in the hands of the Executive or Judicial Branches—was a decision that was not lightly made by the Framers of the Constitution. James Madison wrote in the 58th Federalist:

> This power over the purse may, in fact, be regarded as the most effectual weapon with which any Constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.

That was Madison. Let me state it again. James Madison wrote in the 58th Federalist:

> This power over the purse may, in fact, be regarded as the most effectual weapon with which any Constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.

So the Framers, Mr. President, explicity rejected the notion that such a crucial power should rest either with the Executive or with the Judiciary.

As I have already stated, the Courts lack not only the experience and the resources, but also the close link to the general public needed for responsible budgetary decisions. It would be a profound—a profound—mistake for Congress to adopt an amendment to the Constitution that could transfer such a vital Legislative power to an unelected Judiciary.

The Framers were well acquainted with the history of England. They were very familiar with the long and bloody struggle in which the English people had wrested from tyrannical monarchs the power of the purse and vested that power in the elected representatives of the people in Parliament. The Framers, consequently, considered that the appropriations of money were a bulwark against Executive usurpations, and they, therefore, carefully wrote into the organic law the provisions of Article I, Section 9, which guarantee that no monies shall be drawn from the Treasury but in consequence of appropriations made by the laws of Congress. It is hard to imagine that the possibility of such a dramatic reform of the basic structure of our government would be contemplated in this amendment, by the Members of both Houses of Congress, all of whom have sworn an oath to support and defend the Constitution of the United States.

On the other hand, if the amendment is to be only an empty promise welded into the fundamental charter of our government, only to have this new provision of the Constitution routinely violated, it would inevitably make all other provisions of the Constitution seem far less inviolable. Let us soberly reflect on that.

As Alexander Hamilton noted in Federalist No. 25:

> Wise politicians will be cautious about fettering the government with restrictions that cannot be observed, because they know that every breach of the fundamental laws, though dictated by necessity, impairs that sacred reverence which ought to be maintained in the breast of rulers toward the Constitution of a country, and forms a precedent for other breaches where the same plea of necessity does not exist at all, or is less urgent and palpable.

Mr. President, unless a Senator has a question of me, I am prepared to yield to the Senator from Arkansas for not to exceed 15 minutes without losing my right to the floor. I do not intend to hold the floor all afternoon, but I do have some other things that I wish to say in opposition to the amendment to balance the budget.

Do not forget, I support a balanced budget. I supported lowering the deficits in the 1993 deficit reduction bill. So I support the goal of achieving balanced budgets. But I do not support the prostitution and rape of the Constitution of the United States by a Constitutional amendment that will not achieve a balanced budget but will destroy the very form of our government with its separation of powers and checks and balances.

Mr. President, I ask unanimous consent that I may yield to the Senator from Arkansas [Mr. PRYOR], for not to exceed 15 minutes without losing my right to the floor.

The PRESIDING OFFICER (Mr. KEMPTHORNE). Is there objection? The Chair hears none, and it is so ordered.

The Senator from Arkansas is recognized.

Mr. PRYOR. Mr. President, I thank the Chair, and I thank the distinguished Senator from West Virginia for yielding this amount of time to me.

The other afternoon I was down visiting on the steps, the steps in the Senate where the pages sit. I gathered up four or five of the pages who diligently serve us around here and perform many, many wonderful duties for this institution and for us individually and collectively. I gathered them up and I said:

> Ladies and gentlemen, I want you to remember something. When I speak, or when a lot of us speak in the Senate, maybe from time to time you do not have to listen too carefully to what some of us have to say. But remember that when Senator BYRD of West Virginia speaks, you take time, and you listen, and listen intently to what he has to say, because you will learn something. You will learn something about this body, you will learn something about this country, you will learn something about the Constitution, and you will learn something about what makes the Senate one of the unique institutions in the world. I learn from the Senator constantly.

I thank him not only for his message today but his continuing message on this issue, relative to the balanced budget amendment.

When I was young and growing up in Camden, AR, I remember at birthday parties we used to play a game. In fact, when I raised my sons, they played the same game. Perhaps other Members of this body played a game called pin the tail on the donkey. One of us would be blindfolded, and we would be given the donkey's tail and someway or another we would try to go up to the wall or the board and find the proper place to attach the tail on the donkey. Sometimes, because we could not see it—we were blindfolded—we would not even be near our destination, or near our target.

In the last several weeks, relative to this debate—not only in this Chamber but in the other body and on the talk shows, in the media, in the public, wherever—somehow or another I am reminded of that game once again, of pin the tail on the donkey.

I think there is a lot of blame being passed around—the Democrats blame the Republicans, the Republicans blame the Democrats. We might blame this Senator or that Congressman, we blame this act or this particular time or effort or law or regulation as to why we got to this point and how we got to this point at this time in our country's history.

We are in trouble. We are in deep trouble. And this morning I heard the distinguished majority whip, Senator LOTT, as he quoted a statement that Senator DASCHLE had made 1 year ago in this debate on the constitutional amendment. At that time, Senator DASCHLE voted for that amendment, and Senator DASCHLE was quoted as giving the reasons why he was supporting that amendment.

Mr. President, I invite the distinguished Republican whip to go back to 1982, to go back to 1986, and he can find some statements of this Senator from the State of Arkansas who at that time also not only spoke on this floor but back in my home State, as to why at that moment in our history, that window of opportunity, that I thought we had to support a balanced budget amendment to the Constitution. I believed it then. I believed it in 1982. I believed it in 1986.

Not long after those votes, I also voted for two extremely far-reaching, extremely strict, you might say, proposals that would have frozen spending across the board. In the early 1980's, I supported those particular freezes.

But, Mr. President, something has happened since that period of time. Something has happened to have dramatically and drastically changed the economic and fiscal landscape of America. What has happened is very simple, and I will use the analogy that after the mid-1980's we let the horse get out of the barn.

The horse got out of the barn, and today, we are being asked for support by our wonderful friends, like Senator SIMON of Illinois, who believes with all of his heart that this constitutional amendment is the way to get this horse back in the barn.

Mr. President, I respect my friend from Illinois. I respect my friend from New Hampshire. I respect my friend from Utah—in their belief that a constitutional amendment, where we would balance the budget in the next 7 years is the proper way to get the horse back in the barn. I truly believe it is wrong to attempt to amend the Constitution to bring the horse back in the barn. I think what we are doing, if I may use this analogy, is we are attempting with a constitutional amendment to lasso an elephant with a piece of thread. It cannot be done.

The trouble is not in the Constitution. This is not where the trouble is. It is not in the Constitution that was passed in Philadelphia over 200 years ago. The trouble is in us. That is where the problem lies.

The problem is in me, Senator PRYOR from Arkansas. In 1981, I voted for then-President Ronald Reagan's proposal to increase spending and to decrease taxes. There were 11 Members of the U.S. Senate who voted against that package, and I wish I could say today I had been one of those 11, or that I had made number 12. I was not. I bought on to the idea: We have a new President, let us give him an opportunity to show us what he can do. And I supported President Reagan's package.

In retrospect, I was wrong. So I would like to stand here today and take blame. I will take the blame for making a mistake that helped cause these massive deficits and this gargantuan, absolutely awesome national debt.

So here we are, almost on the eve of voting whether or not we want to refer to the States an amendment to cause, demand, and mandate a balanced budget.

Last Friday morning, I happened to be in this body, fortunately enough, as the Senate was opened with a prayer by Rev. Richard C. Halverson, Jr. I thought the prayer was timely, and I thought it was poignant. I would like to quote, if I might, Mr. President, from that prayer of Dr. Halverson.

> Once again, in the urgency of this hour, we beseech Thee for divine assistance. We pray for a hedge of enlightened restraint around this "necessary fence" of the Senate. For through this body, regulations must pass that will either strengthen or weaken our country.

Dr. Halverson's "necessary fence," of course, is a reference to James Madison who called the Senate, this body, this institution, "a necessary fence to protect the rights and property of its citizens against an impetuous public."

Mr. President, James Madison feared that the Congress from time to time might act impetuously to please the public. Reverend Halverson continued in his prayer last Friday morning, and once again I quote.

> As pressures mount for instant solutions to complex problems, grant those who hold this "senatorial trust" the calm resolve to be not driven by public restlessness, nor drifting in stubborn idleness, but drawn by Thy vision of righteousness—which upholdeth the Nation.

That was an insightful prayer, Mr. President. I hope that Dr. Halverson's prayer are the words that set the tone for this debate. The public is restless. They are demanding instant solutions. They are demanding action, and one instant answer is this very imperfect balanced-budget amendment is before us today.

It is like a bottle of snake oil because it promises to solve all of our budget problems. But what it delivers are loopholes and false hopes. It gives politicians the easy and the temporary cover to go back home and to say we have voted to balance the budget.

There are loopholes, Mr. President, throughout this proposal. And their inclusion assures that false hopes will be created and this is just what our country and just what Americans do not need right now.

Loophole No. 1. Right at the top of this balanced-budget amendment is the three-fifths loophole. Section 1 says that three-fifths of the House and three-fifths of the Senate can vote to completely waive the balanced-budget requirement for a year. I believe the framers of the Constitution placed provisions in the Constitution which they held inviolate.

For example, in the first amendment of the Constitution, it does not say that "Congress shall make no laws respecting an establishment of religion unless three-fifths of each House passes legislation specifying otherwise."

The 13th amendment, for example, does not provide that slavery or involuntary servitude shall exist in the United States unless three-fifths of each House passes legislation specifying otherwise.

Mr. President, the reason that the three-fifths requirement sounds ridiculous is because it is ridiculous.

I do not believe that we should pass this amendment. I do not believe we should pass it with or without this particular loophole. But if the supporters of the balanced budget amendment think it is the panacea to all of our problems, why create a three-fifths loophole? Why not, if we are going to require a balanced budget? Why do we not require a balanced budget, period?

This is the second loophole, Mr. President. That loophole is the definitions game. Section 6 of the balanced budget amendment provides that estimates of outlays and receipts may be used by Congress when drafting legislation to enforce and implement the provisions of this amendment. Nowhere in

this amendment before this body today, and nowhere in the Constitution, are the words "outlays or receipts" defined.

Why would the word "outlays" need to be defined? Because outlays are the moneys that the Government spends. And without an airtight definition of what constitutes spending we had better realize that clever lawyers are going to find many ways to circumvent the intention of this amendment, whatever it may be.

The same goes for the definition of "receipts."

Take the example of sales of Government assets. If someone were to propose that we sell Mount Rushmore, would the money collected when we sold Mount Rushmore represent a receipt under this amendment? It might and it might not.

How about user fees? Will moneys collected from new user fees be considered a receipt? They might. But they might not.

It is no wonder that Judge Bork has recently said that we had better anticipate not only hundreds but perhaps thousands of lawsuits and other forms of litigation in this particular area.

Mr. President, I wonder if the distinguished Senator will yield me perhaps 5 additional minutes?

Mr. BYRD. Mr. President, I ask unanimous consent that I may yield an additional 5 minutes to the distinguished Senator from Arkansas [Mr. PRYOR] under the same terms as heretofore agreed to.

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

Mr. PRYOR. The Senator is very generous. I thank him.

Mr. President, what we are doing today is looking at a possibility of adopting perhaps the greatest sea change in the relationship between the judiciary, the executive branches of Government, and the legislative branches of Government that we have ever concerned ourselves with. The definitional games are going to be played necessarily on what is or is not an outlay or what is or is not a receipt. But the definition games will not be limited to just these issues. And I can say, in my opinion, there are not going to be any winners in this definitional game under these false promises.

Mr. President, there is a third loophole. There are many loopholes. But No. 3 is, I think, one of the more serious—determining what an estimate is.

Who makes those estimates? If one estimator's "estimate" comes out one way, the budget may be in balance. If we use another estimator's estimate, we will no doubt have different estimates and then be out of balance. More lawsuits will ensue.

It sounds like estimators, not Congress, would control the measure of our outlays and receipts, and ultimately, the decisions effecting our lives.

The point is that estimates can differ, and they can differ drastically. Estimates can be flat wrong. Human nature being what it is, estimates can also be manipulated. In any case, do we really want something as unreliable as economic estimates to become the underpinning of the United States Constitution? I do not believe, notwithstanding that the people of our country want us to balance the budget, that they want to underpin the U.S. Constitution with something this illusory.

The estimation game is one more loophole through which runaway Government spending is going to continue. It will take the decisionmaking process out of the hands of the people and the Congress, and place it in the hands of the economists and the estimators who seldom agree on anything.

The fourth loophole, Mr. President—Let us assume that all of our numbers, estimates, statistics and forecasts are correct, and we are struggling to meet the requirement of a balanced budget. Then what Congress will do is probably start playing budget games.

Is there not one of us who has been here for any length of time who has seen the game of putting certain functions of Government on budget or off budget? Mr. President, I predict under this constitutional amendment, if it were a part of our Federal Constitution, that we would spend the majority of our time not balancing the budget, but figuring out which Government programs were on budget and off budget, which programs raise money, and which programs cost money. And we will have many, many heated debates on what should and should not be included in that budget.

The temptation to take deficit programs "off budget" is going to be great. For example, today under section 13301 of the Budget Enforcement Act, we forbid the use of Social Security trust fund surpluses to offset the Federal deficit.

However, under this constitutional amendment, we are going to apparently use Social Security surpluses for that purpose. Many, many experts are predicting that in the year 2013, Social Security will begin to run its own deficit. At that point, the temptation will be to put Social Security off budget in order to meet the balanced budget constitutional requirement.

Nothing in this amendment prevents this chicanery, and we all know it will occur. Will this inspire confidence? No. Will it balance the budget? No.

Mr. President, there are big questions about this amendment. I have discussed just a few loopholes and gimmicks. This amendment to the Constitution deserves as much time as necessary to clear the air.

I am almost out of time. But I want to simply state that I think this has been a splendid debate. I think that we have not, in any way, caused anyone to truly believe that we are attempting a filibuster on this side of the aisle. We have had very few quorum calls. We have had, in my opinion, a debate that is one that will go down in the record books. I truly believe it is one of the better debates that the U.S. Senate has ever engaged in.

Once again, Mr. President, I do not feel that our situation today with regard to these awesome Federal deficits is the fault of the Constitution. It is our fault and it is our obligation to cure those problems by making the hard decisions, the tough decisions that all of us know we have to make to balance the budget.

Mr. BYRD. I thank the distinguished Senator from Arkansas [Mr. PRYOR] for his lucid, incisive observations.

Mr. President, I yield to the distinguished Senator from New Hampshire, [Mr. SMITH] with the understanding that I do not lose my right to the floor.

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

Mr. SMITH. Mr. President, I do appreciate the Senator yielding briefly to me. In the spirit of friendly debate, I ask the Senator if there was any significance to the fact that when I happened to come on the floor to give relief to Senator HATCH, who has been out here many hours during this debate, he mentioned Cyclops. I wondered whether there was any significance to that fact that when he saw me on the floor, immediately the debate went to Cyclops. I think he is a better expert on history than I am, for sure, but the Cyclops had one eye, as I remember. I suppose there is some relevance here, because it is going to take more than one eye to stay focused on where this debate is going and where this debt is going in this country.

I do not know if the Senator wishes to respond, but I did take notice of that fact that immediately, Cyclops became the topic of discussion when I came on the floor.

Mr. BYRD. If the Senator will indulge me briefly.

Mr. President, I will try to answer the Senator's question. Indeed, the Senator's appearance did not have any part in my reference to the Cyclopean giant. I just wish that, if I ever became involved in a street brawl in this city, the distinguished Senator from New Hampshire would be around close by. If I could have him and Senator HOLLINGS there to help me, I would feel like fighting rather than running. He is a genuinely congenial Senator and I have enjoyed my service here with him. We have often talked and discussed matters together. I value his friendship and his advice and counsel. I do not always follow it, but I certainly listen to what he has to say. I will say that I really was pleased to see him come on the floor, because he is one of those distinguished Members of the "Republican

response team," and he is a very worthy one. He has been around here a while. I consider him as a formidable and respectable protagonist of the constitutional amendment to balance the budget.

I think that answers the question, except there is one further matter he mentioned, the matter of having one eye. The giant in the story by Homer had one eye, and the distinguished Senator referred to the national debt, namely that an individual would need more than one eye to see the national debt because it is so high.

I remember that during the early first administration of President Reagan, I saw the President on television. He was very effective. He had a chart and he pointed to that chart which had a line drawn to represent the national debt at that time, in terms of $1,000 bills. He said, if I recall, that if one had $1,000 bills stacked 4 inches high, the stack of $1,000 bills would represent $1 million. Mr. Reagan indicated by the chart that the stack of $1,000 bills necessary to reach the then sum of the national debt, which at that time was just a little under $1 trillion, would require a stack of $1,000 bills 63 miles high.

That was the last time Mr. Reagan ever appeared on television using that chart, because when he left office at the conclusion of his second administration, that stack of bills, using his chart, would bythen have reached about 237 or 240 miles into the stratosphere—because the Nation had added to its debt almost an additional $3 trillion during his 8 years in office. And then, of course, under the administration of Mr. Bush, the debt continued to grow.

I thank the Senator for reminding me of that chart.

Mr. SMITH. Will the Senator continue to yield to me?

Mr. BYRD. Yes.

Mr. SMITH. The Senator mentioned he might like to have me on his side in a fight at some point. This is my fifth year in the Senate. It does not come anywhere near the number of years the distinguished Senator has served here, but I am hoping that someday before either one of our terms is over in the Senate we might be on the same side on an issue, as he is a very worthy adversary.

The Senator referred to a comment that I made a few days ago that made the national press; that it was our goal to wear the Senator from West Virginia out so we could get the balanced budget amendment to a vote. And the Senator is a very worthy adversary, because we have not been able to do that yet. Even though we have had a number of us out here relieving one another, the Senator still stands on his feet and still continues to debate, which is really the great thing about the Senate.

Over behind my desk, there is the desk of Daniel Webster, one of the greatest orators in the Senate. The Senator from West Virginia certainly ranks up there in oratorical skills with those great Senators of that time—Clay, Webster, Calhoun, and so many others.

But it does remind you that the time we spend here is very fleeting; that we are only temporary stewards of this country.

But I think, in that perspective, if the Senator would continue to yield just for a moment, it is important to realize the significance of this debate. I think this is a debate of historical significance.

The Senator from West Virginia and the Senator from Arkansas mentioned the fact that the debt went up significantly during the Reagan years when Reagan was President. That is accurate.

However, during those years, there were a lot in the Senator's party in Congress who certainly contributed to that. All of the Reagan budgets, at least from when I was here from 1985 through 1988–89 during the Reagan years, they were always dead on arrival and so predicted before they got here. And then they were increased by the party in power in the Congress. So the debt went up, true, while Reagan was President, but whether or not it went up all because of Ronald Reagan I think is something that I would take pretty sharp issue on with the Senator.

Mr. BYRD. Will the Senator yield on that point?

Mr. SMITH. It is the time of the Senator from West Virginia.

Mr. BYRD. Number one, the Senator has stated that all of the Reagan budgets were dead on arrival. I call the distinguished Senator's attention to the fact that some of those budgets were subjected to a vote in this body or the other body or both and the Republican Members did not vote for those Reagan budgets. I believe I am correct in that. If I am not, I will be glad for someone to correct me.

Second, the Senator is in error—I know this to be a fact—when he indicated, as I thought I understood him to so indicate, that in the case of all of Mr. Reagan's budgets the Congress increased those budgets. That is not the case, if I understood the Senator correctly.

Mr. SARBANES. The Congress reduced them.

Mr. BYRD. The Congress reduced Mr. Reagan's budgets in some of those years, in some of the Reagan years.

Going back to 1945, the accumulated requests of all the Presidents exceeded the accumulated appropriations by the Congress—exceeded the accumulated appropriations by the Congress—over that same period.

But precisely under Mr. Reagan, I say again, the Congress did not exceed his budgets in every year. In fact, in some years Congress appropriated less than the budget requests.

Mr. SARBANES. Will the leader yield?

Mr. SMITH. But the Senator knows, as an expert on the Constitution, that the Congress of the United States controls the purse strings. The President does not spend any money without the approval of Congress.

So I think, to be fair about it, it would be fair to say that Congress is ultimately responsible, not the President, for increasing the debt. The President's budget is purely advisory. We do not have to agree to it. We can increase it, decrease it, ignore it, kill it, do whatever we want to do with it. But the Congress appropriates the money. The Congress authorizes the spending. And it is the spending that drove the debt up over that period of years.

And I would accept that there is certainly enough blame to go around between the two parties. But my point is, I think it is unfair to say that Ronald Reagan alone was responsible for the debt that we have today.

Mr. BYRD. As the Senator says, there is enough blame to go around. But the President, Mr. Reagan, never once submitted a balanced budget to the Congress.

Mr. SMITH. That is accurate. He should have, but he did not. The Senator is right. And neither did the Congress.

Mr. BYRD. Pardon?

Mr. SMITH. Neither did the Congress.

Mr. BYRD. Well, President Carter did. President Carter once submitted a balanced budget.

I sat right over here in room 211. I was then the majority leader of the Senate. I sat over in room 211 on a weekend, brought my little paper bag, with some coal miner's "steaks"—slices of baloney—in that little paper bag. We had the Secretary of the Treasury, the Director of the Office of Management and Budget, and others. We had the President's men in that room, and we sat through Saturday and Sunday—and I believe Senator SARBANES of Maryland, who is now on the floor, was there at that time—and we hammered out a balanced budget.

But, the President also has a veto pen. And Mr. Reagan never once vetoed any appropriation bill for that reason, in particular. He vetoed some bills for other reasons.

Mr. SMITH. Will the Senator yield for just a brief response to that?

Mr. BYRD. Yes.

Mr. SMITH. That is true. But, as the Senator knows, the Congress during those years rolled these huge continuing resolutions in to the President with everything from Social Security to defense and every little program that could possibly hurt anybody in America all rolled into one, essentially saying, "Well, Mr. President, if you veto

this, then we will shut the Government down and stop the Social Security checks."

So, as I say, I think the reason we are here today is because of the irresponsibility, essentially, of the Congress, not any President, over the years.

As we debate today right now on the floor of the Senate, $9,600 a second the national debt increases. It increases $576,000 a minute, $34,560,000 an hour, and $829 million a day—almost a $1-billion-a-day increase as this debate continues.

Mr. BYRD. Senator, "You cram these words into mine ears against the stomach of my sense."

The Senator spoke of the omnibus continuing resolution. I have a little grandson who would say, "Do you know what?"

Well, do you know what? On that continuing resolution that was so heavy and that Mr. Reagan dropped on the table before a joint session of the Congress, do you know what? He asked that those appropriations be sent to him in one bill. I was here. I know. He asked that they be given to him in one bill.

Any further questions?

Mr. SMITH. Well, you did not give him any choice.

(Mr. KYL assumed the chair.)

Mr. BYRD. Oh, yes. He asked for it.

Mr. SMITH. Not really. If Congress controls the purse strings, I say to the Senator from West Virginia, and the national debt increased $3 trillion during those years, how can we blame the President? I mean, whose responsibility is it?

Mr. BYRD. Well, there is enough to go around, but in the case of the 1993 budget deficit reduction package, I would shift the blame in large measure, to those who did not support that deficit reduction package.

They sat here in the Senate. They sat in the House. We had a 1993 deficit reduction package that reduced the deficit over a period of 5 years by $482 billion. Somewhere between $450 and $500 billion. Not one Republican Senator voted for that deficit reduction package.

Actually, the deficits have been reduced more than that. They have come down 3 consecutive years. Not one Republican Senator voted for that package. Why?

Mr. SMITH. Mr. President, I would be happy to answer on behalf of the Senator from New Hampshire. The Senator from New Hampshire voted against that package for a number of reasons.

One, $250 billion in increased taxes on the American people was in it. No. 2, the projections beyond the 5 years in that budget that the Senator mentioned, the deficits go up. As we see from the follow-on budget that the President has sent, we are looking at an annual average increase of $200 billion a year. And the deficits will add $1.5 trillion more to the debt by the turn of the century. He did not take the corrective action that was necessary to continue the downward spiral.

True, deficits went down for over a 5-year projected period, largely due to the tax increases, not a lot of spending cuts. When we look at the outyears, the six, seventh, the eighth, they go like this, and under the President's projections those deficits will be over $350 billion as we turn into the 21st century.

That is not making the corrective decisions that need to be made to turn the country around, which is why we need the amendment. If Congress had the discipline we would not be here. They do not have the discipline. This chart proves it.

There are a number of attempts at balancing the budget of congressional action over the years that were taken but they never got the job done. One of the more recent ones is Gramm-Rudman-Hollings. Lot of fanfare. What happened? We walked away from it because Congress did not have the discipline to do it.

A comparison or analogy would be the Base Closing Commission. Congress did not have the courage to close bases that we did not need, so they created a commission. Some said we should create a commission to balance the budget. The point is the amendment forces us. It is unfortunate, I agree with the Senator. I wish we would not have to be here saying we needed a balanced budget amendment to clutter the Constitution to balance the Federal budget. We should do it. But we do not do it, and we will not do it until we have the amendment.

That is why we have to have it. If we do not, I would say to the Senator, our grandchildren are going to have a country that I cannot imagine. I can imagine a press conference by a President in the future, maybe not too many years, where he comes on television and says, "My fellow Americans, I have some very dismal news to share. We cannot meet our fiscal obligations, and I will go to Mexico and Japan and China, who knows where, and see if I cannot borrow some money to meet our obligations."

That is going to happen, I say to the Senator from West Virginia, because he knows we have to meet obligations. We are going to get to the point where we cannot. Interest is consuming us. Interest is now 16 percent of our budget. Sixteen percent of our budget, and defense is 16 percent of our budget. Interest is going this way and defense is going this way.

I would say to the Senator, where do we stop it?

Mr. BYRD. Will the Senator allow me to answer the question?

Where do we stop? We have to, in order to stop it, we will have to swallow some tough medicine. We have already seen the Republican Senators turn tail and run when it came to tough medicine in the 1993 budget deficit reduction package.

Well, that was tough medicine. I assume, by what my friend has said, it was tough medicine because it raised taxes. The Senator must come to a conclusion at some point in time that this budget cannot be balanced simply by cutting, cutting, cutting. Discretionary spending has been cut to the bone.

There has to be at some point in time, a combination of cuts and tax increases. There has to be.

I heard a Senator on the Republican side of the aisle the other day say he would never, never vote for a tax increase. Well, he has the right to take that position if that is the way he feels.

That kind of an attitude is never going to get this budget in balance. The Senator talks about our children and grandchildren. I suppose then, that rather than vote for a tax increase we should just put this burden of debt over on our children and grandchildren. I have children, I have grandchildren. Are we going to stand here and say to them, "You children, you future generations will have to raise taxes because we do not have the guts to do it"?

We have been on a national credit card since 1981. I can remember those good-feel messages that used to be issued during the Reagan years from the oval office. Every morning. "Good morning in America, everything is fine." There really is a free lunch.

But we say we will not raise taxes. We have more than one tool by which to bring budgets into balance. That effort must not be limited simply to cutting programs. I have voted to cut spending programs. I will vote further to cut spending programs. But we cannot put aside the tool of revenue increases. The men who framed the Constitution provided for revenues to be increased to pay the debts to provide for the common defense and the general welfare.

But if we are going to take the position that the only thing we will support is to cut, cut, cut, programs but we will not raise taxes, then we are cheating our children and grandchildren.

I say we have to combine these tools if we really, really, really mean business.

Mr. SMITH. Mr. President, would the Senator yield for one more point?

Mr. BYRD. Mr. President, let me first yield to Mr. SARBANES. He has been asking me to yield, and then I will be happy to yield to the Senator.

Mr. SARBANES. Mr. President, I wanted to direct an inquiry to the distinguished Senator from West Virginia with respect to the supermajorities

that are provided for in this amendment.

As the distinguished Senator has very ably pointed out, the Founding Fathers rejected supermajorities. Both Hamilton and Madison are very explicit in the Federalist Papers about the dangers of supermajorities and the power we place in the hands of minorities.

The argument has been made here on the floor by proponents of this amendment that they have certain waiver provisions in the amendment and if we ever found ourselves in the difficult circumstance clearly a waiver would be obtained and we would be able to address issues of national importance.

The Senator earlier talked about the fiscal provisions, but I wanted to direct his attention to another section, and that is the national security section. I submit to my colleagues that this is very serious business and it is time to stop playing games. The Senator from West Virginia just pointed out one game. People are for the balanced budget amendment but they will not vote for the deficit reduction package. There is a tough deficit reduction package and they say, "No, I cannot vote for that but I am for amending the Constitution to require a balanced budget."

Let me leave that for a moment and let me talk about the national security section which is section 5. I want Members to stop and think about this very carefully because we obviously need to stop, look, and listen before we place ourself into any framework that could conceivably endanger the national security of our country.

The provision says that Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect.

We do not have many declarations of war. We can get involved in a situation we have to deal with, but we do not have a declaration of war. It then goes on to say:

> The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and if so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

In other words, if you are facing a threat, an imminent threat the amendment may be waived. The amendment does not even address the situation in which we are not yet engaged in military conflict.

I ask the distinguished Senator from New Hampshire, who is on the floor, suppose we are not engaged in a military conflict, there is just the danger of a military conflict breaking out which requires us to take action involving the expenditure of moneys. Could you waive that with a joint resolution? I ask the Senator from West Virginia.

Mr. BYRD. Mr. President, I ask unanimous consent that I may yield to the distinguished Senator from Maryland for the purpose of his engaging in a colloquy, if they so wish, with the Senator from New Hampshire, without my losing the right to the floor.

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

Mr. SARBANES. I ask the Senator. It says, if engaged in military conflict, you may waive it. Suppose you are not engaged in military conflict but you need to prepare for a possible engagement in military conflict; you need to take actions which will cost money, which will unbalance your budget, in order to deter the potential of a forthcoming military conflict. Can you waive that under this provision?

Mr. SMITH. Would the Senator like me to respond to that?

Mr. SARBANES. Certainly.

Mr. SMITH. The Senator knows very well that this debate is simply an attempt to divert attention from the real problem. You just mentioned a moment ago the tough deficit reduction——

Mr. SARBANES. No, no, I yield to the Senator to respond to my question. The question is on the national security issue. The question is specifically addressed to section 5 of House Joint Resolution 1, and it specifically goes to the question of whether you could have a waiver where we were not engaged in military conflict but needed to take action in order to address a potential military conflict.

Mr. SMITH. Well, since the Senator wants me to respond to certain parameters rather than the parameters I prefer to respond, I say: "Declaration of war is intended to be construed in the context of the powers of the Congress to declare war under article I, section 8. The committee intends that ordinary and prudent preparations for a war perceived by Congress to be imminent would be funded fully within the limitations imposed by the amendment, although the Congress could establish higher level of spending or deficits for these or any other purposes under section 1."

Mr. SARBANES. I know the Senator from New Hampshire is reading the report, but it does not really answer the question. The first provision says that Congress may waive it for any fiscal year in which a declaration of war is in effect. I am addressing a situation in which a declaration of war is not in effect.

Mr. SMITH. I can read it——

Mr. SARBANES. I am addressing a situation in which we are not actually engaged in military conflict, but we want to take actions to forestall a military conflict. Can you waive it?

Mr. SMITH. Is that not ordinary and prudent preparations for war? Yes, that is ordinary and prudent.

Mr. SARBANES. You can waive it?

Mr. SMITH. It did not say waive it. "The committee intends that ordinary and prudent preparations for a war perceived by Congress to be imminent would be funded fully * * *" There is nothing to waive.

Mr. SARBANES. Fully funded; in other words, you can violate the requirements of the balanced budget amendment.

Mr. SMITH. Not at all. That is not what this says. The truth of the matter is, there will not be any funds even to conduct war if we continue along the lines that the Senator from Maryland would like to go, which is literally to bankrupt the United States of America. We will not have any money to spend on defense.

Mr. SARBANES. What does the Senator make of this waiver provision? What is its intention to be in section 5?

Mr. SMITH. This is the time of the Senator from West Virginia. I am not going to engage the Senator on the time of the Senator from West Virginia.

Mr. SARBANES. I see. I regret the Senator does not want to respond. If the Senator from West Virginia will continue to yield?

Mr. BYRD. Yes.

Mr. SARBANES. I regret the Senator from New Hampshire does not want to address that question. Let me just point out to the Senate that when you really get down to some of these hard questions, the proponents of this amendment just slide off them and they say, "Oh, well, we would get a waiver."

The waiver that is required here is declared by joint resolution adopted by a majority of the whole number of each House and, as the very able Senator from West Virginia has pointed out, this is contrary to what the Constitution now requires.

What this waiver means is that you would have to have 51 votes in the Senate and 218 votes in the House. I have heard the proponents stand on the floor and say, "Don't worry, no problem. If a situation arises, clearly the Members will vote for the waiver and we will be able to address it, we will get these votes, there is no problem."

I just want to recount one story, because this is very serious business, I suggest to the Members.

On August 12, 1941, the House of Representatives was confronted with the issue of extending the time of service of those members of the armed services who had been drafted the year before.

In the summer of 1940, the Congress had passed the Selective Training and Service Act, and, under it, people called up were to serve for 1 year—the President could extend the period indefinitely if Congress declared that the national interest is in peril.

On July 21, 1941, with the prospect of war increasing, President Roosevelt acted. In a special message to Capitol

Hill, he asked Congress to declare a national emergency that would allow the Army to extend the service of draftees. The President came to the Congress and asked them to make this extension. Everyone is telling us that "if we had a national emergency, surely the Congress would act." The measure regarding the draft for World War II passed the House of Representatives by a vote of 203 to 202. It passed the Senate by a vote of 45 to 30.

Now, just think of this. We are literally a few months away from the outbreak of World War II. The President has said to the Congress, "There is a national emergency. I ask you to extend the time of duty of those who had been drafted the previous year for a 12-month period. The storm clouds are on the horizon for all to see. We need to take action."

In many ways, it is comparable to envisioning a waiver situation for national security under this amendment for which the proponents say, "Oh, if there is a real problem, we'll get the waiver and we'll address our national security situation."

At that time, the vote in the Senate was 45 to 30; in the House of Representatives, 203 to 202. Neither of those votes meets the requirement of section 5 of this balanced budget amendment proposal. Even though in both instances a majority of those voting on this draft question voted to extend it, 45 to 30 in the Senate, 203 to 202 in the House, with Speaker Rayburn going into the well of the House in order to bring about that vote, neither of those votes is a majority of the whole number of each House, which is what this amendment requires.

So I ask my friends, the proponents of this proposition, how have they provided for the national security of the Nation? I am giving you an absolute, specific demonstration of an instance in which anyone looking back upon it would say clearly there was an important national security question that needed to be addressed and yet the vote to address it would not carry the day under the requirements of section 5 of this balanced budget amendment. The section states "So declared by a joint resolution adopted by a majority of the whole number of each House," which means you have to have 218 votes in the House—it carried in the House 203 to 202; it did not have 218 votes—and means you would have had to have 49 votes in the Senate. It carried in the Senate 45 to 30, but it did not have the necessary 49 votes in the Senate. There were 48 states in the Union during World War II and 96 Senators; therefore, the whole number would be 49.

Now, this is the absolute harm which supermajorities can potentially do to the national security of our Nation.

Mr. SMITH. Will the Senator allow me to respond to that?

Mr. SARBANES. Sure.

Mr. SMITH. The point is, it is very clear in the language that I have just indicated on the amendment as well as article I of the amendment. The Senator is correct that it does take a three-fifths vote. Now, the point is——

Mr. SARBANES. Will the Senator yield at that point? This requirement, as I understand it, does not take a three-fifths vote.

Mr. BYRD. Right, it does not.

Mr. SARBANES. This requirement requires the supermajority in the sense that it required that it be adopted by a majority of the whole number of each House.

You see, this is very important, and I am glad we are having this discussion because it is important to know exactly what this resolution provides and how it would work in real-life situations. There is a great tendency to just brush it all aside, and in fact I think this exchange illustrates that because I am not now focusing on the three-fifths requirement. That is a different issue.

Mr. SMITH. It is not a different issue.

Mr. SARBANES. I am focusing on the section 5 provision, and its supermajority requirement of the majority of the whole number of each House.

Mr. SMITH. But the Senator is focusing on that and ignoring article I, which allows you to raise the debt if you need to raise the debt in order to deficit spend, in order to deal with the emergency that the Senator is talking about.

Mr. SARBANES. By a three-fifths vote.

Mr. SMITH. That is what the Senator chooses to ignore, because that answers his question.

Mr. SARBANES. By a three-fifths vote.

Mr. SMITH. That is right.

Mr. SARBANES. That underscores my point even more. If the Senator's answer to me is you can waive it on a three-fifths vote, then in neither of these instances in the Senate or the House for the extension of the draft did they come anywhere close to the three-fifths vote. They did not have the three-fifths vote.

Mr. SMITH. It goes right back to the issue of priorities, which is why we are dealing with a balanced budget amendment to begin with, I say to the Senator from Maryland. Priorities are, if you are at war or need to go to war to defend the national interest of the United States of America, and you need a three-fifths vote to do it and you cannot get it, you will cut spending somewhere else; you will take out some pork or some wasteful spending that we never can get out of this budget, which is the reason we are in this mess.

You set priorities. What is more important, the national security of the United States or funding the Education Department or funding the Commerce Department or HUD? You make decisions, just like everybody else has to do in America.

That is the problem. The Senator has gone right to the heart of it. That is exactly why we are here today, because of this mess, because of the point the Senator makes. Nobody wants to set priorities anymore.

You set priorities. If I am a Senator and this happens, and the President of the United States, whoever he or she may be, needs money, needs forces, needs to protect the national security of the United States or the troops in the field, I am going to cut somewhere; you bet I am going to cut somewhere, and I am going to do it quickly if I cannot get the three-fifths.

I say to the Senator, I think we would get the three-fifths because the Senate and the House of Representatives, speaking on behalf of the American people, with our Armed Forces in jeopardy, are certainly not going to deny them the protection they need and the materials they need to protect themselves in the field or the national security interests of the United States.

It is a weak argument, and the Senator knows it. It is just a way to obfuscate this issue, to deny those who are out here saying we need this amendment. We do need it, and that is exactly why we do need it, because nobody wants to set priorities. No priorities can be set here—only in the household budgets, only in business, only in the cities of America, only in the States but not in the Congress of the United States. Oh, no; we have to spend more than we take in, year after year after year after year, $18,500 per American. That is the share of the national debt. It goes up, up, up, up.

The Senator talked about the guts to support the President's budget. The President's budget did not resolve it. If it resolved it, why are we looking at $200 billion more in annual deficits? How are you going to defend America when we get $20 trillion in debt? Where do you draw the line? Where do you draw the line?

The Senators talked about taxes. We can raise the tax rate, the Senator from West Virginia said—36 percent, 50 percent, 70 percent, 100 percent? That is what is going on in Washington, DC, right now. The taxes are so high they cannot pay them anymore. They are asking the Federal Government to come in and take over the city.

Mr. SARBANES. Let me bring the Senator back to the very real-life problem that I wish to discuss with him based on a very clear example in history, because what the Senator has just done is what is consistently done here. If we try to focus, in a tough-minded way, on a particular problem they say, "Oh, well, don't worry about it; somehow or other it is going to be taken care of."

Now, I want the Senator to come with me for just a moment or two and

to look at some history, and I want to read from this article that appeared in the summer of 1991.

Fifty years ago last Monday, on August 12, 1941, House Speaker Sam Rayburn saved the draft from legislative defeat and kept the U.S. Army intact to fight a war that was only 4 months away.

The reason I am citing this story is because we are constantly told that if we have an emergency situation, we will get this waiver. The Senator from New Hampshire has just told me we are going to get a three-fifths waiver. He left the section I was focusing on that required a majority of the whole number, namely you had to actually have 218 votes in the House or actually have 51 votes in the Senate, and he has now gone to three-fifths of the whole number. So you have to have 290 votes in the House and 60 votes in the Senate in order to address the crisis. He says if we have a crisis, we obviously will address it. I am going to point to a lesson in history in which I think people would now agree we had a crisis that had to be addressed. We did address it. But if we had been operating with these requirements, either one of them, we would not have addressed it because we would not have gotten the vote that was necessary to do it.

Let me read on from the article.

The margin of victory was a single vote. And the battle could have been lost as easily as won except for Rayburn's personality and leadership and mastery of parliamentary procedure. If Rayburn had failed, the Army stood to lose about two-thirds of its strength and three-fourths of the officer corps. At issue was whether to extend the 12-month service obligation of more than 600,000 draftees already in the Army, thousands of others being inducted every day, and the active-duty term of several thousand National Guardsmen and Reservists who had been called up for 1 year. Without an extension, the obligations of both the draftees and the Guardsmen and Reservists would begin expiring in the fall. The United States had adopted its first peacetime draft during the previous summer after weeks of heated and acrimonious debates in both congressional Chambers.

The article then goes on to point out:

Although the legislation limited the draftees' terms of service to 12 months, it provided that the President could extend the period indefinitely if Congress declared that the national interest is imperiled.

On July 21, 1941, with the prospect of war increasing, Roosevelt acted. In a Special Message to Capitol Hill, he asked Congress to declare a national emergency that would allow the Army to extend the service of draftees, guardsmen and reservists for whatever period the legislators deemed appropriate.

Despite the measure's unpopularity and strong lobbying by isolationist forces, the Senate approved a joint resolution on August 7, declaring the existence of a national emergency and authorizing the President to extend the service of most Army personnel by 18 months.

The vote was 45 to 30, I say to my good friend from New Hampshire; 45 to 30. That vote would not have qualified under the amendment that he is proposing. That vote was inadequate. You needed 49 now you would need 51, if you did it by the whole number, or 60 if you are doing the three-fifths. I am now quoting the article.

In the House it was a different story. The Republican leadership viewed opposition to draft extension as a political opportunity too good to ignore. Others had their own reasons for opposing the measure.

It then discusses what Rayburn went through, and of course the final vote was 203 to 202. Mr. President, I say to the distinguished Senator from New Hampshire, 203 votes is not enough under the provisions of the proposal that he is now seeking to place in the Constitution of the United States.

So, here we have a real situation. This is not hypothetical. This was a critical issue. It was carried under the provisions of the Founding Fathers, which the very distinguished Senator from West Virginia has been expounding. Under the provisions of the Founding Fathers, the Congress was able to make a decision. You had a majority in both Houses for it, 45 to 30 in the Senate, 203 to 202 in the House of Representatives. They addressed the situation. Under this proposal, we would not have been able to address that crisis.

Mr. SMITH. If I might just respond to the Senator, his point is well taken. However we have a situation where I think we are mixing apples and oranges. The Senator is assuming—we did not have an amendment at the time, we did not have a $5 trillion national debt in 1941. We did not have a situation where the Members who were debating knew that they would need a certain number of votes to get over the top to be able to declare war. It is an entirely different situation. You cannot compare 1941 with 1995—you can, but I do not believe it is a fair comparison.

I think things were different then. The situation was different. The debate was different. The issues were different. I think in this particular case if the emergency was such, under the amendment—if the emergency were such that we needed to do something in the area of national security, it could be done either by a three-fifths vote of both parties to deficit spend to take care of it—which is one option. If they do not want to do that, then they have other options. But I think to say 1941 when Roosevelt declared war is the same as it is today is simply wrong.

The issue is, we can deficit spend. That is the first option. Or we can cut spending somewhere else. And that is exactly what most responsible people would do in the future, who are here on the floor of the Senate or in the House, wherever the debate takes place—in both places. They would make the responsible decision, surely, to protect the national security of the United States. They would cut something if they did not agree to go the three-fifths route to deficit spend to do it. I think that is very well protected under the Constitution. It makes complete sense. It is common sense. We are the representatives of the American people. If we decide we cannot muster three-fifths votes then I assume the American people do not feel it is a national security problem for us.

If we still believe that they are wrong, we can then cut spending somewhere else with a simple majority. I do not see what the Senator's problem is.

Mr. SARBANES. Mr. President, I say to my colleague we are just being given these kind of bland assurances. "Surely this would happen. No question this would be done. It is common sense that we would respond." Yet I am giving you a real, live, historical example. There was nothing hypothetical about it, nothing conjectural about it. It happened at a critical time in American history. We were faced in the Congress with a very fateful decision. We are talking literally months before Pearl Harbor. Literally months. And the Congress was faced with this difficult decision.

The Congress reacted, I think, appropriately. But by very narrow margins. And neither of the margins in the Senate nor the House are adequate to meet the requirements contained in your proposal, which only dramatizes the point that the Senator from West Virginia has made so effectively here this morning about the danger of going against the Founding Fathers, against Madison and Hamilton, and writing in these supermajority requirements.

The real danger to the Republic is that you will not be able to deal with crisis situations when they emerge.

The Senator says, "Oh, no, we will take care of those. Do not worry about it. Do not worry about it. Surely we would respond."

I am saying to the Senator: I am giving an example right out of history where we, under his standards, would not have taken care of it. Fortunately the standard was the one laid down by the founders, the one that the Senator from West Virginia propounded here. In other words, we decide things by majority. We were able to address the situation. But with your provisions here that situation could not have been addressed. It is clear on its face.

Mr. SMITH. Mr. President, if the Senator will yield for a response, there are a couple of points here. First of all, the Senator is assuming something he does not know to be the fact. In 1941 we did not have a three-fifths situation. In 1941, I would assume that the American people would have wanted us to support the President of the United States, which we did, to go to war when we were attacked.

Mr. SARBANES. Will the Senator yield on that? Is the Senator telling me that on a measure that passed the

House 203 to 202, that if at the time there had been a three-fifths requirement of the entire membership of the House of Representatives—which would be 261 votes?

Mr. SMITH. I did not do the math. I will take the Senator's word for it.

Mr. SARBANES. It is 261.

Mr. BYRD. Let me tell the Senator, 175 votes could defeat it; two-fifths could defeat it.

Mr. SARBANES. It is 261. Are you telling me that a good number of the 202 who voted against it then would have voted for it, so you would have had 261 votes? Where are you going to come up with these? You barely got 203 votes. It almost lost. It passed by one vote. And now you are telling me, "They did not have the three-fifths requirements then. If they had the three-fifths requirement somehow, miraculously they would have gotten the other votes in order to do it when they voted against it at the time?" They almost beat it. They almost beat it on a straight up or down vote: 203 to 202. And now you are telling me, "Well, they did not have the three-fifths requirements. If they would have had the three-fifths requirement, namely that he had to get 261 votes then a big chunk of these 202 who voted against it then, to prevent it from happening, would have switched over and voted for it?" Is that what the Senator is telling me? I cannot believe it.

Mr. SMITH. The Senator did not listen to me very carefully. That is not exactly what I said. What I said is there are two options. One, those people, if they had the three-fifths provision, I think, would have looked at it a lot differently, and they may have gotten more votes.

Let us assume the Senator's position and say that did not happen. If it did not happen and this amendment were, in 1941, part of the Constitution, we then would have gone and spent money by taking money from someplace else in the budget because we would have believed that the national security interests of the United States should come first ahead of subsidies to apples or whatever else.

Mr. SARBANES. How do you know they would have done that?

Mr. SMITH. Because it takes 51 percent to do it. That is why.

Mr. SARBANES. My dear friend.

Mr. SMITH. That is exactly why. It is the same numbers.

Mr. SARBANES. The Senator from New Hampshire is my dear friend. But how can the Senator stand here and say, "We easily would have gone somewhere else and found the money" when at the time, on the very issue itself without that constraint, without that additional complication in terms of getting support for the measure, without the further complication of the dynamics of trying to achieve a majority vote, when at the time they only passed it by one vote, 203 to 202? That was the vote.

Mr. HATCH. Will the Senator yield?

Mr. SARBANES. Speaker Rayburn walked the Halls of the Congress. I am now quoting this article.

The vote was set for Monday, August 11. But Rayburn put it off for one day out of respect for a Republican Member who had died over the weekend.

I must say those were the days when there was a degree of civility that prevailed in the workings of the Congress.

With the President out of town meeting secretly in New Foundland with British Prime Minister Winston Churchill to frame the Atlantic Charter, Rayburn spent the additional day roaming the corridors of Capitol Hill trying to win over recalcitrant Democrats and wavering Republicans. His lobbying style was like the man himself, honest, direct and intensely personal without a hint of intimidation. The debate went on for 10 hours in the House. Finally at 8:05 p.m. the reading clerk began calling the roll.

I reach back into history to try to bring you a real, live example.

Mr. HATCH. Will the Senator yield?

Mr. SARBANES. Certainly.

Mr. BYRD. Mr. President, I ask unanimous consent that I may yield for such colloquy without losing my right to the floor.

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

Mr. HATCH. I apologize. I did not realize my distinguished friend from West Virginia had the floor.

Let me just say this. That is what was created 203 to 202. There were times when that could have happened. It was extraordinary. In the Senate, there were only 96 Senators sitting at that time. The vote was 45 to 30. So there were 21 Senators that were missing. We could have had a constitutional majority in this case.

Mr. SARBANES. How could you have had it? Those votes could not qualify under your amendment. Is that correct? Neither of those votes qualifies under your amendment.

Mr. HATCH. You could not with those two votes.

Mr. SARBANES. Either in the Senate or the House.

Mr. HATCH. The Senator was talking about Senators walked. They walked there. There were 30 that walked in the House. There were 21 in the Senate; 96 in the Senate; only 75 voted. So even under a minority vote, people can walk, if they want to.

But the point is we have a constitutional majority in here for one reason, and it has been accepted by both Democrats and Republicans in the House and the Senate; and that is so that we would have tax-limiting effect. I think it is going to be a tax-limiting effect. That is the purpose of it.

Mr. SARBANES. If the Senator will yield, you have it in section 5 to do a waiver for a military conflict you require a whole number of each House.

Mr. HATCH. That is right.

Mr. SARBANES. The whole number.

Let me go back. There were only 48 States then. So there were 96 Senators.

Mr. HATCH. Right.

Mr. SARBANES. The whole number would be 49 in that circumstance. Is that correct?

Mr. HATCH. That is right.

Mr. SARBANES. The vote in the Senate was 45 to 30. That does not qualify. Correct?

Mr. HATCH. Right.

Mr. SARBANES. In the House, they had 218.

Mr. HATCH. 203 to 202.

Mr. SARBANES. 218.

Mr. HATCH. No. It was 203 to 202.

Mr. SARBANES. In any event, it will not qualify there either.

Mr. HATCH. It would have, had they not walked.

My point is the Senator is saying they might walk under this constitutional majority. They walked then under a regular majority vote.

Mr. SARBANES. That is right.

Mr. HATCH. But in both cases, had they not walked, you could have had a constitutional majority. I think these votes are going to be heightened votes, and nobody is going to miss them.

Mr. SARBANES. If I could say to my dear friend from Utah, the Founders specifically discussed this. They debated whether the quorum should be more than a majority of the body and they rejected the notion that it should be more than a majority. They said then that you would prevail on a measure by majority of those present and voting.

Mr. HATCH. That is right.

Mr. SARBANES. Assuming you had a quorum. You have escalated the number, and you have done it in such a way as to negatively effect very critical decisions, as I have indicated by the history of World War II. A measure that was before the body that I would argue very strenuously was needed to provide for the national security of our Nation would have failed, not because a majority of those present and voting did not support it—they did support it—but because you have introduced supermajority requirements. And these votes would not have met your supermajority requirements.

Mr. HATCH. Will the Senator from West Virginia yield once more to me?

Mr. BYRD. Mr. President, yes. I do.

Mr. HATCH. Keep in mind, I do not think that we can use votes in 1941. There was not a constitutional amendment in effect then. Keep in mind, one of the other things our Founding Fathers did—they did it very carefully—was to put article V into the Constitution which provides for constitutional amendments, and for changes that are needed. We are asserting that this change is needed because of the way Congress has been profligate over the last 60 years.

But let us say the last 26 years during which time we have—could I finish?

Let me finish this one thought. The point is that one of the most important aspects of the balanced budget amendment is that these two votes, if they are taken every year, are going to be the votes nobody is going to be able to miss. If you vote on increasing taxes, there are going to have to be 100 Senators here because it is going to be a vote that everybody in the country is going to pay attention to. If you vote on increasing the deficit, there had better be 100 Senators here. There are not going to be any walks. Anybody who walks is not going to be there in the next Congress.

That is one thing this amendment will do.

Mr. SARBANES. Let us assume that. Let us assume in 1941 in the House of Representatives that everyone who walked would have voted for the measure. It is a big assumption. Let us assume that. Everyone who did not vote would have voted for it.

Mr. HATCH. You would have had a constitutional majority——

Mr. SARBANES. No, you would not have had the three-fifths——

Mr. HATCH. Not to increase spending.

Mr. SARBANES. Which the Senator from New Hampshire was making reference to.

Mr. HATCH. I said a constitutional majority for increasing taxes.

Mr. SARBANES. The point I want to get across to my colleague is that there is the assumption that issues of national security will not be a matter of controversy. In other words, he is saying clearly, if there is a problem, we are going to get these supermajorities in order to do what needs to be done. I am demonstrating that we had an instance in which there was clearly a national security question and you are not commanding the supermajority.

Mr. HATCH. The fact that you cannot command a supermajority is part of what is going to happen here. What we are saying is, look.

I think a better illustration, if the Senator wants me to substitute one for him, would be the vote last year on the tax package which the President brought up here. It is an interesting constitutional question that I know will intrigue my dear friend from West Virginia who has spent a lifetime studying the Constitution—for whom I have a lot of respect—in that area, among many others. That is, that vote last year did not have one Republican. We have been excoriated by Members of the other side of the floor as Republicans because we did not vote for that tax increase, or the deficit reduction part of it either. We did not because we did not want taxes to increase. And some stood up and said, "We stood up and did something about the deficit." Well, I suspect that is true. We just did not happen to agree. But now that vote was a 50–50 tie in the Senate.

I want the attention of my dear friend from West Virginia. It was a 50–50 tie. Had this constitutional amendment been in effect, would that bill have become law today? Or would it have become law at that time? We did not have a majority of the whole number of the U.S. Senate. It took the Vice President to break the tie.

There are two ways of looking at that. One is that 50 of us could have thwarted the tax increase. I think that would have been a terrific thing to do, and that is what we tried to do. We lost because of the fact that under the Constitution the Vice President could vote. But the other point would be—

Mr. SARBANES. Will the Senator yield?

Mr. HATCH. Let me finish and I will be glad to. The other point—with the delegation given to me from our colleague—is that, from your standpoint, a simple majority was not allowed to win, and that this would make it even more difficult because you would have to have 51 actual votes of the whole number here.

Mr. SARBANES. Is that your reading of section 4 of this balanced budget amendment?

Mr. HATCH. Not necessarily. I am raising—

Mr. SARBANES. What is your interpretation? What does it mean? Section 4 says, "No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by a rollcall vote." Take the situation you just described. It is a 50–50 split. The Vice President is entitled to cast his vote. Would this negate the vote-casting power of the Vice President?

Mr. HATCH. No. He could cast his vote, but since you did not have 51 votes of the majority of the whole number, the tax bill would have gone down to defeat.

Mr. SARBANES. That is your understanding of the meaning of that?

Mr. HATCH. That is my interpretation. I thought I would give you a good illustration.

Mr. SARBANES. I wanted to have that on the record.

Mr. HATCH. We would not have had that highest tax increase in history had this amendment been in effect.

Mr. SARBANES. That is right. You are saying if this amendment were passed, the August vote would have been negated.

Mr. HATCH. That is my interpretation. It would have meant that we would have had to have gotten that 51 votes to increase taxes, and we probably would have been faced with having to reduce the deficit more.

Mr. BYRD. Mr. President, what it also means is that in a situation such as the distinguished Senator from Maryland has raised—and he has focused on a section which I am going to reach a little later, but he has done it much better than I would have done it. What my Republican friends are saying—and I hope I will have the attention of both of my friends—what our friends here have just said is that in the event we are in a situation which jeopardizes the national security——

Mr. HATCH. No, that is not what I said.

Mr. BYRD. Wait. That is, in essence, what you are saying. You have not let me finish what I am going to say. How do you know what I am going to say? Be a little patient.

Mr. HATCH. I will.

Mr. BYRD. What they are, in essence, saying is that you have to have 51 votes in the Senate—no matter how many take a walk; you have to have 51 Senators, not including the Vice President, who would be willing to stand up and vote for a resolution which authorizes the Commander in Chief in a situation where there is a declaration of war or——

Mr. HATCH. No, no——

Mr. BYRD. Just let me finish. This is one Senator who is not going to be befuddled or frustrated by interruptions. I will be very happy to yield to my friend when I have finished.

Let me start again. We will learn over a period of time that there are some Senators who will just not be rushed.

"Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect." In the last 48 years, this country has fought three wars and engaged in several military conflicts that were of a lesser nature. Not one time was there a declaration of war. Not one time.

The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution adopted by a majority of the whole number of each House which becomes law.

Therein lies a tale—many tales, as a matter of fact. First, there has to be a resolution passed. There has to be a joint resolution passed, even considering the fact that we might have a filibuster conducted on such a resolution because the opposition could be very strong in the Senate on that occasion There could be a filibuster. The President could veto the resolution when it reaches him. How much time do we have? My friend from New Hampshire—I believe, if I did not misunderstand him—said in that kind of a situation, we would make cuts, we would make cuts from other programs. We would adjust priorities.

We do not have time to make cuts when the Nation is faced with a military threat. We do not have time to search through various programs and come up with cuts. And besides, the domestic discretionary programs have already been pared to the bone. When the Nation is put in jeopardy, there must

be a resolution passed. It must be enacted into law by the President's signature, and the Nation's security is in the balance. We do not have time to make cuts. It takes time.

Secondly, in the event there is a 50–50 tie, under the Constitution as it is written, the Vice President could cast a vote breaking the tie. Under this section of the amendment, the Vice President, representing the President and his administration, is not permitted to cast a vote to break a tie, while the Nation's security is in the balance. No, it has to be a Senator. The amendment says you have to have 51 Senators.

Mr. President, this section 5, plays Russian roulette with the national security of this country. You do not have the time to look at some programs providing research on apples, or mushrooms, or whatever it may be. You do not have time for that. And that is small chicken feed, that is small; you are talking about pennies in comparison with the billions of dollars that military threats to our security will cost. It puts the Nation's security into a gamble.

Mr. President, does the distinguished Senator wish me to yield to him again?

Mr. HATCH. I would appreciate it. I appreciate what the Senator is saying. This amendment is not going to allow business as usual. It is going to require a constitutional majority to increase taxes, which is a tax-limiting approach. I suspect that that will be more difficult to get than a three-fifths majority to increase the debt. I really suspect that that is so.

The distinguished Senator from West Virginia—as he always is—was very accurate in stating that section 5 says that during a declared war, Congress can waive this provision. That only takes a majority vote. However, if you get into a military conflict which causes an imminent and serious military threat, then it will take a constitutional majority.

I cannot imagine any Congress that would not grant a constitutional majority under those circumstances. But be that as it may, if it does not, then that will be the right of the Congress.

(Mr. GREGG assumed the chair.)

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

Mr. HATCH. Yes, I will.

Mr. SARBANES. The people who are against it do not even have to show up; is that correct?

Mr. HATCH. Yes.

Mr. SARBANES. Now the way the Constitution is written, if a matter is put to a vote, let us say four or five Members are missing, they may be ill, they may be in the hospital, they may be sick, they may have gone to a family funeral, so they cannot be here. It is not unheard of. In fact, it has happened on occasion. You take a vote amongst those that are here. It passes 47 to 46, and that is that. Under your provision you need 51 votes.

Mr. HATCH. Right.

Mr. SARBANES. Suppose you had a vote 50 to nothing, just to draw the most extreme hypothetical, 50 are for, zero against. The rest are all absent. That does not carry; is that correct?

Mr. HATCH. You would wait until the next day when you had 51. You can come up with hypotheticals in every situation, but that does not change reality. This body has increased the debt ceiling.

Mr. SARBANES. But the people that are against do not have to vote; right?

Mr. HATCH. That is right.

Mr. SARBANES. They are not required to be here to make a difference. Because the standard is not between those that are for and those that are against, you have to get so many affirmative votes; is that correct?

Mr. HATCH. You could use the same logic. It does not—

Mr. SARBANES. Or it could be the three-fifths where you have —

Mr. HATCH. You have to have 51 here to constitute a quorum, so it would not have passed anyway. That could be under any hypothetical.

Mr. BYRD. No, no, no. You can have 51 here, which is a quorum, under the constitutional amendment that presently obtains and 26 Senators would be a majority.

Mr. SARBANES. If you had 51 present so you had a quorum and the vote was say 48 to 3.

Mr. HATCH. Then you would not have the requisite number.

Mr. SARBANES. It would not pass; right?

Mr. HATCH. No.

Mr. SARBANES. You would have a quorum and you would not pass it.

The more you probe into this, the more of a Rube Goldberg contraption it is.

Actually what happens is, the more we debate this section, the more you come to understand and a appreciate the perceptions and the wisdom of the drafters of the Constitution.

It is incredible that we are out here playing games with a document that has withstood 206 years of scrutiny and was put together by a group of men whom Gladstone, the great British Prime Minister, regarded as the greatest assemblage of statesmen in the history of the world. That was his comment about them in framing the Constitution of the United States. Yet, we are playing games with it all throughout here.

You have a three-fifths of the whole number requirement, you have a majority of the whole number requirement, you have a waiver requirement. You are negating the tie-breaking vote given to the Vice President of the United States, as I understand it, under another provision of the Constitution.

Mr. HATCH. Not really.

Mr. SARBANES. The Senator told me on a vote of 50 to 50, in which the Vice President sought to cast the tie-breaking vote, would not qualify under your proposal.

Mr. HATCH. Only under that instance. In other instances it who qualify.

Let me make this point. The game that is being played is business as usual. We are running this country right into bankruptcy.

Mr. SARBANES. No, that is not the case.

Mr. HATCH. Let me finish.

Mr. SARBANES. No, I am going to reclaim my time. I am not going to let the Senator——

Mr. HATCH. He yielded to me.

The PRESIDING OFFICER. Does the Senator from West Virginia yield the floor?

Mr. BYRD. Let me get it perfectly clear. I yielded to both Senators for a colloquy, with the understanding that I would not lose my right to the floor, into which colloquy I presume I can intervene at any point I wish.

Mr. HATCH. That is right.

If I could finish my remarks, I would be happy to allow the Senator from Maryland to respond.

My problem is, you can find fault with almost anything. The reason we brought this balanced budget amendment before us is because we have a runaway train of Federal spending. We have a runaway train that is not treating our taxpayers fairly. The answers always seem to be more spending and more taxing.

This amendment is an amendment that does not require a balanced budget, but it does require us to at least make priority choices.

If we are going to spend, then we are going to have to stand up and vote to do so. You have to vote. We do not have to now. If we are going to tax, then you have to stand up and vote to tax. We do not have to do that right now. We can do it through voice votes.

I just want to add this to it: If you are going to tax more, by gosh, I think you are going to find these two votes—a vote to increase taxes, a vote to increase the deficit—from this point on, if this balanced budget amendment passes both Houses and becomes ratified, you are going to find that those two votes are going to have 100 Senators every time, because nobody could fail to vote on them. And if they do, they are in jeopardy of losing their seat. It is going to highlight the importance of these votes around here. We will not have any more of these 51 votes or 26 to 25. We have not had any of those as long as I have been here.

The point is that when the Senator mentioned that in his hypothetical, he said 50 votes. I am saying that would not have been acceptable; 51, if you have 26 votes, yes.

Mr. SMITH. Will the Senator from West Virginia yield?

Mr. SARBANES. If I could just engage in this colloquy further.

The game that is being played, I say to my friend, is very clear today because the other side has been very clear that they have drafted this in a way that would have knocked out the deficit reduction package of August 1993.

Now, I understand that the Senator was not for that. I was for it. I disagree with him. The Senator portrays it as a tax increase on all the American people. The fact of the matter is, it was a tax cut on the top 2 percent of the income, other than the gasoline tax. But the income tax rates affected the top 2 percent.

Now, I understand the Senators on the other side have a very soft spot for the top 2 percent, but it seemed to me reasonable to do this and to try to address some of our Nation's problems.

In any event, the situation could have been reversed. You could have been trying to push through a deficit reduction package that I opposed for one reason or another.

The question is whether you are going to skew the Constitution in a way that a majority is not going to be able to make decisions. The Founding Fathers very carefully constructed this document and they are very explicit, both Madison and Hamilton in the Federalist Papers, in pointing out in the documents about a supermajority.

Let me just read what Madison said in Federalist 58. Because he is the father of our Constitution and a man of great reason and fairness. He would recognize the other arguments and try to deal with them rationally, which is what we are trying very hard to do here today. Let me just quote him.

This is Madison now, in the Federalist 58:

> It has been said that more than a majority ought to have been required for a quorum; and in particular cases, if not in all, more than a majority of the quorum for a decision. That some advantages might have resulted from such a precaution cannot be denied. It might have been an additional shield to some particular interests, and another obstacle generally to hasty and partial measures. But these considerations are outweighed by the inconveniences in the opposite scale. In all cases where justice or the general good might require new laws to be passed, or active measures to be pursued, the fundamental principle of free Government would be reversed. It would be no longer the majority that would rule: the power would be transferred to the minority. Were the defensive privilege limited to particular cases, an interested minority might take advantage of it to screen themselves from equitable sacrifices to the general weal, or, in particular emergencies, to extort unreasonable indulgences.

Now, I agree with Gladstone's evaluation of the Founding Fathers. This amendment is fraught with peril. The more we go into it and the more we develop it and the more we measure it against historical experience, the more I find wrong with the amendment.

The Senator asserted earlier that surely three-fifths would vote to raise the debt limit. I invite my colleague to go back through the votes on raising debt limits in the past to spot the ones where three-fifths did not. It is not so obvious.

In many of these issues it is a struggle to get the simple majority to make the decision. These are controversial issues. They are recognized as controversial. The August 1993 package was controversial. You disagreed with it. I supported it. I think it has proven itself out. I think all the subsequent history supports a decision to have passed it.

Those decisions ought to be made by majority vote. That is what the Founding Fathers intended. That is what I think we should stick with.

I yield the floor.

Mr. SMITH. Mr. President, will the Senator from West Virginia yield?

Mr. BYRD. Mr. President, I yield.

Mr. SMITH. The Senator has been very generous for all Members here on his time for which this Senator is grateful.

I would like to pick up on something that Senator HATCH said, and say to the Senator from Maryland, the Senator has pointed out some points which are well taken regarding this debate and this amendment. I would also say to the Senator that Winston Churchill once said, "Democracy is not perfect, but it is the best thing going."

The issue here is the Founding Fathers were not infallible. We are not infallible. There are reasonable decisions that have to be made from time to time. The Dred Scott decision in 1857 when a Supreme Court said a slave was property and therefore could not sue in Federal court. That came in under the Constitution. Is that right? No. But it happened. So we are an infallible people.

So my point is, what Senator HATCH was alluding to, if we look at what is happening we are talking about a situation where a national emergency might emerge. The Senator is correct. He made some very good points about what might happen if that national emergency were to come about.

The other point is, if we are looking at where the debt is going and how much of the debt is being consumed, how much of the budget is being consumed by interest on the debt, and looking at where it is today, 16 percent roughly of that budget is interest on the debt and 16 percent is national defense.

I would say to the Senator, with all due respect, if we did not stop it, if we do not stop this runaway train of debt and deficit spending, we are not going to have any money for national defense. We are not going to have any money for any emergency under any situation because, and the Senator knows, that the commission, which was a bipartisan commission, on entitlements headed by Senator Bob KERREY, Democrat, and Senator Jack DANFORTH, Republican, said by the year 2013 at the latest, this country will be spending 100 percent of its budget on interest on the debt and entitlements. There is not going to be any money for defense.

I would just say to the Senator if this is fallible, this amendment, then tell me what the alternative is when we get to 2013 and we do not have any money—none, zero—to defend our national security or our national interests.

Mr. SARBANES. Mr. President, I will tell the Senator. First of all, it boggles the imagination that we are hearing this argument from someone who voted against the 1993 deficit reduction package. All of the situation that the Senator is talking about would be far worse had the Senator prevailed on that vote.

There are tough decisions to be made. Everyone recognizes that. Because they are tough to make it is very difficult to get a majority for them. What the Senator is doing is escalating the standard from a majority to a supermajority. So the Senator is making it even tougher to make the tough decisions, not easier. The Senator is putting more power into the hands of the minority to frustrate or to thwart the effort.

Where I disagree with the Senator is, in his assumption, that all of these waivers will be granted in a time of crisis. If we go back through our history, it does not support the Senator. Historically, when we come up against these situations they are often very divisive and very controversial and action in the end is taken by a bare majority. I went through at great length earlier the example of the extension of the service requirement under the draft in 1940.

Clearly, that was important to the national security of the country. I am quoting from that article:

> In an effort to depoliticize the issue as much as possible, Roosevelt and Secretary of War Henry Stimson designated Army Chief of Staff George Marshall as the administration's point man on the Hill. Marshall worked tirelessly but found converts difficult to come by despite his tremendous prestige on Capitol Hill. "You put the case very well," one Republican Congressman told him, "but I will be damned if I am going to go along with Mr. Roosevelt."
>
> The vote was set for Monday August 11, but Rayburn put it off for one day out of respect for a Republican Member who had died over the weekend. With the President out of town meeting secretly in Newfoundland with British Prime Minister Winston Churchill, to nail the Atlantic Charter, Rayburn spent the additional day roaming the corridors of Capitol Hill trying to win over recalcitrant Democrats and wavering Republicans. His lobbying style was like the man himself, honest, direct, and intensely personal without a hint of intimidation.

Here is Rayburn himself, walking the corridors. Here is General Marshall, one of the really great statesmen of

American history, a man for whom I have enormous respect and admiration, working—as they say here "Worked tirelessly but found converts difficult to come by despite his tremendous prestige on Capitol Hill." When the vote came, it was 203–202. That vote would not qualify under the provisions of your balanced budget amendment proposition here.

We would not have been able to respond to this national crisis. The Senator earlier said to me if they had known they needed a three-fifths requirement they would have gotten more votes. I said to the Senator, it defies belief that a sizable chunk of the 202 who voted against it would switch over because they knew there was a three-fifths requirement. They voted against it when there was a simple majority requirement and the thing would have gone down, and it would have been a disaster for the Nation had it happened.

All I am saying is that these tough decisions need to be made by majority vote just as is provided for in the Constitution. The Founding Fathers could foresee these things and that is why they provided it. This is, as the distinguished Senator from West Virginia said, playing Russian roulette with the national security of the United States.

Mr. SMITH. Mr. President, if I could have a last response, I promise the Senator from West Virginia.

The Founding Fathers also provided for an amendment process to the Constitution because they knew that it would need that flexibility, because it could not predict the future nor foresee the future. The Senator knows that. That is why we are here.

I also would respond to the Senator on the point of the budget agreement of 1993. This debate is, essentially, a nonpartisan debate on the issue of whether or not we need an amendment, constitutional amendment, to balance the Federal budget. But the Senator introduced a partisan matter on the issue of the budget agreement.

Just because this Senator and the remaining Republican Senators in the Senate at the time did not agree with the Senator from Maryland that the way to bring the deficit down was to increase taxes $250 billion, but rather bring spending down $250 billion to move the budget deficit down, that does not make me opposed to bringing the deficit or the debt down.

The truth of the matter is, those on this side who voted against that wanted to cut spending, not raise taxes.

The second point is, which we have already gone into on the floor many times before, not only during this debate, but the truth of the matter is the correction that needed to be taken to reduce the debt was not taken with that budget agreement, for the same reason it was not taken with any of these other agreements that are on this chart from 1921 all the way up to Gramm–Rudman–Hollings and the budget agreement of 1993. The truth of the matter is, Congress walks away from them.

The President of the United States, President Clinton, just submitted a budget, the follow-on to this budget, which increases the national debt by $1.6 trillion over the next 5 years. Since this agreement has been passed, we have increased the national debt another one-half trillion dollars. So where is the progress?

This Senator fails to understand where the progress is being made. I hear about all these great agreements, we have had all these budget agreements, we are bringing the debt down, bringing the deficit down. We are not bringing it down. It is going up, up, up, up, and the reason why is because we need this amendment because Congress will not do it without it. That is absolutely evident.

The Senator talks about a national emergency. I do not know whether he has a commission out there somewhere that defines a national emergency or whether he has to read it in the newspaper that it is a national emergency. If the Congress of the United States does not think it is a national emergency or the President does not think it is, I do not know how you define a national emergency.

So I assume, by definition, if the Congress does not vote to say it is a national emergency and provide the funding to go to war, maybe they do not think we should go to war. That is the prerogative of the U.S. Congress. That is the prerogative. That is exactly what the Founding Fathers meant that "Congress shall have the power to declare war."

This argument that somehow we are going to defend the right of the United States to protect itself by voting against the balanced budget amendment is the most nonsensical thing I heard since I have been here.

By the time this debate is over, we are going to add tens of billions, hundreds of billions of dollars to the national debt; $9,600 per second as we debate the debt goes up. Interest on the debt is now going to pass defense. What we spend on defense and interest is going this way, just like that, and defense is going this way. And by the year 2013, by most admissions of a bipartisan commission, we will be spending 100 percent on interest and 100 percent on entitlements.

Mrs. BOXER. Will the Senator yield?

Mr. SMITH. That is what is going to threaten the national security of the United States of America, not a constitutional amendment to balance the budget.

Mrs. BOXER. Will the Senator yield to me to ask a question?

The PRESIDING OFFICER. The Senator from West Virginia has the time.

Mrs. BOXER. If the Senator will yield for a short period of time.

Mr. BYRD. Mr. President, I ask that I may continue to yield with the understanding that I not lose the floor for the purpose of a colloquy to include now the distinguished Senator from California [Mrs. BOXER].

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

Mrs. BOXER. I thank you very much. I was not planning to participate, but something the Senator said makes me want to, and that is during the discussion with the Senator from Maryland on the vote on the deficit reduction package, which the Senator from New Hampshire says is, in fact, not working, every expert in the country says that the deficit would have been $500 billion higher. But let us not even get into that because what I want to ask the Senator are two basic questions.

First of all, the Senator said at that time he did not like the package that the President sent over, the deficit reduction package, because it contained some tax increases of which he did not approve. We also know it contained a large tax cut for the working poor and far many more people are affected in a positive way from that tax cut. But let us put that aside.

The Senator said he would have preferred instead of raising taxes—and he puts it at $250 billion—he would have cut spending $250 billion.

So my question is, did the Senator offer an amendment to cut $250 billion and show us how he was going to cut $250 billion from the deficit? I do not recall it.

Mr. SMITH. If the Senator will allow me to respond, you know the situation as well as I do with regard to the debate and the politics, what was going on. The truth of the matter is, there were many discussions on our side, many attempts to redirect that in committee. The distinguished Senator from New Hampshire, who is in the chair, was involved in a number of efforts in the Budget Committee to reprioritize that whole budget, and the Senator from California knows that.

The truth of the matter is, the position of the President and the majority in the Senate at the time, and in the House, was that the best way to deal with the deficit was to raise taxes on the American people. My point is, the best way to deal with the deficit would be to reduce spending and to continue that spending on a downward trend.

Mrs. BOXER. So the answer to my——

Mr. SMITH. My final point. My only point is we did not do what we needed to do to correct it. Even with the tax increase you did not correct it. If you want to take the position, which I happen to disagree with, that we can continue to raise taxes forever until we balance the budget, you have a right to that position. But there is only so much you can get.

Mrs. BOXER. My question to the Senator was, he said at the time he would have preferred to cut spending $250 billion instead of raising the taxes. The President's plan did raise taxes on the wealthy, and it also cut taxes much more broadly on the working poor.

Mr. SARBANES. It also cut spending.

Mrs. BOXER. And it cut spending the other $250 billion. But the point I want to make, in conclusion, and then I will yield back the time to the good Senator and thank him once again for his leadership on this: The Senator himself said he was working on some plans. I am sure he is. I have never seen that plan.

I wrote to every single Republican who is in the leadership, heads committees when this debate started. I said, "Show me your plan. You want this balanced budget to go into effect. I want to know if it is going to hurt the people of California, the people I represent. I want to know what is going to happen if there is a disaster or a war."

You have a three-fifths supermajority built into this, as the Senator from West Virginia and the Senator from Maryland have stated. They do not agree with it. I do not agree with it. I think it shows a mistrust for the people, that is what I think about supermajorities. They show a mistrust for the people. They give too much power to the minority, and I do not think that is what America is all about.

But putting all that aside for this conversation, I have to stand up and say to my friend from West Virginia that when Senators on that side criticize those of us on this side for voting for deficit reduction, which was the largest package in history and it is working, for them not to show what their plan is and to hide behind this figleaf of a balanced budget amendment, trying to tell the American people, because of that, they are going to be the ones to balance the budget, I find it very problematical. And I rose today to add my voice.

They did not vote for the right to know. They did not vote to exclude Social Security. I think this is a dangerous, dangerous balanced budget amendment.

By the way, I wanted to vote for a balanced budget amendment. I wanted to vote for one over on the House side, I say to my friend from West Virginia. He would not have agreed with me. I did, in fact, do that because it was flexible, it took Social Security off the table, it did not have a supermajority, and we tried to fix this amendment.

As the Senator from Maryland has stated so eloquently, the more you look at this amendment—and that is why I appreciate the time we have here in the Senate to do that—the worse it gets for the American people and the people that I came here to fight for, the people of California.

Mr. SMITH. May I ask the Senator one question?

Mrs. BOXER. Does the Senator continue to yield?

Mr. SMITH. One final question. Under your definition of "exemption," if Social Security and other entitlements get to 100 percent of the budget, do you still support the exemption?

Mrs. BOXER. Let me say to——

Mr. SMITH. Answer yes or no.

Mrs. BOXER. I will answer it. I agree with the Republicans who have said over and over again by vote, "You're not going to touch Social Security."

Mr. SMITH. But when you exempt it——

Mrs. BOXER. The answer is I am not for touching Social Security either, and because I believe that, I think it is a compact with the people who paid into it.

Mr. SMITH. You are going to destroy it without the——

Mrs. BOXER. No.

Mr. SMITH. You certainly are.

Mr. SARBANES. If the Senator will yield, the Social Security System is paying its way.

Mrs. BOXER. Exactly right.

Mr. SARBANES. The Social Security System is not only paying its way, it is, in fact, running a surplus.

Mr. SMITH. And the Treasury is borrowing all the money to fund the debt, and the Senator knows it.

Mr. SARBANES. That has nothing to do with the Social Security System. It is terribly important for the American people to understand this because a game may well be played with the Social Security trust fund, as was just indicated, in effect, by my colleague from New Hampshire, if they do not understand.

The Social Security trust fund is more than paying for itself. People receiving Social Security owe no apology on the deficit question, because the trust fund currently is not only paying its way, it is running surpluses, which in an accounting sense are used to offset the size of the deficit.

Now, the other side would obviously want to use those, and many of us feel that should not be done. In the 1980's, when the Social Security trust fund ran into some difficulties, we took the measures of reducing benefits and raising Social Security taxes in order to put the Social Security trust fund back into a healthy position.

That is exactly what we did. This is an effort to raid the Social Security trust fund. It is implicit in this balanced budget amendment, and to some extent was made explicit the other day with the tabling of the Reid amendment, which sought to make it very clear that it could not be tapped or drawn on. It needs to be understood the Social Security system is paying its way. We have other so-called entitlements that are not, but the Social Security trust fund is more than paying its way. That needs to be understood, and this assault on the Social Security system needs to be repudiated.

Mrs. BOXER. I say to my friend—and I thank him for continuing to yield—the reason I answered the question the way I did to my friend, the good Senator from New Hampshire, is because the Republicans are trying to have it both ways.

It is really extraordinary, and I am glad we have this chance, because on the one hand they have passed motion after motion stating that they will never touch Social Security or the benefits and it is off the table and they are not going to look at it. On the other hand, they vote against the Reid amendment, the Reid-Feinstein amendment, which would have clearly taken Social Security out of this balanced budget requirement.

So they are talking two ways. And what was so interesting right here this afternoon just a few minutes ago is the good Senator from New Hampshire says to me, Senator, are you saying that even if Social Security and the other entitlements are 100 percent of the problem, that you are not going to touch them?

Well, that is what they have been saying. They have been saying they are not going to touch them. But if you listen very carefully, it is a very clear threat to Social Security, as clear as the nose on your face.

I say that this amendment is very dangerous. It is very dangerous to the stability of this Nation because it is so inflexible, and my Republican friends have voted almost unanimously—we came close on the Johnston amendment on the Court issue, but basically they have walked down the aisle with this rigid supermajority requirement amendment that puts Social Security in jeopardy, it puts our States in jeopardy, and it puts our people in jeopardy.

I wish to thank the Senator from West Virginia for his generosity in yielding to me.

Mr. BYRD. I thank the distinguished Senator from California [Mrs. BOXER].

Mr. President, when all is said and done, our friends on the other side of the aisle have not answered the question put to them by Senator SARBANES. He brought up the language in section 5 of the constitutional amendment to balance the budget:

> The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

Of course, then the proponents of the amendment, not wishing to focus on section 5 and the questions asked by the distinguished Senator from Maryland related thereto, wish to talk

about the seriousness of the budget deficits and the seriousness of the debt, and so on.

We are all concerned about those deficits and the debt. There is no disagreement as to the desired goal to reach a balanced budget and to reduce the deficits and ultimately to begin paying the principal on the debt and hopefully reducing the interest that is paid on that debt.

The proponents do not want to focus on this section 5. I will ask the question: If the country "is engaged in a military conflict," short of a war that has been declared, "engaged in a military conflict that causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority number of the whole number of each House, which becomes law," does that language mean that once the joint resolution referred to in that section is adopted by a majority of the whole number of each House and becomes law, and in the event that the military conflict which causes an imminent and serious military threat to national security continues over a period of another year or 2 years or subsequent years, does this language mean that Congress will have to waive the provisions of this article by way of a joint resolution in each and every subsequent fiscal year in which that threat to the national security exists? Does that mean we have to do it over and over again?

I am waiting on the Republican response team to respond. Does that mean that we have to go through this obstacle course every year, every subsequent year after that first year, or that first occasion in which the joint resolution is adopted by a majority of the whole number of each House? Do we have to do that over and over again?

Suppose the support for the Commander in Chief's position, suppose the national support wavers?

Initially, people having been supportive, through their representatives, of adopting the joint resolution are—suppose that threat to the national security continues into a subsequent fiscal year, and then again into another fiscal year? Does this language make it incumbent upon the Congress to continue, with each new fiscal year, to pass a joint resolution by a majority of the whole number of each House? What does this mean?

The Commander in Chief and the military forces which he may have committed as he did in Desert Storm, or as President Truman did in Korea—suppose that initial support of the people lessens? What does the Commander in Chief do? He is left out there hanging. He has men on distant battlefields. He has ships plying the waves of the several seas. He has planes transporting Marines and soldiers. He has an Air Force out there that is flying in various areas of the world. What does it mean? Do we have to pass another joint resolution in the next fiscal year?

Suppose this emergent situation should arise in August, with the close of the fiscal year imminent on September 30. There is not time to pass a joint resolution and look for cuts in other areas of the budget, to which my friends on the other side of the aisle have alluded. What happens? The fiscal year is closed on September 30 and the total outlays have exceeded the total receipts for that fiscal year. You have men out there in the field facing danger. Their lives are on the line, their lives are in jeopardy, and the security of this country is in jeopardy. What are we going to do? Are we going to be entertained by a wide-ranging debate in both Houses on a joint resolution every fiscal year that that situation continues? And, in addition, we have to have a majority of the whole number elected to each House for passage.

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

Mr. BYRD. Yes, I yield.

Mr. THOMAS. Senator, I am not as familiar as you are with the process, but it seems to me that now there has to be approval, there has to be approval annually for the budget, there has to be approval for the President's move in terms of military activities.

Mr. BYRD. There was not any approval in the case of his invasion of Haiti. The invasion actually started.

Mr. THOMAS. There was in Desert Storm, as you will recall.

Mr. BYRD. Wait just a second. The invasion of Haiti started. The President called it off—in midair, almost. I was not supportive of that invasion.

Mr. THOMAS. Nor was I.

I guess further I would say, I am not sure I am confounded by the Congress each year approving this. I do not think that is an unusual kind of thing. Do you not think the Congress represents the people——

Mr. BYRD. When the Senator is around here long enough he may find himself confounded. If we get into a situation where the Nation's security is in the balance, we may all feel confounded by the necessity of acting expeditiously, because we have the lives of men and women in dire peril. And then, under this amendment, we are going to require a majority of the Senators who are chosen and sworn to pass a resolution in a situation like that—we are going to explain that away by talking about the budget deficits?

Mr. THOMAS. I have a little more confidence in the Members of this body than to ignore an issue of that kind. It just seems to me that the evidence is that we need to do something different than we have been doing. I constantly hear we cannot change things. But the record is, we have to if we want different results.

Mr. BYRD. Senator, I am talking about section 5.

Mr. THOMAS. I understand.

Mr. BYRD. Let us stay with it. Let us not talk about, at the moment—I will be glad to yield later to the Senator, if he wants to broaden the discussion.

We are talking about section 5. As Napoleon said, there were men on his council who were far more eloquent than he, but that he won every argument simply by saying 2 plus 2 equals 4. It is pretty simple.

So I want to say to my friend, as Napoleon might have, he would say let us stick with the question. Let us stick with section 5. That is the question that has been raised this afternoon, in the main, on this floor.

So, is the Senator telling me that we should run the risk of adopting a joint resolution each fiscal year in which our national security is in jeopardy? We should run the risk of adopting a joint resolution and that he is willing to subject this country's security to the necessity of a supermajority vote—a mini-supermajority vote, a majority of those Senators chosen and sworn?

Mr. THOMAS. I have, I guess—and I do not suggest I know the answers—but I have a good deal of confidence. What does it say? It says, "* * * this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious militarily threat * * *" I have a hunch that most of us, a supermajority of us, would respond to that.

Mr. BYRD. Is that the Senator's answer?

Mr. THOMAS. Yes, sir.

Mr. BYRD. Well, Mr. President, that is the kind of answer that the proponents of this ill-advised constitutional amendment continue to make. "Well, I have confidence that the Congress would do thus and so." Or "The intent of the proponents of this constitutional amendment is thus and so—the intent." Or "That would never happen." Or "I am sure that the Senate and House will rise to meet the needs of providing—by providing supermajorities."

Senators do not know that. Senators do not know what the intent of a future Congress may be. Senators do not know with enough certitude to give me confidence that Congress will act in a given situation that may be years away, as it might act at this moment or in this year of Our Lord 1995.

Mr. President, this is the typical response: "I have confidence." That is it. "I have confidence. I am willing to trust our colleagues." Well, I am willing to trust colleagues also. I am willing also to trust the good judgment of a majority of the representatives of the people, if the people are adequately informed. I am willing to trust the opinions of the American people if they are

properly informed. But we cannot cavalierly push away this sobering question nor the serious questions that arise with respect to this Constitutional amendment simply by saying, "Well, I am sure it won't happen," or "I am willing to trust" so and so and "a future Congress" and "this is not the intent."

Read what the amendment says. That is what the court is going to go by. It is going to first look at the four corners of the document.

Section 1:

Total outlays for any fiscal year shall not exceed total receipts for that fiscal year.

Then in section 5:

The provisions of this article—

Meaning section 1.

may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security.

Who is going to determine what is an "imminent and serious military threat" to the national security? Obviously, there are going to be differences of opinion.

Mr. THOMAS. That is what I am suggesting; that is, that is the role of Congress, and I think it is a legitimate role and one that is not unusual, one that I have perceived has been done for a number of years.

Mr. BYRD. Absolutely. But for a number of years it has not been required.

Mr. THOMAS. It should be required.

Mr. BYRD. For 206 years it has not been required that there be a majority of the whole number in each House to pass a resolution.

Mr. THOMAS. Where does the President get the money, if the majority of the Congress does not agree?

Mr. BYRD. Where does he get the money?

Mr. THOMAS. Yes.

Mr. BYRD. Let me ask the Senator. Suppose the President needs a new tax. Suppose he needs to raise taxes to meet that serious military conflict, that serious military threat to the United States. Suppose he needs to increase taxes. Then what? Would the Senator be willing to raise taxes?

Mr. THOMAS. The President does not raise taxes.

Mr. BYRD. That is not the question which I asked the Senator.

Mr. THOMAS. I think there is a system in which the President can move. But the President then comes to the Congress for either a declaration or for the money, or he, as he is doing now, comes for a supplemental budget. The Congress has to be involved to make this decision.

Mr. BYRD. Of course. This Senator has never said the Congress should not be involved. This Senator is saying simply that the Congress ought to continue to be involved under the present Constitution which has provided very well for congressional actions to meet all emergencies that have occurred throughout the 206-year history of this country.

Mr. THOMAS. I understand that.

Mr. BYRD. But now we are going to be in a very different situation if this Constitution is going to be amended. And it will not be amended for just a year or so; it will be changed from now until kingdom come, unless the American people and Congress repeal this amendment once it is in the Constitution. The Senator knows that. It is not easy once it is in there. It is not like a statute which can be repealed by the same Congress that enacted it in the first place.

I am asking the Senator. Suppose we get into a situation where this Nation's security is in peril and more money is needed and the necessity arises for an increase in taxes. Then what are my friends on the other side going to do in that situation?

Mr. THOMAS. That is why this provision is there to waive.

Mr. BYRD. Yes. By what vote?

Mr. THOMAS. By a supermajority vote.

Mr. BYRD. Yes. That is just the question. Why subject this country's security to the necessity of a supermajority vote when the Nation's very life is in danger, the security of the American people are in danger, the security of the troops in the field are in danger, and the security of the planes in the air is in danger? Why subject a decision at that critical moment to a supermajority? The Framers, in their wisdom, did not do it. And we have fought a good many wars.

Mr. THOMAS. I understand. This is the basis of what we are talking about. Of course, the Senator says leave it as it is. Others say we need to change it. That is what it is, whether we change or whether we do not. Many people think that there needs to be a change. Many people think the performance is such that there needs to be a change. And I respect greatly the Senator's wisdom and knowledge. But that is the issue. And the Senator does not want it changed. I understand that. Others do. That is what it is all about.

Mr. BYRD. It is about more than that. That is why we need to take the time to probe and to explore these provisions that are in this amendment to balance the budget. We are all in agreement, I say to the Senator, with the goal of a balanced budget. We are all in agreement. I am in agreement that we need to reduce the deficits. And I agree that it is going to require some pain. I also am of the opinion that we do not need to wait 7 years. We started in 1990. We took a great step beyond that in 1993. We need to do more.

Why cannot we continue on that course of enacting multiyear budget deficit reduction bills? Do you know why? Because of the pain, and part of that pain may just have to be an increase in taxes. I do not like to vote to increase taxes. I have been in political office 48 years, and I know it is not easy to vote to increase taxes. It is always easy to cut taxes. It was easy to cut taxes in 1981 when Mr. Reagan asked for a tax cut in one package involving 3 successive years of cuts, 5 percent the first year, 10 the next, and 10 the next. It does not take courage to vote to cut taxes.

But in a situation—I keep getting back to this section 5. What is the Senator's answer? Is he willing to put this Nation's security in peril by requiring a supermajority consisting of a majority of the Senators and House Members elected? The Framers did not think that was wise. We had just come through the Revolutionary War. We had still ahead of us the War of 1812. We had ahead of us the Mexican War of 1848, the Civil War, the war with Spain in 1898, the First World War, the Second World War, Korea, Vietnam, and the Persian Gulf. In addition to these, there were several military conflicts that were not wars, of that magnitude, by any stretch of the imagination.

There was never, until this amendment comes along, any thought of requiring a mini-supermajority to pass a resolution in a moment of dire peril to deal with our Nations's security. We get nothing from the proponents when we direct the question at them, "Would you be willing to raise the revenues to meet the needs in that moment of peril?" "Would you be willing to raise taxes?"

Mr. LEVIN. Will the Senator yield for a question.

Mr. BYRD. Yes, shortly. What we get is what the Senator from Maryland got a while ago when he tried to pin Senators down on the other side of the aisle with his questions concerning section 5. Section 5 has not been talked about much in the Senate. It needs to be talked about. What we get are speciocities, irrelevancies, platitudes, well-wishes, and expressions of good intent. We do not know what the "intent" of the Senators who sit at these desks will be 2 years from now, 3 years from now. Perhaps they will be the same Senators. How can we say what their intent will be? We need to read the words of the amendment. They speak for themselves when they say "total outlays shall not exceed total receipts in any fiscal year." That does not leave any wiggling room. The proponents say, yes, it does, because you can waive that by a three-fifths majority.

It is a dangerous amendment. Section 5—I would not want to risk the lives of my grandsons on that kind of language, requiring 51 Senators in this Chamber to pass such a resolution, denying the Vice President of the United States his vote to break a tie, if there should be a tie. This amendment would deny the Vice President of his vote

that is accorded him in the current Constitution——

Mr. LEVIN. Will the Senator yield?

Mr. BYRD. To vote to break a tie. I yield.

Mr. LEVIN. I understand that the Senator from Utah said that the Vice President would be denied, in his opinion, a vote to break a 50–50 tie. But he also said it was an "open question." I do not think we ought to have an open question in a constitutional amendment, because this is a life and death matter.

Mr. BYRD. You have a constitutional crisis when you have this open question.

Mr. LEVIN. It will, in fact, plunge this constitutional amendment into the courts to interpret as to whether or not the Vice President can break a tie. It should not be left open. It should be resolved in this amendment as to whether or not the Vice President's vote counts to break a 50–50 tie. I think it is irresponsible to write a constitutional amendment knowing that that question is left open.

By the way, that is not some theoretical question. Last year's deficit reduction bill, as it has been debated here this afternoon, was a 51–50 vote, based on the Vice President's vote. So this is not some theory that we are arguing here in a civics class. This is the reality of the U.S. Senate, and life and death matters can be resolved on whether or not the Vice President's vote counts to break a tie.

It was the opinion of the Senator from Utah, as I understand it, stated earlier this afternoon, that the Vice President's vote would not count in this provision. And yet, the chief sponsor of this language that is in front of us, Representative DAN SCHAEFER of Colorado, says the Vice President's vote would count. Yesterday, we had the same problem. We had, on this side, the chief sponsor saying that there would be no standing, do not worry about it. We had the chief sponsor on the other side—this is the Schaefer-Stenholm substitute. Representative SCHAEFER has said that there would be standing for Members of Congress to sue. I had a big board up, and my friend from Pennsylvania who is managing the bill now saw where we had the prime sponsor of this language quoted in a very formal document, by the way, these were not casual comments. These were questions and answers he submitted for the RECORD, in the HOUSE CONGRESSIONAL RECORD, where he made statements which were exactly contrary to what the opinion of the Senator from Utah is—exactly contrary on critical issues on the role of the court.

Representative SCHAEFER said, in a formal answer, that a court could throw out an appropriations bill or a tax bill, as being unconstitutional. But we were told by the Senator from Utah that it was his opinion that a court could not involve itself in the budgetary process.

My question of my friend from West Virginia is this—and I want to read now into the RECORD the statement of Representative SCHAEFER on the question of whether or not the Vice President's vote counts. It is on page 758 of the CONGRESSIONAL RECORD of January 26. This is a formal interpretation of section 4. And, again, this is a formal question and answer presentation that was supplied for the RECORD by Representative SCHAEFER:

> This language is not intended to preclude the Vice President in his or her constitutional capacity as President of the Senate from casting a tie-breaking vote that would produce a 51–50 result.

He goes on to say:

> Nothing in section 4 of the substitute takes away the Vice President's right to vote under such circumstances.

Mr. SARBANES. Will the Senator yield?

Mr. LEVIN. I do not have the floor, but——

Mr. BYRD. Mr. President, the courts are going to decide that. It does not make any difference what my intent is or what the intent of the House Member was who was addressing himself to that question, or what he intent of any other Senator is. It is the court, and it will be a constitutional crisis. Once we constitutionalize this fiscal policy by writing this amendment into the Constitution, it is an open invitation to the courts to come into this equation. There is nothing in this amendment that prohibits or forbids the courts from intervening.

Mr. SARBANES. Will the Senator yield on that point?

Mr. BYRD. Yes.

Mr. SARBANES. I think the Senator from West Virginia is absolutely correct. But what is going to draw the court in even more is the fact that two principal sponsors of this measure give absolutely contrary views as to the meaning of this clause, as the Senator from Michigan has pointed out. One of the chief House sponsors says that under section 4 the Vice President would have the tie-breaking vote. The distinguished Senator from Utah, chairman of the Judiciary Committee and the lead manager for this bill, very explicitly stated on the floor of the Senate not too long ago that you would have to produce 51 votes out of 100 in this body in order for section 4 to apply. A 50–50 vote with the Vice President supposedly casting a tie-breaking vote would not work. In effect, you have negated the tie-breaking vote of the Vice President.

This is important in underscoring all of the pitfalls that are contained in this provision. I am certain it will bring about what the Senator from West Virginia has just stated, and that is the involvement of the courts, because the legislative history on this is absolutely contradictory on the part of its proponents.

Mr. LEVIN. I thank the Senator from Maryland. My point here is that this is being left——

Mr. BYRD. I ask unanimous consent that I may continue to yield the floor, retaining my rights to the floor, for colloquies. I do not intend to hold the floor all afternoon. My feet are getting tired.

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

Mr. BYRD. I call attention to the fact that we have a fresh new Member here from the Republican response team. They are sending them in in relays.

Yes, I would be glad to yield.

Mr. LEVIN. The Senator has eloquently pointed out the reasons why we should not require majorities, and on that there is a difference of opinion. I happen to share the opinion of the Senator from West Virginia for the reasons that he has given that we should not require a supermajority.

But the issue that I raise, the Senator from Maryland has raised, and the Senator from Utah has raised relates to that question. It is, what is a supermajority and whether the Vice President's vote counts? And on that one, I think 100 of us ought to agree.

Maybe there is a disagreement as to whether or not we should have a supermajority—and there is a disagreement—but there should be no disagreement, there ought to be absolute unanimity on a determination that this constitutional amendment be clear on the question as to whether or not the Vice President can break a tie and count towards the 51 votes. We should not leave that ambiguous.

This is not a matter where there is a difference of opinion as to whether or not a supermajority is appropriate in order to raise revenues or not. This is a question of writing a constitutional amendment, knowing that a question, a critical question, is left open. It should not be left open.

Because if it is, this constitutional crisis, which the Senator from West Virginia and the Senator from Maryland talked about, is something that we are inviting. And we should not only not invite it, we should close the door on any such constitutional crisis by making that clear.

That will not resolve the question that the Senator from West Virginia has raised as to whether or not it is desirable that there be a requirement for a supermajority, and I happen to, again, share his view on that. But, again, we should clarify the question.

I ask unanimous consent at this point, Mr. President, that the statement of the prime sponsor of the joint resolution in front of us, Representative SCHAEFER, that appears on page H758 of the CONGRESSIONAL RECORD of January 26 of this year, be printed in the RECORD.

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

This language is not intended to preclude the Vice President, in his or her constitutional capacity as President of the Senate, from casting a tie-breaking vote that would produce a 51-50 result. This is consistent with Article I, Section 3, Clause 4, which states: "The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided." Nothing in Section 4 of the substitute takes away the Vice President's right to vote under such circumstances.

Mr. LEVIN. Mr. President, I do not have the floor, but I think it would be very desirable for the Senator from Pennsylvania to respond, should the Senator from West Virginia so yield.

Mr. BYRD. Mr. President, of course, I would not want to shut out from this electrifying moment in this very illuminating debate a Member of the "Republican response team."

I ask unanimous consent that my previous request include the Senator from Pennsylvania and any other Member of the response team.

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

The Senator from Pennsylvania.

Mr. SANTORUM. I thank the Senator and I thank the Chair.

I was going to refer you to the 12th amendment that uses the same language that is used in section 5 and section 2, which refers to the whole number of the Senate. In one case, it says the whole number or two-thirds of the whole number of the Senators, the same language that we use here only we say in each House.

If you have questions about the ability of the Vice President to cast votes with respect to this, then I suspect you have questions as to whether the Vice President can cast votes under the 12th amendment, because it is word for word what is put in this document.

Mr. LEVIN. If the Senator will yield, I do not have a question about it.

The Senator from Utah, who is the principal sponsor on that side, said that the Vice President's vote would not count. Now that is coming from a pretty authoritative source here.

Senator HATCH said—and I was not on the floor, but I understand that he said—two things about this question. Number one, it is an open question. That means what it says. It is an open question, presumably left for the courts or left for somebody to decide. But then Senator HATCH said—it was reported to me, and I was not on the floor; I believe the Senators from West Virginia and Maryland were here—Senator HATCH apparently then said that, in his opinion, in his opinion, the Vice President's vote would not count toward the 51 votes. And I think that is what the Senator from West Virginia reflected in his statement.

Mr. BYRD. Yes.

Mr. LEVIN. So it is not the Senator from Michigan who is raising the question—I think we ought to button down the issue—it is the principal sponsor of the amendment here in the Senate who has rendered that opinion.

Mr. SARBANES. Will the Senator yield to me? Because the analogy—

Mr. BYRD. Before I yield, may I point out to the Member of the response team who just, I believe, indicated that the supermajority in amendment No. 12 would be a parallel to the situation which we have been discussing—namely, as the Vice President's vote would be involved—I point out to the junior Senator from Pennsylvania, who perhaps has not read the 12th amendment lately, that that is what that amendment is all about. There is no Vice President.

Mr. SANTORUM. Right.

Mr. BYRD. There is no Vice President to cast a vote under the 12th Amendment. The reason for that amendment is to provide for the election of a Vice President by the U.S. Senate when the Vice President's seat is vacant.

Mr. SARBANES. If the Senator will yield, that was exactly the point I was going to make.

The Senator from Pennsylvania got up and said, "Well, if you want to know what this language means here of the majority of the whole number, just refer to amendment 12."

Now, amendment 12 has to deal with picking the Vice President. There is not a Vice President. And it says——

Mr. SANTORUM. Does that not make it obvious.

Mr. SARBANES. It says:

The Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

But the choice is picking the Vice President. It does not answer the question that the Vice President can cast the tie-breaking vote.

Mr. SANTORUM. If the Senator will yield, I think it makes that very point. Obviously, the Vice President is not considered part of it because there is no Vice President. So the whole number must mean that it is the Members of the Senate, absent the Vice President. Otherwise, this would make no sense. I mean, I think that is the reason I used it, because it is apparent.

Mr. SARBANES. Once a Vice President has been chosen——

Mr. SANTORUM. The Vice President is a Member of the Senate.

Mr. SARBANES. Once the Vice President has been chosen——

Mr. BYRD. He is not a Member of the Senate. The Vice President is never a Member of the Senate.

Mr. SANTORUM. I rest my case.

Mr. SARBANES. We take a vote——

Mr. BYRD. That is not the case.

Mr. SARBANES. Once the Vice President is chosen and we take a vote, a 50-50 vote, can the Vice President break the tie?

Mr. LEVIN. Under this amendment.

Mr. SANTORUM. If we compare it to the language in the amendment it parallels, my opinion would be no.

Mr. LEVIN. He cannot?

Mr. SANTORUM. Correct.

Mr. LEVIN. So you disagree with Congressman SCHAEFER?

Mr. SANTORUM. I do.

Mr. LEVIN. Then in that case, we have the prime sponsors in the Senate and we have the prime sponsor in the House, whose name is on top of this constitutional amendment—this is the Schaefer amendment—we have the sponsors here and the sponsor there in total disagreement on an absolutely fundamental question as to whether or not the Vice President's vote can be counted to break a 50-50 tie. And that determines the outcome of the whole deficit reduction package last year.

That should not be an open question. Whatever side of this issue you are on, whether or not you believe in supermajorities or you do not, we should not leave an ambiguity that huge in the Constitution as to whether or not the Vice President's vote counts. And I think it ought to be clarified. It ought to be clarified one way or the other, but it ought to be clarified because, otherwise, it is an invitation for a constitutional crisis.

I yield the floor and I thank my friend.

Mr. BYRD. Mr. President, I have been unable to get a question answered here, and perhaps the Senator from Pennsylvania can answer it.

My question being: If the threat to our national security should continue into the next fiscal year, or the next calendar year after the year in which the joint resolution referred to in this section is adopted by a minimajority of a majority of all the Members of the Senate and all the Members of the House chosen and sworn, if that threat continues, and we are in a second fiscal year does such a joint resolution have to be passed again by both Houses?

If not, do both Houses have to waive the requirements of section 1, which requires a three-fifths majority? Does Congress have to continue to waive for each fiscal year during which we have the military threat? Does that mean that every new fiscal year in which the threat continues, we have to have three-fifths to waive the requirements of section 1? Or does it require that every fiscal year we pass another joint resolution requiring a majority of the total membership of both Houses as referred to in section 5? Or does it require that both sections be waived?

Mr. President, I ask unanimous consent that I may propound a question to the Senator, even though I hold the floor.

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

Mr. SANTORUM. Mr. President, section 5 reads: "The Congress may waive

the provisions of this article for any fiscal year in which a declaration of war is in effect." So it would seem very obvious to me the Congress has the availability to raise it for the fiscal year or any subsequent fiscal year in which the war is in effect.

That is pretty much what it says.

Mr. BYRD. I am glad we are going by what the amendment says for once.

Now, what do you think it says? What does the Senator think it says?

Mr. SANTORUM. I think that is what it says.

Mr. SARBANES. I ask the Senator, what does it mean? What is your understanding of the meaning? Would you have to have a waiver for each fiscal year?

Mr. SANTORUM. I am stupefied that the plain reading of this language is not apparent to the Senator from Maryland. I think it is very serious.

Mr. SARBANES. I have to say to the Senator from Pennsylvania perhaps I am not as quick as he is to pick up the plain language. I thought the question was a good question. The question, as I understood it is, must you have a waiver in each fiscal year since?

Mr. SANTORUM. It says, "The Congress may waive in any year."

Mr. SARBANES. For any fiscal year in which the United States is engaged.

So, we may waive it for that fiscal year.

Mr. SANTORUM. Or next fiscal year.

Mr. SARBANES. The next fiscal year comes along. Then what?

Mr. SANTORUM. It says we may waive for any fiscal year. It does not say we have to waive for this fiscal year. We could pass—it says "any fiscal year." It could be for next fiscal year, the one afterward, as long as the declaration of war is in effect, we can raise for any fiscal year.

Mr. SARBANES. So you think it means any and all?

Mr. SANTORUM. As long as the declaration of war is continuing, I assume that is what the Congress can do.

Mr. SARBANES. What about the next sentence?

Mr. BYRD. There are two different situations there.

Mr. SARBANES. What about the next sentence? Same interpretation.

Mr. SANTORUM. Obviously, in one case we have declaration of war. That is, a declaration of war has a certain time limit, then the declaration of war ceases.

In this case——

Mr. BYRD. Would the Senator say that again?

Mr. SANTORUM. The declaration of war at some point ends.

Mr. BYRD. What causes it to end? What terminates a war?

Mr. SANTORUM. A signing of a treaty to end the war.

Mr. BYRD. What terminates the declaration of war?

Mr. SANTORUM. I ask the Senator, since I was not around the last time we declared war, I assume it would be some act of Congress to end the declaration.

Mr. SARBANES. But it was the Senator that asserted that the declaration of war would end. How does that happen?

Mr. SANTORUM. I just responded.

Mr. BYRD. The Senator was responding to a question. His response, I do not understand.

Mr. SANTORUM. As long as a declaration is in effect, however long that may be, that Congress can, under this provision, waive this amendment.

Mr. BYRD. How long was the declaration of war in World War II in effect?

Mr. SANTORUM. I yield to the Senator from West Virginia.

Mr. BYRD. I am asking a question. I want to be informed.

Mr. SANTORUM. I do not know the answer.

Mr. BYRD. The ready response team should have all the answers.

How long was the declaration of war in World War I in effect? The war is over. Suppose declaration of war is still in effect. What happens in a situation like this?

Mr. SANTORUM. I think it would be apparent that at some point the Congress would rescind the declaration of war and then this article would no longer be operative.

Mr. BYRD. Congress did not rescind all previous declarations of war. Why does the Senator not help me find the answer to that question?

Mr. SANTORUM. I will do my best.

Mr. SARBANES. Would the Senator address the second question? Let us move beyond the declaration of war. What is your understanding of the second sentence? This is not a declaration of war in which the United States is engaged in military conflict, so declared by a joint resolution. Would we have to get a joint resolution the following year?

Mr. SANTORUM. My opinion on that is that the—according to the plain reading of the constitutional amendment—Congress would have to, each year, go through the process of exempting itself from this provision because of that conflict.

Mr. SARBANES. How can the phrase "for any fiscal year," which is identically the same phrase in sentence 1 and sentence 2, be given diametrically opposite definitions?

You just told me that the phrase "for any fiscal year" in sentence 1, linked to a declaration of war, means that it can be waived for not only the current fiscal year but fiscal years beyond that.

Now the Senator tells me in sentence 2, "waive for any fiscal year" means only the fiscal year in which you find yourself and not subsequent fiscal years.

Now, how can the Senator give that phrase an entirely different interpretation?

Mr. SANTORUM. Let me give you the committee report which says: "For any fiscal year, in effect, is intended in the first sentence of this section to require a separate waiver of the provisions of any amendment each year."

Mr. SARBANES. For which sentence?

Mr. SANTORUM. For the first usage.

Mr. SARBANES. In section 5.

That is not what you told me a few minutes ago.

Is that right?

Mr. SANTORUM. That is correct.

Mr. SARBANES. Which is correct then, your answer or the committee report?

Mr. SANTORUM. I refer to the committee report.

Mr. SARBANES. So, the answer you gave me earlier is not correct?

Mr. SANTORUM. According to the committee report, that is correct.

Mr. SARBANES. Well, what is your view? Is your view the committee's report or is your view the answer which you gave yourself just a couple minutes ago?

Mr. SANTORUM. My view is that the committee report, having had the time to study it longer than I, is probably the accurate view.

Mr. BYRD. Was there a minority view on this particular question in that report?

Mr. SANTORUM. Not that I am aware. I will have someone check.

Mr. BYRD. Let me ask the Senator.

Mr. SANTORUM. By the way, I would further read that the meaning in the second sentence, the second use, is also the same, that in every fiscal year the Congress would have to extend this waiver.

Mr. SARBANES. I say to the Senator that is certainly a consistent reading of the meaning "for any fiscal year." At least it is being read the same way in the second sentence as it was read in the first sentence according to the committee report.

Now, that is not the answer the Senator was giving us because he was giving a completely opposite view of the meaning "any fiscal year" in sentence 1 and in sentence 2. But it only underscores the problems with this amendment.

The distinguished Senator from Pennsylvania came to manage the bill during this time period. The Senator had—I assume now it has changed—a perception of the meaning of this proposed amendment to the Constitution which I am now told he is withdrawing.

Mr. SANTORUM. If the Senator will yield, that is why it is very important to have committee reports and implementing legislation that is called for in the article; that we have implementing legislation to clear up these kinds of doubts that may exist with respect to specific provisions of the act.

So I suggest to the Senator that a lot of this debate is useful. In fact, it is illuminating. I find it to be such, not just on this point, but on many others.

But what is important to note is the ability of this Senate to come back, as it will, and implement this act and further specify the meanings of how this constitutional amendment will be implemented.

Mr. SARBANES. I ask the Senator from Pennsylvania, do you think that the implementing legislation could be used to clarify the discrepancy in view that was outlined here earlier on the floor as to whether a Vice President has the power to break a tie? Could that be clarified by the implementing legislation?

Mr. SANTORUM. I guess I would defer to answer on that. I do not know whether the implementing legislation would do that or not, to be honest. I think that would be a matter of interpretation.

Mr. SARBANES. Let me just carry the question a step further. Do you think that implementing legislation can rewrite provisions of a constitutional amendment?

Mr. SANTORUM. Obviously not, but they certainly can clarify points of a constitutional amendment. Obviously, constitutional amendments, particularly of this nature, are not meant to stand on their own. There has to be some legislation that is going to allow this to be complied with.

Mr. BYRD. Will the Senator allow me on that point?

Mr. SARBANES. Certainly.

Mr. BYRD. Implementing legislation may be repealed in the very same session—for that matter, in the very same month—in which the original legislation was enacted. Does this mean then that we are going to trust to the hands of shifting opinions in the country and in this body the interpretation of the amendment if we are going to do it by implementing legislation?

Does this mean that we are going to put at risk the Nation's security by leaving this up to the implementing legislation, which can be changed, as I say, by even the same Senators in a subsequent year? Are we going to place the Nation's security at risk by falling back on the language that talks about implementing legislation?

Mr. SARBANES. Will the Senator yield?

Mr. BYRD. Yes.

Mr. SARBANES. He is making an extremely important point. Suppose one Congress comes along and passes implementing legislation saying that the Vice President cannot cast a tie-breaking vote. Then a new Congress comes in and they pass implementing legislation saying the Vice President can cast a tie-breaking vote.

I say to the Senator from Pennsylvania, I do not see how this particular provision can bounce back and forth with the implementing legislation. I just do not understand how that could happen. It is obvious that a court would have to come in to decide it if it is not decided here, and we have directly conflicting views.

Let me just read you—I do not know whether the Senator is acquainted with what Congressman SCHAEFER on the House side said about this.

Mr. SANTORUM. If the Senator will yield, again, I am a little bit perplexed. I look at, for example, section 8 powers under article I that are given to the Congress to borrow money, to regulate commerce. Does it say how we regulate commerce or do we leave that to implementing legislation? And if we do change that, does that mean we somehow violate the Constitution, or is that somehow dangerous upon our society? The Constitution, as the Senator will tell you, is a contract of principles, not as to how to.

Mr. SARBANES. Will the Senator yield on that very point?

Mr. SANTORUM. We continually change how to.

Mr. SARBANES. That is absolutely wrong. That is absolutely wrong. The Constitution is very specific in describing how, in terms of the process, decisions will be made. It is not specific about the substance of the decision to be made, but it is very specific about how we are to do our business. The Framers were very careful about that. They spelled out what would be a quorum, then a majority of the quorum could pass the legislation. It is all laid out.

I want to give you a real-life situation. A bill is before this body. It is a controversial, closely fought bill. We take a vote on it. The vote is 50–50, and the Vice President is sitting in the chair.

Now, it is very clear under current procedure in that circumstance, the Vice President can cast a tie-breaking vote. It does not have to be 50–50, it can be 48–48, whatever. And I have been in this body when that has happened, not only on the 1993 deficit reduction bill, but on other measures as well. I have seen the Vice President in the chair casting a tie-breaking vote.

What is the outcome in that situation?

Let me read to you what Congressman SCHAEFER says the outcome would be. This is the Republican lead sponsor on the House side:

> This language is not intended to preclude the Vice President in his or her constitutional capacity as President of the Senate from casting a tie-breaking vote that will produce a 51-to-50 result. This is consistent with article I, section 3, clause 4 which states: "The Vice President of the United States shall be President of the Senate but shall have no vote unless they be equally divided." Nothing in section 4 of the substitute takes away the Vice President's right to vote under such circumstances.

The Senator, I take it, has told us that he disagrees with that; is that correct? That is not his view of the meaning of article 4.

Mr. SANTORUM. It is apparent from the committee report that refers to, as I did, the 12th amendment and refers to that being similar to what the 12th amendment would be. That would be my answer.

Mr. BYRD. In the 12th amendment there is no Vice President——

Mr. SANTORUM. It is obvious as to what——

Mr. BYRD. To cast any kind of vote, whether it is a deciding vote or anything else. That is why we have the 12th amendment, to fill the vacancy in the Vice Presidency.

Mr. SARBANES. What is the reference in the committee report to which the Senator is referring?

Mr. SANTORUM. Page 15, about three-quarters of the way down, "the whole number of each House."

Mr. SARBANES. That does not answer the question. That just makes a statement.

> The whole number of each House is intended to be consistent with the phrase "the whole number of Senators" in the 12th amendment to the Constitution * * *

But that does not answer my question, since the 12th amendment to the Constitution was a situation in which there was no Vice President. It addresses a situation in which you are choosing a Vice President, not the situation after which the Vice President has been chosen. And once the Vice President is chosen under article I, section 3, clause 4 of the Constitution, he has a vote in an equally divided situation.

So what the Senator from Pennsylvania is doing is drawing an analogy from a situation that governs circumstances in which a Vice President has not been picked and you are picking a Vice President. It does not then answer the question of the vote-casting power of the Vice President once he has been chosen.

Mr. SANTORUM. If the Senator will yield, I think the Senator from West Virginia, in fact, helped me answer this question when, if you look at, again, what the committee report says, "The whole number of each House is intended to be consistent with the phrase 'the whole number of Senators * * *'"

The Vice President is not a Senator. I quote the Senator from West Virginia, just a few minutes ago. So it would be obvious to any reader that a whole number of Senators must be 51, assuming there are 100 Senators.

Mr. SARBANES. I just make this observation to my friend.

You must be desperate about the 1993 legislation to be so driven that you want to deny the Vice President of the United States his tie-breaking power to cast a vote which has been in the Constitution from the very beginning.

Now, I know Members on the other side are unhappy about that legislation, but it seems to me it is carrying your differences over the substance of a piece of legislation much too far when you start tinkering, really assaulting,

the Constitution of the United States in this fashion. We end up getting two completely differing interpretations of the application of this provision as interpreted by the lead House Republican sponsor of this measure and by the answers that I am now receiving in the Chamber of the Senate.

Mr. BYRD. Mr. President, I ask unanimous consent that notwithstanding the fact that I have the floor, I may propound a question to another Senator without losing my right to the floor.

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

Mr. BYRD. Let me ask the distinguished Senator from Pennsylvania, in a situation in which in a given fiscal year the United States is engaged in military conflict which causes an imminent and serious military threat to national security, and that threat continues into the next fiscal year, is it section 1 that would have to be waived in the subsequent fiscal year or years? Would section 1 have to be waived in the subsequent fiscal year or years?

Mr. SANTORUM. I am not too sure—if the Senator is asking for an answer, I am not too sure I understand what the question is. Is he suggesting that the second year would be treated differently than the first year of the conflict?

Mr. BYRD. Why would it not? It is a new fiscal year. And the constitutional amendment on the balanced budget requires that the outlays not exceed receipts in any fiscal year. So we are into a new fiscal year. And yet the threat to the security of this country is still in effect. What do we do? Do we have to waive section 1 again in the new fiscal year?

Mr. SANTORUM. According to the committee report, a joint resolution of Congress would be required in order to have this provision be eligible to be waived, this amendment to be waived.

Mr. BYRD. The Senator is talking about two things there. The Senator is talking about the joint resolution in section 5 that would have to be enacted into law which would require a majority of the whole number of Members in each House. But section 1 requires a vote, in order to be waived, of three-fifths of the whole number of each House.

Mr. SANTORUM. And section 5 provides an exception to section 1.

Mr. BYRD. To section 1.

Mr. SANTORUM. In other words, section 1 binds us with the exception of, as outlined in section 5, when we have a declaration of war or——

Mr. BYRD. But my question is, if that military threat continues into a second fiscal year——

Mr. SANTORUM. We would be required then to pass a separate waiver of this amendment.

Mr. BYRD. Congress would have to pass a joint resolution in each and every fiscal year that ensued following the fiscal year of the first joint resolution?

Suppose there is not a declaration of war in effect. The first sentence of section 5 addresses the situation in which there is a declaration of war. Now, I will read it:

> Congress may waive the provisions of this article—

Meaning section 1——

> for any fiscal year in which a declaration of war is in effect.

Now, the country has fought three major wars and engaged in several military conflicts during the past 48 years without declaring any war. Suppose there is not a declaration of war in effect. Then let us see what it says.

> Provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by joint resolution, adopted by a majority of the whole number of each House, which becomes law.

Now, I have two or three questions I wish to ask the Senator. I will ask them singly or I will ask them en bloc.

One. Does this mean that in each subsequent fiscal year—let us imagine that a military threat develops in August, which is only 2 months preceding the close of the fiscal year. A threat is imminent. The Commander in Chief asks for a resolution, and Congress, notwithstanding the rules providing for unlimited debate in the United States Senate, quickly passes such a joint resolution for that fiscal year.

Then let us imagine that the threat continues over into the next fiscal year, January, February, March, April. Is another joint resolution required by the Congress?

Third question. Suppose that the response of the Congress to the President's request is favorable and the President launches his planes and ships, his troops, and vast expenditures of money are entailed. The fiscal year ends. The outlays exceed the receipts. The threat continues throughout the next fiscal year. There is no declaration of war but expenditures run into the billions of dollars—billions. What are we going to do?

This amendment says outlays shall not exceed receipts in any fiscal year. What are we going to do about the fact that the deficits rose greatly in the previous fiscal year, the one in which the threat first made itself clear and the deficit of the second year amounted to billions of dollars? What are we going to do? And suppose that passions within the Congress and in the country in the early-on support for the war dwindled away and left the Commander in Chief out there with his men in far-flung seas and lands, with their lives on the line. What do we do? No war has been declared.

Do we require that in order to waive—in order to waive section 5 there must be a majority of the Members elected in both bodies to waive. And you do not have that majority. What are you going to do? You have already run in excess, many—$10 billion, $15—who knows what? It cost billions, the Persian Gulf War, what do you do, Senator?

Mr. SANTORUM. I would answer the question——

Mr. BYRD. Are you going to raise taxes?

Mr. SANTORUM. I would answer that question the same as I would with any war. The Congress has the responsibility of funding the war and appropriating the dollars. The President cannot continue to execute a war if the Congress does not provide the funds to do so by a majority vote. So we already have, already, an existing requirement that Members of Congress vote by a majority to fund the war.

So I guess I do not see the complication. If we are going to go ahead by a majority vote and fund the war through an appropriations process, and we have the support to do that, why would we not continue very consistently, almost an afterthought, to go ahead and waive this provision of the Constitution, recognizing the imminent threat to our national security?

Mr. BYRD. Except that a majority is not a majority is not a majority, under this new amendment to the old Constitution. A majority under the current Constitution is not a majority under this constitutional amendment to balance the budget.

So the deficits have been increased, the debt has gone through the stratosphere, and we have people overseas with their lives on the line. What are we going to do?

You have an administration under the control of one party and the leadership of the Congress under the control of the other. You are putting our Nation's security in peril——

Mr. SANTORUM. Senator, what you are suggesting——

Mr. BYRD. Requiring a mini-supermajority for such a critical time.

Mr. SANTORUM. Is what the Senator is suggesting that this body or the other body would pass appropriations bills to fund the conflict, our participation in the conflict, and then not come back and waive the requirement for a balanced budget to allow us to do that? Is that what the Senator is suggesting?

Mr. BYRD. I am not suggesting it. The Senator——

Mr. SANTORUM. Same vote——

Mr. BYRD. The amendment the Senator is so avidly supporting requires that in each fiscal year——

Mr. SANTORUM. As we do with appropriations——

Mr. BYRD. Outlays shall not exceed receipts.

Mr. SANTORUM. Except——

Mr. BYRD. Suppose that in order to make that work, we had to have a tax

to fund this threat—to protect us against the threat to the security of the Nation. I have heard Senators on that side of the aisle say they will not vote for a tax, ever. What about the deficits that have already been run up in the previous fiscal years, for which a majority of the Members chosen and sworn have voted to waive? Does that mean we have to go back and put on a retroactive tax? How would the Senator feel about that?

Mr. SANTORUM. How I would feel about it is, as you know, every year we have to appropriate money for the Defense Department. Particularly in time of war we would have to appropriate money through an appropriation process; we would have to go through both sides, it would have to be passed by a majority vote. In addition, we have put an additional hurdle—yes, of this section—which requires a simple majority, not a three-fifths or constitutional majority, but a majority of the whole number of each House——

Mr. BYRD. That is not a simple majority.

Mr. SANTORUM. A majority of the whole number of each House.

Mr. BYRD. Which is not a simple majority.

Mr. SANTORUM. Which would be slightly higher, possibly slightly higher burden in the House, and potentially higher, depending on interpretation, vote here in the Senate. But certainly consistent with the passage of the appropriations bill.

Mr. BYRD. Slightly higher, but it does not necessarily mean it would be slightly easier.

Would the Senator recommend that in order to deal with the deficits that had been built up as a result of the waiver of the article in previous fiscal years—does he suggest there might have to be a retroactive tax?

Mr. SANTORUM. There is nothing here in this constitutional amendment that requires us to pay back deficits that have been incurred since the enactment of this constitutional amendment, that have occurred as a result of a waiver of this amendment. So there is no requirement in the constitutional amendment to require the payment of existing debt.

Mr. BYRD. Oh, there is not? There is not?

The other day, the Senator from Pennsylvania stated with reference to dealing with the deficit for a year that has ended, the Senator stated: "We could, as has been done here, retroactively tax." I do not believe the Senator would have made that statement without having given it long and serious thought. So the question that naturally occurred to me today, again, is would the Senator be willing, in that situation, to vote for a retroactive tax? We are talking about a fiscal year or fiscal years that have ended and the estimate for the deficits for that year or those years have gone wrong by virtue of the sudden imminence of a serious military threat to our national security.

Is the Senator willing—he would not be willing, I do not believe, to vote for a package to reduce the deficits, such as the one we enacted in 1993. But in a situation like this, in which the Nation's security is imperiled, would he be willing to vote to increase taxes? I heard a Republican Senator stand over there on the floor and say he would not vote to increase a tax, ever.

I do not believe the Senator from Pennsylvania's feet are in such concrete. But I am just wondering, in the light of what he said about a retroactive tax the other day, whether or not he would suggest that, in a situation like this? In order to go back and wipe out those deficits?

Mr. SANTORUM. Would I in fact vote for a retroactive tax? If we needed to tax in order to meet the needs of war, I think we would have broad bipartisan support, as we would—as we do now, with appropriations bills.

Mr. BYRD. And he would vote for a retroactive tax?

Mr. SANTORUM. I do not know what the need would be for a retroactive tax but if that is what would be required, I would certainly consider it, if our country was at war. Certainly.

Mr. BYRD. How would the taxpayers of this country ever know how to fill out an income tax form, if we are going to go back and enact retroactive taxes? How are they going to know what the tax requirements are when they fill out their income tax forms and whether they may have to pay back taxes?

Mr. SANTORUM. That was our argument against the retroactive tax in 1993.

Mr. BYRD. But the other day—I am talking about the Senator's statement the other day, when he suggested there might be a retroactive tax.

Mr. SANTORUM. I said that is an option available to future Congress, if necessary.

Mr. BYRD. And I am asking the Senator.

Mr. SANTORUM. I would not recommend that option.

Mr. BYRD. But you would be willing——

Mr. SANTORUM. In a time of war, Senator, I would be willing to do things that otherwise I would not be willing to do at other times.

Mr. BYRD. What I am concerned about is in a time of serious military threat to this country, under this amendment a majority of the Senators and House Members elected and sworn would be required in order to waive the requirements of this amendment, under such dire extremities, and could not do so by a simple majority vote.

May I say, for the information of the Senate, I have an amendment which is at the desk.

I would be willing to agree to a vote on that amendment on the day that the Senate returns following this weekend—be willing to agree to a vote on or in relation to the amendment. I say "in relation" because the amendments around here to this constitutional amendment do not get up-or-down votes. Motions to table are made. There have been several amendments offered and debated to this constitutional amendment. There have been no up-or-down votes, and all of the amendments succumbed to the motion to table. That certainly is within the right of Senators to move to table.

I would be willing to offer my amendment, and it will be germane, if cloture is invoked. I would be willing to offer that amendment today, and agree to a time on it for debate and vote on or in relation to it, which includes the tabling motion, to take place on next Wednesday. I have not offered the amendment yet. So it cannot be tabled today. But I can offer it. So if the manager of the bill would like to respond, I will yield.

Mr. HATCH. Mr. President, will my dear friend yield?

Mr. BYRD. Yes. I am happy to yield.

Mr. HATCH. As I understand it, the Senator from West Virginia is willing to lay down his amendment as long as it is not tabled today, and willing to have the vote on it at a time certain when we get back on Wednesday.

Mr. BYRD. Yes.

Mr. HATCH. Can the Senator tell me what time the distinguished Senator would desire? Could we keep it short?

Mr. BYRD. Let me modify my request. Let me offer this modification, or possible modification. I believe a unanimous-consent order was entered for the recognition of the Senator from West Virginia immediately upon the disposition of the cloture vote today to call up amendment No. 252, and that amendment would eliminate the three-fifths supermajority contained in section 1.

I would like to have the privilege of calling up that amendment, laying it down today, or calling up instead an amendment which is equally germane, in the event cloture is invoked, to deal with section 5, which the Senators from Maryland and Michigan and I and other Senators have been discussing this afternoon—with the understanding that there would be no tabling motion offered today, and that the vote on or in relation to that amendment, whichever of the two it is, would not occur until next Wednesday.

There is a cloture vote, I believe, that will occur, possibly even two of them, on that day. As I understand it, the majority leader laid down two cloture motions last night—say 2 hours of debate, equally divided. Of course, if cloture is invoked, we will operate under the rule.

Mr. HATCH. Will the Senator be willing, if our side takes only 15 minutes,

to reduce that time to an hour? He would almost have the same amount of time as 2 hours equally divided. It would be 15 minutes less. But I would be 45 minutes less.

Mr. BYRD. The Senator is most generous.

Mr. HATCH. I have tried. What I am trying to do with my dear colleague is get moving on the amendment process, face whatever we have to face on this amendment, and try to bring this matter to a close sometime within the near future so that we can alleviate delays as much as possible. We are willing. As the Senator from West Virginia can see, we have been willing to take very little time on our side and allow plenty of time on the opposite side of this issue as an accommodation to try to move things along.

Mr. BYRD. Mr. President, accommodations do not matter to this Senator——

Mr. HATCH. I understand that. It is just a request.

Mr. BYRD.—When it comes to amending the Constitution. There is probably too much accommodation around here, in any event. But, nevertheless, it is characteristic of the distinguished Senator to want to accommodate.

What I was amused about was the offer to let the proponents of my amendment have 1 hour of debate and the opponents have 15 minutes. That is an indication to me that there is not much serious thought being given to my amendment. It is going to suffer the same fate as have other amendments around here—that they have been debated a little bit, and a motion to table is then made. They are not accorded serious debate.

Mr. HATCH. Will the Senator yield on that?

Mr. BYRD. I am not directing this at the Senator. I am simply saying that it says something about the debate on this constitutional amendment.

Mr. HATCH. Will the Senator yield?

Mr. BYRD. Yes.

Mr. HATCH. No, it does not, because the amendment the Senator is going to call up we are fully cognizant of. We spent a lot of time analyzing it. We believe we can answer it in a reasonable period of time. I feel we can answer it in 15 minutes. If we cannot, I would be happy to—but I think we can.

On the second amendment, I do not know what amendment that would be. So we might have to grant some more time on that. But our problem is not so much that we do not want to give enough time on this. We have been giving hours and hours. We have given. It is now 14 days of Senate floor time; long hours. I am not complaining. I am willing to be here as long as the distinguished Senator wants to debate any of these issues. But we have spent 14 days, which is 3 more than was spent on any balanced budget amendment in history.

Like I say, I am willing to spend more, but it is to accommodate my colleagues who are on the other side of this issue. So it is not a matter of giving a short shrift. We believe some of the amendments in the past have not deserved a lot of consideration from a constitutional standpoint. And we felt as though we had full debate, even with the limited amount of time we have allocated to ourselves, and we felt as if we made the case enough. But so far, we have been successful in tabling motions.

One last thing. Every amendment that has been brought forth has been a significant amendment, in my eyes.

I have wondered why some were brought forth, perhaps, but I still hope that they are substantively significant amendments. We cannot constitutionally answer some of them in less time than it takes for others. We are hopeful that on the amendment that we believe the Senator will call up before the end of today we can shorten the time. If the Senator wants 2 hours equally divided, I am not sure that the majority leader would not grant him that. But I am trying to accommodate the Senate and accommodate the opponents so they can bring up their amendments and yet still make sure that the record is made constitutionally on these important issues.

I add that the distinguished Senator from West Virginia always brings up important, substantive issues that are important not only to himself but to others as well, and they are certainly important to me. I admire and appreciate his desire to at all times uphold the Constitution and at all times do what is right, in his view, under the Constitution. That is all we are trying to do here—to do what is right.

We have spent 14 days of full Senate floor time, and compared to other balanced budget amendment debates, we have had far less amendments. So we have given adequate time to these amendments, and we have spent far more time than on prior amendments. But we cannot be governed just by prior debates. I am happy to spend whatever time it takes. I am sure the Senator understands the majority leader is asking me to try to move it along as fast as I can.

Mr. BYRD. Let me say——

Mr. HATCH. I am trying to accommodate the Senator. I will have to ask the majority leader. I felt like it was an attempt to accommodate by giving the Senator most of the time, almost as much as he would get with 2 hours equally divided, while we would try to make our arguments—as feeble as they might be—in a shorter time.

Mr. SARBANES. Why could the Senator not—if the request was 2 hours equally divided and the Senator's suggestion is that the Senator from West Virginia have 1 hour and he have 15 minutes, why would the Senator not agree to the 2 hours and not use all his time if it was not necessary in the debate? I mean, give the Senator from West Virginia time to debate at the time, and you might discover on that occasion that you might need more than 15 minutes. You can always yield back your time.

Mr. HATCH. This is not a demand. This is a suggestion. If the Senator from West Virginia does not agree——

Mr. SARBANES. I was just seeing a way where you could get where you want to go.

Mr. HATCH. Anything that will move the debate forward I am happy to try to do. In any event, we will have to see what the majority leader wants to do next Wednesday. We have that cloture vote, and I am not sure when he is going to have that cloture vote; I am not aware. But we will have to put in a quorum call and decide. I understand the Senator's request, that he would like to bring up one of two amendments——

Mr. BYRD. At this point.

Mr. HATCH. Could the Senator inform us what the other amendment is? I believe you said it is No. 252.

Mr. BYRD. I said it pertained to section 5. That has been discussed all afternoon here.

Mr. HATCH. I thought you mentioned there might be two amendments and you would make your choice between the two.

Mr. BYRD. I mentioned amendment No. 252 and an amendment No. 256. Amendment No. 256 deals with section 5. I believe I have 7 or 8 or 9 or 10 amendments at the desk.

Mr. HATCH. You would choose whichever one you want, but there would be no amendments to the amendment in order by either side?

Mr. BYRD. Well, if cloture is invoked, I suppose if I were able to qualify, or if other Senators were able to qualify, they could have second-degree amendments at the desk.

Mr. HATCH. Unless we agree to a time agreement with those terms. That is what I am asking.

Mr. BYRD. I am not quarreling with the hour that I am to be given. I have had a good bit of time this afternoon. But I think it is indicative of the lack of interest on the part of the proponents in seriously trying to improve the constitutional amendment that is before the Senate when they say, well, we will take 15 minutes, you can have your hour. I know what is going to happen; the amendment is going to be tabled. That is certainly the right of the manager of the resolution, or the leader, or any other Senator.

Mr. HATCH. Will the Senator yield?

Mr. BYRD. Yes.

Mr. HATCH. Surely, I do not believe the Senator is suggesting that I am not taking his amendment seriously or that I have not taken any amendment seriously, is he? I have taken them all

extremely seriously. This is the Constitution we are working on and nobody takes it more seriously than the distinguished Senator from West Virginia, unless it is the Senator from Utah. I would not claim to take it more seriously than the Senator, but I do not think anybody takes it more seriously than either of us. I will try to do my best to answer.

Mr. SARBANES. If the Senator will yield, can I be included in that duo, to make it a trio of people who take the Constitution seriously?

Mr. HATCH. We just do not feel that people on the east coast—I am kidding. Yes.

Mr. SARBANES. Let us make it a trio.

Mr. HATCH. Let us make it 100 of us. We are all serious. The fact of the matter is let us see what we can do to get Senator DOLE to resolve this.

Will the Senator yield for a unanimous-consent request?

Mr. BYRD. Yes.

PROVIDING FOR AN ADJOURNMENT OF THE TWO HOUSES—HOUSE CONCURRENT RESOLUTION 30

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate temporarily lay aside the pending business and turn to the consideration of House Concurrent Resolution Res 30, the adjournment resolution.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. HATCH. Mr. President, I ask unanimous consent that concurrent resolution be agreed to and that the motion to reconsider be laid upon the table.

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

So the concurrent resolution (H. Con. Res. 30) was agreed to; as follows:

H. CON. RES. 30

Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on the legislative day of Thursday, February 16, 1995, it stand adjourned until 12:30 p.m. on Tuesday, February 21, 1995, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the Senate recesses or adjourns at the close of business on Thursday, February 16, 1995, pursuant to a motion made by the Majority Leader or his designee, in accordance with this resolution, it stand recessed or adjourned until noon, or at such time on that day as may be specified by the Majority Leader or his designee in the motion to recess or adjourn, on Wednesday, February 22, 1995, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Speaker of the House and the Majority Leader of the Senate, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, shall notify the Members of the House and Senate, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it.

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

The Senate continued with the consideration of the joint resolution.

Mr. HATCH. I ask that the Senate resume the pending bill.

Mr. BYRD. While the distinguished Senator is making an inquiry of the majority leader, let me just say for the RECORD that the distinguished Senator from Utah talks about this amendment that is presently before the Senate as having had 14 days of debate.

Mr. HATCH. Will the Senator yield, and I will make a unanimous consent request on the Senator's request, if it is all right?

Mr. BYRD. On the request that we have been discussing, yes.

UNANIMOUS CONSENT AGREEMENT

Mr. HATCH. Mr. President, I ask unanimous consent that the time prior to a motion to table amendment No. 252, the Byrd amendment, be limited to 2 hours to be equally divided, and that no amendments be in order prior to the motion to table. As I understood it, the Senator wanted it after the cloture vote?

Mr. BYRD. Yes. Would the Senator provide for the alternative of amendment No. 256, either/or?

Mr. HATCH. Could the Senator give me a copy of amendment No. 256?

Mr. BYRD. I ask that the clerk state, for the edification of the Senate, amendment No. 256.

The PRESIDING OFFICER (Mr. SMITH). The clerk will report the amendment for the information of the Senate.

The assistant legislative clerk read as follows:

Amendment 256: On page 2, lines 24 and 25, strike "adopted by a majority of the whole number of each House."

Mr. HATCH. Would the Senator agree to bring up the amendment and have the 2 hours, if there are two cloture votes, after the second cloture vote, if necessary?

Mr. BYRD. Yes. I have no desire to interfere with cloture votes.

Mr. HATCH. Then let us add either No. 252 or No. 256 to the request. The Senator will have his choice on amendments.

Mr. BYRD. Yes.

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

Mr. BYRD. I thank the distinguished Senator.

May I say briefly that I want to yield to Senator PELL for 10 minutes and then I am going to yield the floor.

The distinguished Senator from Utah—and he is a distinguished Senator—has talked about the 14 days that we have spent on this constitutional amendment. Well, so what? The constitutional Framers spent 116 days—116 days in closed session at the Constitutional Convention—116 days. And now we have spent, the Senator said, 14 days. So what? What is 14 days as between us Senators, 14 days to amend the Constitution in a way which can destroy the separation of powers and checks and balances—14 days.

The other body spent all of 2 days on this constitutional amendment. I believe that is right, 2 days. What a joke! Two days in adopting this constitutional amendment. Why, any town council in this country would spend 2 days in determining whether or not it should issue a permit to build a golf course.

Two days to amend the Constitution.

I will not say any more than that now.

I ask unanimous consent that I may yield to the distinguished Senator from Rhode Island. He has an ambassador waiting on him in his office. I understand he wishes 10 minutes.

Mr. PELL. Thank you very much.

Mr. HATCH. Reserving the right to object, would the distinguished Senator allow me just a few seconds to just make a closing comment on what the distinguished Senator just said?

Yes, they did spend over 100 days to arrive at the full Constitution, without the Bill of Rights. And we have spent 19 years working on this amendment. This amendment is virtually the same as we brought up in 1982, 1986, and last year. We have had weeks of debate on this amendment. It is a bipartisan amendment. It has been developed in consultation between Democrats and Republicans in the House and in the Senate. It has had a lot of deliberation, consideration, negotiation, and debate on the floor.

Admittedly, I am sure the distinguished Senator from West Virginia would agree that the constitutional convention did not debate this on the floor of the Senate at the time, nor would it have taken that much time had there been a debate on the floor of the Senate. But be that as it may, if it had, we are living today with an amendment that is one amendment to the whole Constitution that, if adopted, would become the 28th amendment to the Constitution.

We have spent 14 days on the floor. I am willing to spend more. I am not complaining, and I do want to have a full and fair debate, but I also believe that we are reaching a point where there is deliberate delay here, not by the distinguished Senator from West Virginia necessarily, but I believe reasonable people can conclude that there is a desire to delay this amendment for whatever purpose that may be and that

is the right of Senators if they want to do it.

The majority leader has filed a cloture motion which we voted on today. We had 57 Senators who wanted to end this debate and make all matters germane from this point on. Next Wednesday, we will vote on cloture again. And if there are 60 Senators who vote for cloture, then that will bring a large part of this debate to a closure.

I think I would be remiss if I did not say, on behalf of the majority leader and others on our side who are working hard to move this amendment, that we believe that is a reasonable period of time and we believe that every person here has had a chance to bring up their amendments.

We tried to get to an amendment up last night. We were willing to work later. We could not get one person to put up an amendment.

So we have reached a point where we can go along with more amendments. But once cloture is invoked then only those that are germane will be considered and then only for a limited period of time.

But I just want to make the record straight that this is not a rewriting of the whole Constitution, although it is important and it will have a dramatic imprint and impact on how we spend and how we tax in America from that point on if this amendment is passed through both Houses of Congress by the requisite two-thirds vote and ratified by three-quarters of the States. It is very important. Those who are for it are very concerned about it and those who are opposed are rightly very concerned about it.

We have had a very healthy debate. We intend to continue as long as is necessary to bring this matter to closure. But I do not want anybody thinking that anybody has been cut off here or that anybody has been mistreated or that anybody has not been given their chance to bring up amendments, because they have. We have tabled those amendments. We feel that that is certainly within our right to do that. We have tried to treat every amendment with the dignity and the prestige that it deserves.

Finally, I would like to encourage my colleagues next Wednesday to vote for cloture. Because we all know where it stands. We all know the arguments on both sides. This is not just 14 days. Since I have been here, we are in our 19th year debating this matter, in the Judiciary Committee now four times and stopped a number of other times in the Judiciary Committee before we could even get it to the floor.

So this is not an unusual situation. We actually have worked hard. Everybody here knows what is involved in this amendment. Everybody here knows the arguments against it. And everybody here knows that we voted on some very substantial and very important amendments thus far, and those who are in a bipartisan way thus far have been successful in maintaining the integrity of the House-passed amendment; I might add just one more time, a House-passed amendment for the first time in the history of this country. And I have to say that is historic.

Now we have the opportunity of passing it through here and submitting it to the States. And those of us who support it hope that 38 States will ratify it. We hope all 50 will, but at least 38, three-quarters. And if they do, then this will become the 28th amendment to the Constitution.

But I just wanted to make those points. I am sorry I delayed the distinguished Senator from Rhode Island.

Mr. BYRD. Mr. President, I do not want to leave the record standing as the distinguished Senator from Utah has left it. I believe he indicated he thought there was a deliberate effort to delay.

Mr. HATCH. I said not by the distinguished Senator from West Virginia. I would not impute that to you and I hope that is not the case.

But I do not think many reasonable people would conclude that we have not given an extensive amount of time to this debate. And I think people might conclude that now that we have gone through one cloture vote that there may be a desire of some here to delay this matter from a filibuster standpoint. I hope that is not true. But that is the way it looks to me.

I admit that I am not nearly as experienced here as the distinguished Senator from West Virginia, but I have been here 19 years and I have observed. I can remember the majority leader, Senator Mitchell, calling filibusters filibusters in less than a day. And here we have had 14 days, so it is 3 solid weeks of Senate debate on this, and extensive amendments, although not as many as the 1982, where there were 31 amendments. But we did that in 11 days. I think people could reasonably conclude that there is a filibuster going on.

Mr. BYRD. Mr. President, I disagree with that statement.

The Senator from Utah was not here during the debate on the Civil Rights Act, which lasted 103 days, covered a total of 103 days between the date of the motion to proceed on March 9, 1964, and the date on which the final vote occurred on the civil rights bill on June 19. March 9, June 19th—103 days transpired. The Senate was on the bill itself 77 days and debated the bill 57 days in which there were included six Saturdays.

The Senator implies that there may be a deliberate effort here to delay this measure. Nobody has engaged, that I know of, in obstructionist tactics. Imagine what one could do if he wanted to. There have been no dilatory quorum calls. There have been no dilatory motions to reconsider, and the asking for the yeas and nays on a motion to reconsider, and then put in a quorum call and send for the Sergeant at Arms and have the Sergeant at Arms arrest Members, as I had to do. Nothing dilatory has been done.

Nobody has objected to any time limits on amendments. Not one objection that I know about. I have had every amendment that has been called up here and time request that has been brought to me, brought to me because I am a Senator. I have not objected to any such request.

The majority leader has a right to offer cloture motions. I think he has been fairly reasonable in this situation. He has not been pressing out here daily for action on this constitutional amendment.

I am not against Senator HATCH. I am not against Senator DOLE. I am just against this amendment. Nobody has attempted to deliberately delay this. Let me debunk that idea from any Senator's mind.

I want to see this come to an end. It is going to come to an end. I will have no more to say unless the Senator wants to carry on this bit of subject matter further.

Mr. HATCH. Mr. President, I appreciate my colleague offering that opportunity. All I have to say is that the rules today are considerably different than they were during the civil rights debates when they went 103 days. Cloture can be invoked. There is no such thing as a postcloture filibuster today.

Mr. BYRD. There could be.

Mr. HATCH. But a lot different from the old days.

Mr. BYRD. Does the Senator know why it is different? Because I, as majority leader, laid down certain points of order that were upheld by the then Presiding Officer, and we established precedents that make it much more difficult to carry on a postcloture filibuster.

Mr. HATCH. How well aware I am, and I compliment the distinguished Senator from West Virginia for his knowledge of the rules.

Mr. BYRD. I thank the Senator for that compliment. I hope I have a little knowledge of a few things other than just the rules of the Senate.

Mr. HATCH. I have to confess that I think the distinguished Senator is a fine Senator, a great Senator.

I know that he knows the rules very well and I think he knows the Constitution quite well, although I do think earlier in the day he said there were no amendments dealing with the economy.

Mr. BYRD. No, no. I said no amendments dealing with fiscal policy.

Mr. HATCH. I believe the contract laws, I believe the 16th amendment do deal with fiscal policy.

Mr. BYRD. It does not attempt to write fiscal policy, fiscal theory, about

which Justice Oliver Wendell Holmes said there is no place in the Constitution for fiscal theory.

Mr. HATCH. I agree with that, if you consider that fiscal policy.

Mr. BYRD. I consider this amendment which, by the way, I think contains about 465 words.

Mr. HATCH. It does.

Mr. BYRD. The entire first 10 amendments in the Bill of Rights contain only about 385 words. This amendment alone contains about 465 words. The entire 10 amendments in the Bill of Rights contained only around 385.

What I am saying is this nefarious amendment that is proposed here has only about 80 fewer words than do the 10 amendments to the Bill of Rights. The 10 amendments contain, I think, about 465 words, and this monstrosity contains about 385. So there are only about 80 words difference.

My math may be off a little bit this afternoon. I have not had any lunch, and my feet are getting a little tired.

Mr. HATCH. I am happy to yield the floor.

Mr. BYRD. Mr. President, I ask unanimous consent that Mr. PELL be recognized for 10 minutes, and that he be followed by Senator MURRAY, not to exceed 5 minutes.

I thank Senator HATCH for his gracious manner and his characteristic friendliness and conviviality. He is a fine Senator. I enjoy working with him.

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

MAJORITY RULE

Mr. PELL. Mr. President, I rise in support of the amendment offered by the distinguished and learned Senator from West Virginia [Mr. BYRD] to amend the proposed constitutional amendment to allow a majority, rather than a supermajority to determine when a deficit can be incurred.

The concept of majority rule is so deeply embedded in our society and in almost every organized group proceeding—from fraternal and social groups to corporations large and small and government at the village, county, city, and State level—that many Americans might be very surprised to realize the extent to which the Congress of the United States is sometimes ruled by a minority, and could become more so in the future.

We have before us the balanced budget amendment which contains not just one but two supermajority requirements—one requiring a three-fifths vote of the entire membership of each House to permit outlays to exceed receipts and the other a three-fifths vote of the entire membership of each House to increase the public debt limit.

And we may soon have before us a line-item veto proposal which would subject congressional disapproval of a rescission to a two-thirds supermajority veto override, as opposed to an alternative plan under would a simple majority could block a rescission.

If approved, these supermajority requirements would join others already in place: the Senate cloture rule, the new rule of the House of Representatives on votes of that body to raise income taxes, and the statutory supermajority requirement for waiving points of order under the Balanced Budget and Emergency Deficit Control Act of 1985, better known as Gramm-Rudman-Hollings.

Mr. President, these flirtations with supermajorities are leading us astray from the apparent intent of the wise men who wrote the Constitution two centuries ago. For them the principle of majority rule was so self-evident that they apparently saw no need to state it explicitly.

Since the Constitution provides for supermajorities only in specific instances—such as overriding vetoes, Senate consent to treaties, Senate verdicts on impeachment, expulsion of Members, determination of Presidential disability and amending the Constitution itself—it seems clear that the Framers intended that all other business should be transacted by a majority.

And since the Constitution gives the Vice President the power to break ties when the Senate is "equally divided," Framers again evidenced a clear intent that business was to be transacted by a majority. We carry forward that intent in the structural organization of Congress itself, whereby the party that controls 50 percent plus one seat assumes control.

The time may be coming when the only way to prevent further violence to the Framers intent will be to enshrine this most basic principle of governance—majority rule itself—as a constitutional provision.

Mr. President, I offer these reflections today from the vantage point of 34 years service in this body. As I stated here a few days ago, I have cast 327 votes for cloture during those years, so I am no stranger to the impact and consequences of a supermajority requirement in the Senate.

I would point out, in that regard, that cloture by majority rule would not cancel out rule XXII of the Senate—it would simply lower the margin for invoking cloture to the threshold envisioned by the Founding Fathers for the transaction of business. And we should make no mistake about the fact that the rules of proceedings now have such sweeping substantive effect that they do in fact constitute an important element in the business of the Senate.

Mr. President, in the haste to fulfill the expectations and promises of this new Congress, many of which are of great merit, we must take special care to preserve basic principles of our democracy which may be brushed aside in the rush to reform. The principle of majority rule is the basic cornerstone of the edifice, whether it applies to rules of proceedings or the substance of legislation. It must be preserved and protected from all assaults. Perhaps the time is coming when it too should be enshrined in the Constitution.

I ask unanimous consent that three articles entitled "The Three-Fifths Rule: A Dangerous Game" by David Broder, "Super-Majority Simple-Mindedness" by Lloyd N. Cutler, and "On Madison's Grave" by Anthony Lewis, be printed in the RECORD.

There being no objection, the articles are ordered to be printed in the RECORD, as follows:

[From the New York Times, Jan. 30, 1995]

ON MADISON'S GRAVE

(By Anthony Lewis)

BOSTON.—"Miracle at Philadelphia," Catherine Drinker Bowen called her book on the Constitutional Convention of 1787. And it was a political miracle. The delegates produced a document that has ordered a huge country for 200 years, balancing state and nation, government power and individual rights.

The Constitution has been amended 27 times. Some of the changes have been profound: the Bill of Rights, the end of slavery. But none has altered the fundamental structure, the republican systems designed by James Madison and the others. Until now.

Now the House of Representatives has approved an amendment that would make a revolutionary change in the Madisonian system. It is call the Balanced Budget Amendment. A more honest name would be the Minority Rule Amendment.

The amendment does not prohibit unbalanced budgets. It requires, rather, that a decision to spend more in any fiscal year than anticipated receipts be made by a vote of three-fifths of the whole House and Senate. The same vote would be required to increase the debt limit.

The result would be to transfer to minorities effective control over many, perhaps most, significant legislative decisions. For the impact would not be limited to the overall budget resolution. Most legislation that comes before Congress bears a price tag. If a bill would unbalance a budget, a three-fifths vote would be required to fund it.

In short, a minority of just over 40 percent—175 of the 435 representatives, 41 of the 100 Senators—could block action. It takes no great imagination to understand what is likely to happen. Members of the blocking minority will have enormous power to extract concessions for their votes: a local pork project, a judgeship for a friend. * * *

Just think about the debt-ceiling provision. Even with the best of intentions to stay in balance, the Government may find itself in deficit at any moment because tax receipts are lagging. Then it will have to do some short-term borrowing or be unable to meet its obligations. Instead of a routine vote for a temporary increase in the debt ceiling, there will be a session of painful bargaining for favors.

The amendment is also a full-employment measure for lawyers. Suppose the figures that produce a balanced budget are suspect, or suppose the demand for balance is ignored. How would the amendment be enforced? Sponsors say it would be up to the

courts. So this proposal, labeled conservative, would turn intensely political issues over to judges!

It is in fact a radical idea, one that would subvert majority rule and turn the fiscal debates that are the business of democratic legislatures into constitutional and legal arguments. How did a conservative polity like ours ever get near the point of taking such a step?

The answer is plain. The enormous Federal budget deficits that began in the Reagan years have frightened us—all of us, conservative and liberal. We do not want our children and grandchildren to have to pay for our profligacy. We are not strong-minded enough to resist deficit temptation, so we are going to bind ourselves as Ulysses did to resist the lure of the Sirens.

The binding would introduce dangerous economic rigidities into our system. In times of recession government should run a deficit, to stimulate the economy. But the amendment would force spending cuts because of declining tax receipts, digging us deeper into the recession.

The rigidities of the amendment would also inflict pain on millions of Americans. The target year for balancing the budget, 2002, could not be met without savage cuts in middle-class entitlements such as Social Security and Medicare.

"It's a bad idea whose time has come," Senator Nancy L. Kassebaum, Republican of Kansas, said. "It's like Prohibition; we may have to do it to get it our of our system."

If someone as sensible as Nancy Kassebaum can succumb to such counsels of despair, we have truly lost Madison's faith in representative government. Madison knew that majorities can go wrong; that is why he and his colleagues put so many protections against tyranny in their Constitution. But they also left government the flexibility to govern.

Their design, the miracle that has sustained us for 200 years, is now at risk.

SUPER-MAJORITY SIMPLE-MINDEDNESS

(By Lloyd N. Cutler)

The Republican majority has proposed amending House Rule XXI to require the affirmative vote of three-fifths of the members present to pass a bill "carrying a federal income tax rate increase." If all 435 members show up, 261 votes would be needed for passage. As Post columnist David Broder and Rep. David Skaggs (D-Colo.) have already observed, such a rule would be unconstitutional. Even if it were constitutional, it would still be unworkable.

It would be unworkable because tax bills usually contain multiple provisions reducing some rates of tax, increasing other rates and adjusting the base numbers—e.g., wages, profits and capital gains less various credits, exemptions and deductions—to which these rates are applied. Almost every two-year Congress enacts major tax revision laws to close loopholes, correct inequities, adjust rates, hold down the budget deficit and manage the economy for noninflationary growth.

If the rules are changed to require a three-fifths affirmative vote, it may not be practicable to pass any major tax bill. Any such bill is bound to contain some provisions that can be called tax rate increases. What about a tax bill that reduces rates for incomes below, say, $200,000 and raises rates for incomes above that figure? What about tax bill provisions eliminating charitable or home mortgage interest deductions, or reducing the allowed exemptions for dependents or lengthening the required holding period for long-term capital gains? Any one of these would have the same effect on many taxpayers as an increase in income tax rates. As a result, the proposed three-fifths requirement could well apply to any major income tax revision bill that follows adoption of the proposed rules change.

Let us suppose that a stubborn minority of 175 members will be mustered to prevent a three-fifths majority and thus defeat any bill including some income tax increases. Let us also suppose that a simple majority (218 if all 435 are present) will vote against an amendment that eliminates any such increase. There is still a budget deficit to contend with, and 218 members may think that a broad reduction in income tax rates should be at least partially offset by some tax increases. In that event, no major tax bill could be passed at all, and the government would be unable to make needed changes in national fiscal policy.

With the House floor debate on the proposal about to begin, it may also be useful to spell out the main reasons why a super-majority requirement for the vote on passage of a bill is unconstitutional. In *United States v. Ballin*, decided a century ago, the Supreme Court said that a simple majority governs "all parliamentary bodies," except when the basic charter requires some form of super-majority, which our Constitution does in five cases (plus two added by subsequent amendments) and no others. The seven exceptions are: the overriding of a presidential veto, the Senate's consent to a treaty, the Senate's verdict on an impeachment, the expulsion of a senator or congressman, an amendment of the Constitution, the 14th Amendment vote on removing the disqualification for office of participants in a rebellion and the 25th Amendment vote on whether to allow a disabled president to resume his office. All of these are special cases, not involving the mere passage of a bill or resolution for presentation to the president.

Except in these cases, the Framers were against allowing a minority of either house to block legislative action. That is the reason why Article I, Section 5, states that "a Majority of each [house] shall constitute a quorum to do Business." As James Madison explained, the Framers rejected a proposal that a super-majority be required for a quorum because: "In all cases where justice or the general good might require new laws to be passed, or active measures to be pursued, the fundamental principle of free government would be reversed. It would be no longer the majority that would rule: the power would be transferred to the minority." (The Federalist Papers, No. 58.)

The vote of the House on whether to pass a bill is certainly the doing of "Business." And contrary to the Framers' intent, a super-majority requirement would certainly give a minority the power to rule over such business.

Another constitutional provision confirms this understanding of the Framers. Article I, Section 3, states that the vice president shall be the president of the Senate, "but shall have no vote unless they be equally divided." The Framers must have intended that in the Senate at least, a simple majority was sufficient to pass a bill. The Federalist Papers strongly support this view. According to Hamilton, the vice president was given the tie-breaking vote in the Senate "to secure at all times the possibility of a definitive resolution of that body." (Federalist No. 68.) There is no logical reason why the Framers would have thought differently about the House. And a "definitive resolution" of the House could not be "secured" under the proposed three-fifths rule.

Proponents of a super-majority requirement will make two points in rebuttal. One is to say that they are following a precedent of Senate Rule XXII, which has long required super-majority votes to close debate and proceed to a vote on a bill or an amendment of a Senate rule. As I have argued on a previous occasion, Rule XXII itself is constitutionally suspect. But even if Rule XXII passed constitutional muster, that would not save the proposed House rule. It applies to the up-or-down vote on a bill, while Senate Rule XXII, as its defenders take pains to point out, applies only to a procedural motion to *close debate* on a bill. Here is arch-defender George Will, writing on this page in April 1993:

"The Constitution provides only that, other than in the five cases, a simple majority vote shall decide the disposition by each house of business that has consequences beyond each house, such as passing legislation or confirming executive or judicial nominees."

Will Newt Gingrich flout George Will?

The proponents' second point will be that the Gramm-Rudman-Hollings Act includes Senate and House rules changes that require a super-majority to pass any bill that "breaks" a budget law or resolution previously enacted. This provision is also constitutionally suspect, but at least it lacks the critical vice of making it impossible to enact any budget resolution in the first place. This still requires only a simple majority.

The biggest question of all is why a majority party with 230 of the 435 seats would want to adopt a super-majority rule requiring 261 votes to pass a tax bill. Such a rule could prevent the Republicans from passing a major tax bill favored by a simple majority it could readily muster, even though it might be unable to muster a super-majority of 261. One is tempted to conclude that the present majority party does not expect to keep its majority for very long.

The Republicans have also proposed an even more egregious change in House Rule XXI, one that would prevent the House from even considering any measure that would retroactively increase tax rates, even if three-fifths of the members were in favor. This would deprive the House, and therefore the entire Congress, of its most fundamental express power under the Constitution, the power to lay and collect revenues including taxes on income. It would also have the effect of overruling the numerous Supreme Court decisions upholding the constitutionality of retroactive tax laws, subject only to a due-process standard.

Both of these proposed rules changes are so manifestly unconstitutional that they should not be adopted. If the Republicans use their majority to adopt them anyway, the courts would have ample reason to set them aside.

[From The Washington Post, Dec. 18, 1994]

THE THREE-FIFTHS RULE: A DANGEROUS GAME

(By David S. Broder)

Among many useful and well-designed reforms proposed by the new Republican majority in the House, one suggested change bespeaks neither confidence nor foresight. It is the proposal that future income tax rate increases would require a three-fifths vote for passage.

The purpose is plainly to make it harder for Congress to boost taxes. Since revenue measures must originate in the House of Representatives, the three-fifths, rule would

hamper future majorities in both the House and Senate from enacting such measures.

Some question the constitutional propriety of such a rule. Rep. David Skaggs (D-Colo.) has circulated a letter to his colleagues arguing that "the principle of majority rule has governed this nation for over two centuries and is fundamental to our democracy." Skaggs asserts that the three-fifths rule is unconstitutional. Bruce Ackerman, a professor of law and political science at Yale, has expressed the same view in a New York Times op-ed article. Common Cause and congressional scholar Norman Ornstein also have taken up that side of the argument.

Others disagree. Rep. Jerry Solomon (R-N.Y.), who will be the new chairman of the Rules Committee, argues that when the Constitution says that "each house [of Congress] may determine the rules of its proceedings," the authority is intentionally broad. Lawyers and experts inside congress and out, to whom I put the question, say it would be difficult to predict how the courts would regard such a rule—or even whether they would accept jurisdiction if its constitutionality were challenged.

The experts I consulted agree that there is no precedent for Congress requiring a supermajority for final action on any measure, except where specified by the Constitution. The Constitution says it takes a two-thirds majority to override a presidential veto, ratify a treaty, remove an official from office, expel a representative or senator or propose an amendment to the Constitution.

The other instances in which Congress itself has required more than a majority for some action all involve procedural matters. The House requires a two-thirds vote to suspend the rules and pass a measure without delay; the Senate requires a three-fifths vote to impose cloture or end debate. In the last decade, budget resolutions have required a three-fifths vote to override a point of order against any change that would increase the deficit beyond the agreed-upon target for the year. This is a procedural motion, but it clearly affects the substance of economic policy decisions, and sponsors of the new House rule claim it as a model for their proposal.

But abandoning the principle of majority rule on final passage of a bill is not something the House should do lightly—or rest on a questionable precedent. If the three-fifths rule is intended as a safeguard against rash tax-raising by this incoming Congress, it seems unnecessary. Republicans will have a 25-seat majority in January and they have promised tax cuts, not increases. The president has joined them and so has the leader of House Democrats, Rep. Richard Gephardt (Mo.). So where is the threat?

Fiddling with the rules always arouses suspicion. Two years ago, when the majority Democrats changed the rules to allow the delegates from the District of Columbia, American Samoa, Guam and the Virgin Islands and the resident commissioner from Puerto Rico (all Democrats) to vote on the House floor on everything but final passage of bills, I said they were tampering with the game. Such criticism forced the Democrats to agree that there would be another vote—without the five delegates—on any issue where their votes decided the outcome. The federal courts upheld that version of their rule, saying that the change the Democrats had made was merely "symbolic" and essentially "meaningless."

That cannot be said of the proposed three-fifths rule. It is consequential—and unprincipled. The Republicans themselves juggled the wording to create loopholes for shifting other tax rates by simple majority.

The precedent they will set is one they will come to regret. If this Congress puts a rules roadblock around changes in income rates, nothing will prevent future Congresses with different majorities from erecting similar barriers to protect labor laws, civil rights laws, environmental laws—or whatever else the party in power wants to put off-limits for political purposes.

There is something fundamentally disquieting and even dishonorable about the majority of the moment rewriting the rules to allow a minority to control the House's decisionmaking. You can easily imagine future campaigns in which politicians will promise that if they gain power, they will abolish majority rule on this issue or that—a whole new venue for pandering to constituencies that can be mobilized around a single issue.

This is a dangerous game the Republicans are beginning. And it raises questions about their values. Let them answer this question: Why should it be harder for Congress to raise taxes than declare war? Does this proud new Republican majority wish to say on its first day in office: We value money more than lives?

Mr. PELL. I yield the floor.

Mrs. MURRAY addressed the Chair.

The PRESIDING OFFICER. By a previous order of the Senate, the Senator from Washington is recognized for 5 minutes.

Mrs. MURRAY. Mr. President, I ask unanimous consent to speak as in morning business.

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

DR. HENRY FOSTER, SURGEON GENERAL NOMINEE

Mrs. MURRAY. Mr. President, Dr. Henry Foster has been nominated by President Clinton to be the U.S. Surgeon General. I rise today to express my support for Dr. Foster, and to urge my colleagues to give him a full and fair hearing.

Yesterday, I had the pleasure of meeting with Dr. Foster, and I am very impressed.

Dr. Foster is a physician with vast experience who has dedicated his life to maternal and child health. He is a man who speaks from the heart, a person who cares deeply about the health of families across this Nation.

Dr. Foster is one of the country's leading experts on preventing teen pregnancy and drug abuse, as well as reducing infant mortality. He is a public health professional with vision.

I urge my colleagues to meet with Dr. Foster, to talk with him, to ask him tough questions. I have. I believe they too will be very impressed.

Dr. Foster has tested his ideas about public health interventions that can greatly benefit this Nation. He wants to continue his career-long focus on maternal and child health, on adolescents, and then on prevention of teen pregnancy. He wants to fight AIDS, and combat the epidemic of violence that has taken hold across our Nation.

I also want to stress the importance and relevance of Dr. Foster's practice area. For far too long, women's health concerns have been neglected by this Nation. I am heartened that our next Surgeon General can be a physician who has dedicated his life to women's health—an obstetrician/gynecologist.

Women's health is critical to every family—every man, woman, and child—in this Nation. As a woman, and a mother with a son and daughter, I find the selection of Dr. Foster reassuring. I urge my colleagues to stop and think about the importance of women's health to families everywhere.

I look forward to working with my colleagues on the Labor Committee as they prepare hearings for Dr. Foster. I believe when my colleagues and the American public get to know Dr. Foster, they will be as excited as I am to have him as our Nation's next Surgeon General. You, too, will recognize his honesty, his passion, and his commitment to children and families.

I thank you and yield back the remainder of my time.

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

The Senate continued with the consideration of the joint resolution.

Mr. HATCH. Mr. President, we are now in our 14th day of debate. I was very interested in the chart of the distinguished Senator from New Hampshire, "Statutes Don't Work."

I hear people on the other side constantly saying we ought to just do it; we ought to just balance the budget; we ought to have the guts to do it. Almost invariably they are the people who are the biggest spenders around here. Almost invariably.

It is the biggest joke on Earth, after 26 straight years of not balancing the budget, to have these people tell us, we just have to do it ourselves. That is the biggest joke around here to everybody who knows anything about budgetary policy in the Federal Government.

Do not think the people are stupid out there. They know what is going on. They know doggone well that if we do not have this balanced budget amendment, we will never get fiscal control of this country, we will never make priority choices among competing programs, and we will just keep spending and taxing like never before.

I have heard Senators on the other side of this issue, and some who even support us, beat their breast on how they voted for that large tax increase last year, and that deficit spending thing they did. Anytime you increase taxes, if you can hold on to spending at all, you are going to bring down the budget deficit. The problem is that at best, their approach starts up dramatically in 1996 and really dramatically at

the turn of the century to a $400 billion annual deficit.

These people are always saying we just have to do it. They are the same people who say we could do it with the Budget and Accounting Act of 1921, the Revenue Act of 1964, the Revenue Act of 1968, Humphrey-Hawkins in 1978, the Byrd amendment in 1978. I was here for most of those. From 1978 on, I was certainly here, and I have to tell you, I voted for that Byrd amendment and I was really thrilled. Here is the U.S. Senate, this august body of people who mean so much to this country, voting to say that in 1980, we are going to balance this budget.

Back then, we probably could have if we had really gotten serious about it. But it was almost the next bill that came up that a 51 percent majority vote changed that. The distinguished Senator from New Hampshire really makes a great point here.

The debt limit increase, why, I was here for that, too. We promised, "Boy, we're going to balance the budget."

The Bretton Woods Agreement; again, Byrd II; recodification of title 31; Byrd III; Gramm-Rudman-Hollings, I remember what a fight that was to get that through. My gosh, at last we are going to do something for this country; we are going to get spending under control; we are going to help our country. It helped a little bit, darn little.

We had to go to Gramm-Rudman-Hollings II, II because the little it did help was just too much for these people around here, just too much for these budget balancers who say we simply ought to do it.

Let me tell you, I am tired of saying we simply ought to do it. I heard it from the White House. What do we get from the White House? A budget for the next 5 years that will put us over $6 trillion; that the annual deficits for the next 12 years are $190 billion a year plus.

Now tell me they mean business. No way in this world. This game is up. Those who vote for this are people who are serious about doing something for our country, about getting spending and taxing policies under control. I said spending and taxing. We are not just worried about spending, we are worried about these people who think the last answer to everything is to tax the American people more. And anybody who thinks that last tax policy was just the upper 2 percent, they just have not looked at what they have done. They even taxed Social Security.

People just do not realize because sometimes the big lie is told around here so much that people cannot figure out what is going on. That is why baseball is the No. 1 issue in this country right now. I happen to know. I happen to be in the middle of that one, too. But I have to tell you, as important as baseball is, it is not a fly, a flea on the backside of an elephant compared to what this problem is.

When we went to Gramm-Rudman-Hollings II, that did not work, either. It was a simple statute that we just amended and amended.

We have done some things here. There are some heroes here to me on both sides of the floor who are trying to do their best. I do not mean to find any fault with any individual Senator. We all have our problems. But, by gosh, the point I am making is, we are not going to do it unless we have a fiscal mechanism in the Constitution that requires us to at least make priority choices among competing programs before we spend this country into bankruptcy. That is what this amendment will do. This chart is a beautiful illustration of why statutes do not work. They may work for a short period of time, but sooner or later we are going to spend us just blind again.

In fact, there are those who worry even if we put the balanced budget into the Constitution, there will be some in this body and certainly some in the other who will try to find every excuse they can to get around it.

That is fine. But they are going to have a rough time because a lot of us are going to be here to make sure that there are no ways of getting around it; that we have to face the problems of this country. And right now I have to say we are not facing them. As much as people feel they are, we are not. We are with $200 billion deficits ad infinitum, well into the next century, and we are selling our kids into bankruptcy. It just makes me sick.

Elaine and I have 6 children and 15 grandchildren—the 15th is on its way, but I count that child as if it has been born. It is only a month or so away—15 grandchildren. The fact of the matter is every one of those kids is going to be saddled with irresponsible debt because we keep fiddling while Rome is burning. Our balanced budget tracker poster sure shows that. We are now up to $15 billion in increased debt just in the 18 days we have been on this amendment—18 days.

We have runaway spending in this country. We have a destructive welfare system that is tearing the fabric of our country apart, our families apart, that encourages immorality and promiscuity and children born out of wedlock to the point where today in this country in some cities there are more children born out of wedlock than there are in. As a matter of fact, in some cities in this country there are more kids aborted than there are kids that are born. And you wonder why we are losing our moral fiber? You wonder why this country has problems?

We have a Tax Code that does not work. Everybody knows it. We all feel picked on. Most people in this country hate the IRS. Those are loyal, dedicated public servants just trying to enforce what is a ridiculous set of incomprehensible, massive laws. We can make it simpler. We could put a lot of the tax lawyers out of business and a lot of the tax accountants out of business and get more revenues in the process because people would feel more like paying them because they would be treated fairly.

However, we will not do it because we do not have a fiscal mechanism in the Constitution that requires us to do it, or at least point us in the right direction.

This Washington bureaucracy has grown every year. I get a kick out of some saying how much they are going to cut it back. It just goes on and on at tremendous cost, to the point where welfare in this country, by the time we get our tax dollars set aside for welfare to the people who need them, you have 28 percent of the dollar left, 28 cents on a dollar because it is eaten up right here in the bureaucracy because we will not do anything about it. We have these people standing around saying we will do it; we have the guts to do it. And invariably they are the very same people who are against this amendment. They do not want to do it.

Oh, I should not be so harsh. There are some who really do want to do it, but they just do not have the capacity to do it, and I think we all know who they are. We have to get Washington put together. We have to restore the American dream and give our kids a chance. We have to give our grandchildren a chance.

If there is any big, bloated, amorphous mass I would like to put on a diet, it would be this Federal budget, and I think we would all be better off. We would have more money with which we would be able to do more things. We could expand businesses, have more jobs, actually have more revenues if we just got incentives restored again.

I said early in the debate that the Federal Government could really stand being anorexic for a while. It would probably do this country good. We could cut the fat, cut the waste, get rid of a lot of things that really do not work, and reform and improve those things that do.

Now, if people do not think I know what I am talking about, when I became chairman of the Labor Committee back in 1981, the youngest committee chairman in the history of a major committee, my ranking member was none other than Ted KENNEDY, the distinguished Senator from Massachusetts, with six other very liberal Senators. So there were seven liberals on the Democrat side. We had seven conservatives on my side, plus two liberal Republicans whose hearts, in many ways, were with the liberal Democrats on the committee.

But we were challenged to cut back on the most liberal committee in the Senate's jurisdiction, the most liberal

committee in the Senate. We were challenged to cut back on spending. We went to work. We block granted in part six of the seven block grants. We worked to refine and reform the thousands of programs that they had in that committee. We cut that committee's multibillions of dollars of budgetary jurisdiction by 25 percent in real terms over the 6 years I was chairman, with all of those liberals on the committee. And I have to give Senator KENNEDY and others a lot of credit for helping us to do it. They were willing to work with us. They knew we had the majority and they were fair. But we cut that jurisdiction 25 percent in real terms over those 6 years. And if every other committee in the Congress had done that, we would have had a $150 billion surplus by the end of those 6 years.

So I know what I am talking about. It can be done. And do you know what else? Even though we cut the jurisdiction 25 percent in real terms, because we went to work and reformed the system, reformed those thousands of programs, we actually got more money to more people in better ways than ever before. You cannot tell me we could not do with a good haircut of the Federal Government today in all of these programs.

Almost all of them are well intentioned, almost all of them are well meaning. The fact of the matter is that we are unwilling to do what needs to be done, and the reason we are is not because we are awful people or we are not good people or that it is just Democrats or just Republicans. It is both of us. Frankly, it is because we do not have a fiscal mechanism that encourages us to do it.

Now, this balanced budget amendment is that fiscal mechanism. It is not perfect. I have said it is not. There is nothing that is perfect in the eyes of all 535 Members of Congress. There is no way you can do that. But it is as perfect as we can get—worked on for a decade or more, about 14 years, by Democrats and Republicans. I know; I have been right in the middle of those negotiations every step of the way. And nobody in particular should be able to take complete credit for it or blame for it.

Mr. President, I have to tell you something. It is the hope of millions out there in America, a high percentage of people who may be with the balanced budget amendment and we can get this mess under control.

I just hope with everything I have that we can get those 15 Democrats that we need to vote with us—15 out of 47. That is all we need. Go ahead, 32 of you vote against it, but 15 of you we need to pass this balanced budget amendment. That is all; 52 out of 53 Republicans are going to vote for this. That is really something. I think we will get those 15, and we may even get more. I am going to do everything in my power to see that we do so that we have to face the music, so that we have to face reality, so that we have to understand more than ever before it is time to quit selling the future of our children and our grandchildren down the drain. I want them to have at least close to the opportunities that our generation had when we were coming up and not born in poverty. I just want them to have the same chance.

I notice the distinguished Senator from New Mexico is here. I did not mean to take so much time. I will be happy to yield the floor.

The PRESIDING OFFICER (Mr. BENNETT). The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I spoke yesterday about my concerns regarding the context in which we find ourselves debating the constitutional amendment to balance the budget this year. I would like to take a few minutes of the Senate's time to elaborate on those concerns and to announce how I will vote when this matter comes to a vote, finally, next week.

Mr. President, during the time I have served here in the Senate, from January 1983 until the present, one of the great shortcomings in our national policy has been our failure to pursue sound fiscal policy. During the 1980's and continuing now into the 1990's the Federal Government, each year, has operated substantially in deficit.

During the last 12 years there have been several serious efforts to deal with that problem and I have supported each of those. The deficit reduction efforts in 1987, 1989, 1990, and 1993 have all had my support. Those were deficit reduction efforts under President Reagan and President Bush, and now under President Clinton.

If another serious deficit reduction effort occurs, as I hope it will during this term of my service in the Senate, I expect to support that as well. I share the goal of most Americans to reach a balanced budget at the earliest possible date.

But the question we have to answer is: Will the passage of this amendment in the context it is presented today advance our prospects for achieving sound and fair fiscal policy, or retard those prospects?

As I stated yesterday, the amendment comes to us in a very politicized environment where many of its proponents clearly see the amendment as a way to advance their political agenda of less taxation for certain taxpayers.

In the much discussed Contract With America the Republican leadership in the House of Representatives promised to pass the balanced budget amendment with a three-fifths supermajority requirement for any tax increase. That supermajority requirement was not in fact included in the amendment sent to the Senate by the House in the form of House Joint Resolution 1. However, those who put the Contract With America together have not abandoned their commitment.

There are troubling indications that the effort still goes forward not only to reach a balanced budget, which we all support, but to reach it in a particular way, and to reach it in a way that shields certain Americans from sharing equitably in that pain.

I discussed at length yesterday the House rule adopted before the balanced budget amendment was sent to the Senate—which requires three-fifths supermajority vote to raise income tax rates and income tax rates alone.

Under the House rule other taxes can still be raised by a simple majority—taxes that impact many of the people I represent most heavily—the working families of my State.

The gas tax, for example, the social security tax, various excise taxes. In order for a bill to become law it must pass in both Houses.

This House rule gives the minority in the House a veto over efforts by either House to use the income tax our most progressive tax to raise revenues for deficit reduction.

This rule undermines genuine efforts at deficit reduction. The purpose of this rule is clearly to protect individuals and corporations in the upper tax brackets and to regain any increases in revenue to occur by increases in regressive taxes that affect middle-income families most directly.

I proposed yesterday to amend the proposed constitutional amendment to correct this problem—but unfortunately my amendment was defeated.

So with that defeat, we are faced with a proposed constitutional amendment being presented while the House has in place a rule which makes it clear that middle-income families will likely see their taxes raised to balance the budget—but unlikely that wealthy individuals and corporations will share in that sacrifice to the same extent.

A second troubling indication that the balanced budget amendment is seen by its proponents as a device to pursue a political agenda to advantage certain groups in our society—is the commitment of the Republican leadership in the House to bring the proposed constitutional provision for three-fifths supermajority requirement for tax increases to the House floor for a vote prior to April 15 of next year.

And in fact yesterday there was a colloquy here on the Senate floor where the Senator from Utah agreed to proceed here in the Senate with hearings on a constitutional amendment imposing that same supermajority requirement for tax increases.

So the context in which we are considering this amendment has changed from what it was in previous Congresses. We now are not just talking about how to balance the budget, we

are now talking about writing into the constitution, provisions which will determine whose ox will be gored as we proceed to balance the budget. In this context and with these ground rules in place the people whose ox will be gored are the working people—those who pay the most gas taxes, the Social Security taxes, and those who pay excise taxes.

What are the consequences that would flow from the balanced budget amendment in this new environment with this new change in the House rules.

I believe we can predict three consequences from proceeding with the amendment given percent groundworks.

First, with a three-fifths supermajority requirement in place to raise income taxes it will be much more difficult for us to reach the goal of a balanced budget by 2002. As I stated yesterday, almost all the experts who have looked at the issue seriously agree that a balanced budget will only be reached as other deficit reduction efforts have been achieved, with a combination of spending cuts and revenue increases. And with this provision in place those revenue increases will come from regressive taxes, rather than from the only progressive tax we have, the income tax.

Second, if we do take steps to reach a balanced budget, with that supermajority for income tax increases in place, most of the burden of deficit reduction will fall on working families who can least afford to carry that additional burden.

And the third consequence is that States like my home State of New Mexico with relatively low per capita income will be those most badly hurt.

At this very time our State legislature in Santa Fe is struggling with the question of a gasoline tax. A balanced budget amendment adopted, with the House Rule in effect protecting incomes taxes from change, almost certainly ensures that we in Washington will be adding substantially to the gas tax as one of the only available sources of revenue. The same can be said of Social Security taxes and other regressive taxes.

Mr. President, if I represented a wealthy State with many high income taxpayers, I could see an argument for why I should vote for the amendment—in spite of the House rule. But my State is not wealthy and we have very few taxpayers who will be treated fairly under this new set of ground rules.

CONCLUSION

Mr. President when the final vote is called on the balanced budget amendment next week I will vote "no."

I will do so because I believe we should leave the question of how to achieve sound fiscal policy to a vote of a majority here in Congress at any particular time. We should not try, by rule or other provision, to determine how future Congresses choose to reduce the deficit: We should not dictate whether they cut spending or raise taxes. We should not try to predetermine for future Congresses which group of taxpayers will pay the taxes and which group will suffer the spending cuts.

The Framers of the Constitution were wise to limit the use of the supermajority requirement in the Constitution. They chose to leave the Constitution neutral as to how we accomplish sound fiscal policy at any particular time in our history. We are well advised to defer to their good judgment on that subject, to cease our efforts to solve this problem by changing the Constitution, and, instead, to solve it as all previous generations have, by demonstrating the political courage to make unpopular decisions about spending cuts and taxes.

Mr. President, I yield the floor.

Mr. DORGAN addressed the Chair.

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

The PRESIDING OFFICER. Does the Senator withhold his quorum call request?

Mr. BINGAMAN. I withhold.

Mr. DORGAN. Mr. President, I understand the Senate is near the completion of its business today. I will not take a great length of time, I was intending to offer today an amendment but I was intending to offer an amendment today and now obviously I intend to offer an amendment when we reconvene, whenever that might be, on this constitutional amendment to balance the budget.

I spoke the other day on the floor of my concern about the process by which we are selecting a new Director of the Congressional Budget Office. I made it clear when I spoke that it is not my intent to tarnish the image of the person who apparently has been advanced as the one to be selected. I do not know the person. I do not have a judgment about the person's qualifications because I have not met with that person. But I certainly have a judgment about the way this process has worked and I am concerned about it, and sufficiently concerned that I want the Congress to be able to evaluate this appointment in a more considered way.

This is not just the usual appointment. It is not just a run-of-the-mill appointment. The head of the Congressional Budget Office, in effect, becomes the referee on a wide range of budget questions and on a wide range of scoring issues. As all of us know, how a proposal is scored can have an enormous impact on whether or not that proposal meets with favor or disfavor in the U.S. Senate. For example, one might say, "I have a certain budget proposal that recommends certain things." And CBO says, "Well, we would score that in a dynamic way, or a static way." You would reach very different results perhaps. So you develop scoring rules, and how you select the people to perform these duties is very, very important.

I can remember in 1981, the first year I served in the Congress, in which we had some very dynamic scoring by the Office of Management and Budget. David Stockman, a fresh, new face, was selected to head the Office of Management and Budget. They came up with a strategy that said, "Well, if we do the following things, we will produce enormous new revenue, and we will balance the budget by 1984." He subsequently wrote a book after he left the Government that said none of that was realistic and it was a horrible mistake. I have sometimes used quotes from his book because he gave an interesting insight into what the mindset was when they were using these dynamic scoring approaches to come up with these results. It seemed wildly unrealistic at the time anyway. But, nonetheless, dynamic scoring was used to justify a new fiscal policy.

The point is we have been through periods where people have developed new scoring approaches, new devices, that have been unrealistic and have caused this country great problems and left us with significant debt and deficits. Especially given this constitutional amendment to balance the budget and the vigorous battles that will occur, I am sure, over budget resolutions that come before the Senate, our referee, the Congressional Budget Office, must be led by someone who commands universal respect, someone whose methods do not lead to questions about judgment.

Again, I do not know the circumstances of the person who has apparently been tapped to be the new Director of the CBO. So I do not know whether that person meets this test. But I do know this: We have had people who have led the Congressional Budget Office—Alice Rivlin, Rudy Penner, Bob Reischauer—all of whom, Members of the Senate would almost universally say, are people at the top of their field whose impartiality allows them to call them as they see them. These previous Directors have, I think, received nearly universal respect and support.

The selection of these three Directors was generally a process in which the two parties together make a judgment. In fact, I am told—I will not recite the chapter and verse on this, I will do that later—that previously the minority had difficulty with several candidates, and really, said, "Well, this is not acceptable to us." And that just meant that candidate did not go forward. That was the way it was because there was a need to develop a consensus on a candidate.

I am told that this process on this candidate resulted in an announcement in the House of Representatives, of who the appointee would be, prior to the ranking minority member in the House

Budget Committee ever meeting the person. That is not a process, it seems to me, that is consultative. That is not a process in which both sides have come together to jointly figure out who has the stature and the ability and the authority to do this job.

So I am concerned about the process. I do not think this is the right process. I really think with the Director of the Congressional Budget Office, there ought to be a resolution of approval by both the House and the Senate. I know that is not the current circumstance. But I intend to offer an amendment that would require that. I hope very much that at this juncture the majority would not appoint a Director at this point until I have had an opportunity to offer the resolution. I probably will offer it and discuss it on this amendment, although it would be better to offer it to the very next bill that comes to the floor of the Senate after the balanced budget amendment.

But I, as others, am concerned and want to speak on it. I want to make a case about the process. My case is not a case that says this person is the wrong person. I do not know. But I know that whoever heads CBO is going to have an impact on my legislative life and an impact on the legislative life of everyone in this body and in the House. And I would like very much for the selection of the new head of the CBO to be a selection that represents a consensus between the majority and the minority; a consensus on two points:

First, that this person is someone of great quality, who is at the top of the field and has the credentials to command respect;

And, second, that this person is someone who will provide an impartial analysis of the type that we have been used to.

I must admit that I, like probably the Senator in the chair, have from time to time had to hold my brow as I received something from CBO. I have said, "Lord, I do not agree with that. That is not the answer I was looking for." But I respect Mr. Reischauer. I respect Mr. Penner. I respect Alice Rivlin. I do not know the current candidate. And I am not making judgments here. But I am making judgments about the process. This process is wrong. It is a flawed process when we have circumstances where the appointment is announced prior to the minority ranking member even being able to discuss particulars with the candidate.

I am not going to talk about the process on the Senate side. But I do know that the minority on the Senate side of the Budget Committee sent a letter saying we think we should look further for other candidates. So they obviously were making some kind of a judgment. I think that we ought not proceed until we have responded to this as a body. I hope very much that prior to my offering the amendment when we return, that the majority will not proceed to make this appointment.

Again, let me emphasize for the third time as I take the floor that I do not intend to make a judgment about this candidate at this point. I may at some point. But I do not know enough to make a judgment. I know what I have read in the papers. I have been in politics long enough to understand that that is not enough. I want to understand the facts. I want to understand the circumstances and the quality of this candidate. But I also want to understand that when we finish this process the selection of this very important person will be a selection by consensus among the majority and minority of the House and the Senate. I do not think that is the case today.

So, I had intended to offer this amendment today and because other amendments took most of the day, this will be put over until next week, or whenever we return—I guess the first legislative day when we return. But I wanted to take the floor at this moment to alert my colleagues that I intend to do this, and to urge the majority not to proceed until we have had a chance to express ourselves on this issue.

Mr. President, I appreciate the Senate's indulgence.

I yield the floor.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, I would like to talk as we end this third week of debate on the balanced budget amendment about the importance of this vote and what it really means to America.

I have listened for the last 3 weeks to the debate, and I want to say that I think we are in a filibuster. I think there can be no doubt of it. Our leader has been patient. Senator DOLE wanted everyone to have an opportunity to have his or her say to talk about the issue, because it is a major issue. It is probably the most important vote I will ever make in my career.

I think the leader has given ample time for every person to talk about views, to differ on views, and to put in amendments. I think Senator HATCH and Senator CRAIG, who are the distinguished managers of this joint resolution, have been very patient. But this is a filibuster, and there is a fundamental difference about whether we should move forward with the mandate that we have to change the things we have been doing in Washington, or whether we are in fact doing what we have been doing year after year after year in this Congress—that is, spending beyond our means. That is what has been happening.

We are at the end of the third week of debate. All of us who support the balanced budget amendment thought we would be finished, thought we would leave town for a 3-day recess knowing that we had done the most important thing we could do for the future of our children and grandchildren. But we are not there yet. We are not there because there is a fundamental difference and because many who disagree with the balanced budget amendment have decided to delay it through filibuster.

I support the right of everyone to delay. That is part of the Senate rules. But I think it is time to call it what it is. I think it is time that people realize this is a delaying tactic, that we are no longer into substantive differences—and reasonable people can differ—we are into trying to delay what clearly the majority of this body wants to do, and that is to say that we are going to amend this Constitution and say to future generations: You are not going to have to pay our bills.

Every baby that is born into this country has an $18,000 debt to pay. That is what we have racked up with our over $4 trillion of debt. Some people say, "Let us do it by statutes. We can pass laws, we can act responsibly." And, of course, we point out that over the last 30-plus years we, in fact, have not been able to do that. So if you put the practical experience in the mix, it is clear that we are not going to do it by statute.

But let us talk about what is the role of the Constitution of our country. The Constitution of our country should not be something that we can do by statute. It should be the framework of our Government. It should be what we think the parameters of our Government should be, not for the 104th Congress, but for all the Congresses in the future—something that is so well settled in our policies that it should not be subject to change. That is what we are debating, whether we will amend our Constitution with a fundamental policy decision that should not be changed by future generations.

Mr. President, that is what a balanced budget amendment is, and it does meet the test. It should be a fundamental policy of this country that we will not spend money we do not have, unless we are in a crisis, in a war, and that is the exception—the one exception—that all of us would agree to. Other than that, we are not going to spend money we do not have for programs that we would like, for programs that are good programs, but programs we do not have the money to pay for.

It comes down to the fundamentals that every State, every city, every business, and every household in America understands, and that is: I would like to take my family to dinner tonight, but maybe I do not have the money to do it and I have to make that decision based on whether I have the discretionary money to do it. I would like to send my child to college. Do I

have the funds to do it? I would like to have many things that, perhaps, I cannot afford and therefore I do not acquire. That is a fundamental decision that every American makes every day. The only American institution that really does not is the United States Government. That is a fundamental policy that we must put in place that should not change with the wind or the times—that is, that my priorities are more important than the priorities of future Congresses.

I think it is very important, as we leave today for this recess, that the people of America understand that this is a filibuster. The people who are doing it have the perfect right to do it, but they are delaying this vote; they are delaying what I think the people of America want, what they have said repeatedly they want, and that is for us to start the very tough process of balancing our budget over the next 7 years, so that by the year 2002, if we start right now, we will be able to then begin the adventure of being able to pay back the $4 trillion debt, so that we will not be in that continuing deficit position.

In fact, I think that if we do not act on this in the next week when we get back, it is not that it will pass in time and we will not pass it ever again. I disagree with people that say this is our only chance. I think if we do not pass it this time, we will have a bigger mandate in 1996 and we will pass it. The difference will be, Mr. President, that we will have 2 more years of accumulating debt, and we have seen the charts for the last week showing every day that we have been debating and talking and talking in the Senate debating society, the debt has gone up because we have not begun to turn that ship on a different course.

So if we do not do it this year, we will do it 2 years from now, 3 years from now, because we will have the mandate. But we will have missed 2 years of opportunity to begin this process of responsibility for our future generations. That is what we will miss if we fail to do so.

So as we leave these hallowed halls, I hope all of us will think carefully about the monumental decision that we will make next week to stop this filibuster, to stop the delays, to stop the nuance differences and say that we are going to take this first step of amending the greatest Constitution that has ever been written in any society in all of civilization; that we are going to amend it with a fundamental policy decision of responsible spending, to protect our future generations from our decisions, which may not be theirs.

So it is a great opportunity for us, and I hope all of us will go home and come back next week ready to make the decision that is ours to make, to change the course of this country and begin the process of responsible governing.

Thank you, 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. BREAUX. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded, and I be allowed to speak out of order.

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

OIL RELIANCE THREATENS NATIONAL SECURITY

Mr. BREAUX. Mr. President, and my colleagues, I would think that if any government is presented with evidence that their country is under a national security threat that they would institute immediately a full-scale investigation to determine what the threat is and what action is needed to prevent that threat from becoming an all-out emergency, or a conflict that we could not ultimately solve. That is the purpose of government. Ultimately to protect the security of the citizens of our country.

Therefore, when I read a release that I received today from the United States Department of Commerce which clearly states that they have made a finding that growing U.S. reliance on oil imports threatens the national security of the United States by making it vulnerable to interruptions in foreign oil supplies, I would immediately gather all of my advisers around me and say, "All right, what are we going to do about this?"

I am deeply disturbed that as I read the release and talk to people who know about this problem and find that, essentially, nothing is being done. I think we as a Nation are making a terrible mistake.

Let me try and point out what I think the problem is in a very clear fashion. If we in this Nation were suddenly told that we are now importing 50 percent of all of the food that we consume in this country, and much of it from nations that are very undependable as far as being allies of the United States, I would predict that the next day there would be lines of people surrounding the White House and surrounding this Capitol saying, "My goodness, this is a terrible threat that we are now having to import half of the food that we consume from countries that are not dependable as allies of the United States."

Yet this is exactly what is happening when it comes to energy security. I will tell Members how this came about, Mr. President. That is, that the Department of Commerce, under existing rules and regulations, were responding to a petition that was filed by the Independent Petroleum Association of America that was filed on March 11, 1994, alleging that "Increasing U.S. dependence on foreign oil threatened the national security of the United States."

They pointed out in their request that imports of crude oil products were estimated through 1994 to average 8.8 million barrels of foreign oil coming into the United States every day. This represents a 200,000-barrel-a-day increase compared to 8.6 million barrels a day in 1993.

The estimated import ratio has now, for the first time ever, broken the peril point level of 50 percent of foreign imports coming into this country.

There is no dispute about that fact. The IPAA presented information. No one objected to that. The Commerce Department finds, after looking at all this information, clearly that U.S. reliance on oil imports now threatens national security by making us vulnerable to interruptions in foreign oil supplies.

The Commerce Department recommended, however, that the President not use his authority that he has under section 232 of the Trade Expansion Act of 1962 to adjust these foreign oil imports through the imposition of tariffs, because the economic costs of such a move outweigh the potential benefits and because current administration energy policies will limit the growth of imports.

Mr. President, I disagree with that, and I disagree with it strongly. I think current administration energy policies in this administration, in the last administration and in the administration before that, in Republican administrations and in Democratic administrations, have clearly allowed us to get to the point where today we are importing half of the oil that we use in this country.

I guess it has been an easy thing for administrations to do because we have been getting cheap oil, but does anybody remember what happened in the early 1970's when we had lines of Americans sitting in their cars waiting to buy the precious gas that was left at the stations to run their cars and run this country? Because at that time, the Middle Eastern oil suppliers turned the faucets off just a little bit and literally brought this country to our knees, because at that time, we were importing about 30 percent of the oil we use.

Today, we are importing 50 percent, and just turning that faucet a little bit in 1995 will bring this country to our knees in a much more serious fashion than we were brought to our knees in 1973.

Unfortunately, it seems that all the administrations since then did not learn the lesson, and the lesson is very simple: That we should never be dependent on something that is important to our national security; we should never be dependent on other nations to supply it, particularly nations that are not necessarily our friends nor

our allies, that we cannot trust to be reliable when we have a need for a product that they have, whether it be food, as I mentioned earlier, or whether it be energy to run our plants, our factories, to heat our homes, to cool our homes in the summer, to run our cars, to run our trucks, to keep up with the commerce demands of a great Nation.

Yet today, for all of those needs, we are now dependent on foreign nations for over half of those energy needs. And the thing that bothers me the most is that after recognizing that there is a national security threat—and these are not my words, these are the words of the Commerce Department when they made the findings—that the situation today presents a national security threat to the United States but we are not going to do anything in terms of setting a tariff to try and reduce the amount of imports coming in in order to encourage greater domestic exploration and production right here in this country.

I think that that is something that is not acceptable, because there are some things that we can do. I do not suggest that maybe oil import tariffs are the only answer. I have advocated them for a number of years. But there are a lot of other things that they could have said we are going to recommend that needs to be done, other than just saying we are going to rely on current policy. Because, folks, it is clear that current policy has us in the predicament we are in. Current policy has allowed us to have imports increase up to the point where they now constitute 50 percent of all the energy we have in this country.

Imports increased this year from last year by 200,000 barrels a day more than the year before. That is under current policy. And to say that we are going to continue to stay with current policy, there is no trend line to suggest that is going to solve the problem. The trend line is that imports will continue to increase under current policy.

So I suggest to my friends in this administration that they take the Commerce Department's findings that there is a national security threat to make some recommendations on new things that should be done in order to prevent a national catastrophe from falling on this country.

I suggest that there are a number of things that I would have hoped that the administration would have been able to say we are recommending instead of maintaining the status quo.

First, they could have recommended that the administration will actively support what the industry calls geological and geophysical expensing, which simply says that oil and gas operators in this country would be able to expense the cost of exploring and producing a well, whether that well is a dry well, a dry hole, which they can do now, or whether it is a producing well. That would encourage a substantial increase in domestic production in this country to reduce that 50 percent number to what would be a more acceptable number.

I look over the recommendations and that is not there.

They could have, second, suggested that we move toward and support OPRA 90 reform. OPRA is the Oil Pollution Act that this Congress passed in 1990, but the way it is being implemented is not the way this Congress intended it to be implemented, and legislation is necessary to clarify what we meant. Here is the simple problem:

Congress never intended when we passed that Oil Pollution Control Act that onshore facilities would have to carry insurance of $150 million per well. We were talking about major offshore activity that had the potential to pollute if a catastrophic event occurred. We never intended that any facility onshore that may be very, very small, with only very limited potential to cause any pollution, would also have to have $150 million of liability insurance. But that is how our folks in the bureaucracy have interpreted it.

An amendment, a legislative fix for this problem would allow independent operators who produce oil onshore to do it in a fashion that they could afford. We are going to run independents out of business if we do not do something legislatively to fix this problem. That would have been the second thing that could have been recommended and should have been recommended.

The third is to have recommended some type of broad-based royalty reform to encourage exploration and production in difficult areas where it is more expensive to find oil, where many times a day it costs more to explore than it would pay them if they found a producing well, because the price of oil per barrel, partly because of cheap foreign imports, is less than it costs to find that oil. Broad-based royalty relief would have made a major impact on helping to increase domestic production. But there is no recommendation for that type of activity.

The fourth is to do something about the Alaska export ban on oil that is produced in Alaska. When Congress passed that law saying that oil that is found in Alaska could never be exported outside the United States, it probably made sense at that time. But it does not make sense today.

If oil from Alaska can be sold in other areas at a higher price, it would give companies greater amounts of money to explore for and find additional fields domestically in North America—in Alaska, in the gulf coast area—which would increase the domestic production and thereby lower that 50 percent import figure that we have.

Mr. President, not one of those proposals, not one of those initiatives is found in the Commerce Department's finding and recommendation as to what should be done.

I will just close by saying that it is insufficient, in my opinion, for a department of our Government to make a finding that there is a national security threat to this Nation, which they have made, and then to say we are not going to recommend anything new to address that threat. That is an abdication of responsibility. It is unacceptable. This Member, and I know other Members, will take their finding and offer constructive suggestions to, in fact, address what is now clearly established as a national security threat to the United States of America.

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

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

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION.

The Senate continued with the consideration of the joint resolution.

Mr. CONRAD. Mr. President, I will be very brief so that colleagues will know that we can end the day, especially the desk staff will know that they can get home to their loved ones.

I did want to bring to the attention of my colleagues that yesterday in the Budget Committee, when Secretary Christopher was there, inadvertently a Republican staff document was attached to part of his testimony and was handed out. I might say that it is a very interesting document. The document that has been prepared by the majority on the Budget Committee shows function 150, International Affairs. It is headlined, "Fiscal Year 1996 Balanced Budget Resolution." Down in the corner it says, "For Internal Purposes Only." But it was handed out inadvertently.

What I think is interesting about this document is it suggests that the majority has a plan to move towards a balanced budget, and I commend them for that. I hope they do have a plan. But I would say to my colleagues that if they have a plan, then we should revisit the question of the right to know provision that we sought to add to the balanced budget amendment.

We sought to add a provision that called on the Republican majority to produce their plan on how they intended to balance the budget so that the States could be advised of that before they had to vote to ratify it, and so that our colleagues who are about to vote on a balanced budget amendment could know what was the outline of the plan.

The Republican majority resisted that right-to-know effort by saying they could not say what a long-term plan was because there were so many things, it would be hard to determine and hard to project and hard to forecast. And yet we find in this document, which was released inadvertently, that at least with respect to one function of the budget they do have a detailed plan, very specific as to what they have in mind; terminating a set of programs, reducing other programs in order to reduce the 150 function, which, of course, is the international affairs function.

This suggests at the very least that other functions for other areas have a plan, something that is in the works, something that is available, that could provide some guidance as to where the majority is going with respect to a plan to balance the budget over the next 7 years.

I would just say to my colleagues that if in fact there are plans for other functional areas, as there clearly is for the international affairs section, we ought to have a chance to see it. We ought to have a chance before we vote on a balanced budget amendment. The American people ought to have a chance to see what the plan is.

What does the Republican majority have in mind for how they intend to balance this budget? I think that would certainly influence some votes in this debate.

Let me just say that I am one Member who is undecided on the question of how I will vote on a balanced budget amendment. I am not being coy. I am seriously undecided at this point. I want to see what is the final provision on which we will vote.

Let me just add that I am absolutely convinced we must balance the budget in the next 7 years. It is absolutely imperative that we do so. Whether we have a balanced budget amendment to the Constitution or not, this Senator believes we have to balance the budget because we have a window of opportunity here before the baby boomers retire, at which time Government spending will skyrocket. And that will put enormous pressure on the economy of this country.

So we have a chance here in the next 7 years to get our fiscal house in order. That must be done. But I have reservations about the elements of this constitutional amendment in terms of the provision that would provide for looting the Social Security trust fund in order to balance the operating budget, the involvement of courts. The last thing I wish to see happening is the Supreme Court of the United States writing the budget of the United States. No judge was ever elected to do that.

I am also concerned about the lack of a capital budget. The vast majority of States that have a balanced budget requirement provide for a capital budget. You can pay for big investments over a period of time. That is what State governments do. That is what we do in our own personal lives. I know very few people who buy a house for cash. Most people take out a mortgage.

So those are, I think, legitimate concerns. But beyond that, I think we also have the question of how we do it. How do we balance the budget? And if our Republican colleagues, in fact, have a plan, one that they have not released and not revealed—and I think the fact that they clearly have one with respect to one function of the budget suggests they probably have it for other functions of the budget—that is something that could form the basis for an important discussion and debate about how we accomplish a balanced budget.

Let me just conclude by saying I would very much like to see us structure a means to require both sides to put down a plan to balance this budget simultaneously.

What is going on is we have a bit of Alphonse and Gaston, the chicken and the egg; nobody wants to go first. And I am working on legislation now that would require us, if the balanced budget amendment fails, to have the budget committees of both Houses and the President put down a plan to balance the budget over the next 7 years and to lay it down by May 1—have both sides be required to come to the table and lay down their plans to balance the budget. It is clear to me now the Republican majority is working on such a plan. Perhaps they have one completed, at least in preliminary outline. I think it would be very important for that to be shared with our colleagues and with the rest of the country as we consider this very important matter of a balanced budget amendment to the Constitution.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded 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.

SENATOR J. WILLIAM FULBRIGHT

Mr. BYRD. Mr. President, I was sworn in as a Member of this body on January 7, as I recall, 1959, the 1,579th Member to have been elected or appointed to the Senate since its beginning on March 4, 1789. As of today, 1,826 men and women have borne the title of United States Senator. When I came to the Senate, some of the other Members were Clinton P. Anderson of New Mexico, Styles Bridges of New Hampshire, Paul Douglas of Illinois, Allen Ellender of Louisiana, Hubert Humphrey of Minnesota, Lyndon Johnson of Texas, Estes Kefauver of Tennessee, Richard Russell of Georgia, Lister Hill of Alabama, George Aiken of Vermont, Everett McKinley Dirksen of Illinois, Carl Hayden of Arizona, Wayne Morse of Oregon, Harry Flood Byrd, Sr. of Virginia, Spessard Holland of Florida, Henry Jackson of Washington, John F. Kennedy of Massachusetts, William Langer of North Dakota, Robert Kerr of Oklahoma, and others, including J. William Fulbright of Arkansas.

All of these men have now passed from this earthly stage and gone on to their eternal reward. The last of these whom I have mentioned, Bill Fulbright, died last week.

J. William Fulbright was born in Sumner, MO, on April 9, 1905, and moved with his parents to Fayetteville, AR, the following year. He attended the public schools in Arkansas and graduated from the University of Arkansas at Fayetteville in 1925; as a Rhodes Scholar from Oxford University, England, in 1928, and from the Law Department of George Washington University, here in Washington, DC, in 1934. He was admitted to the District of Columbia Bar in 1934, and served as an attorney in the U.S. Department of Justice, Antitrust Division, in 1934–1935. He was an instructor in law at the George Washington University in 1935, and he was a lecturer in law at the University of Arkansas during the years 1936–1939. He served as President of the University of Arkansas from 1939 to 1941. He was engaged in the newspaper business, in the lumber business, in banking, and in farming, and was elected as a Democrat to the 78th Congress, where he served from January 3, 1943, to January 3, 1945. He was not a candidate for renomination to the House, but was elected to the United States Senate in 1944, and re-elected in 1950, 1956, 1962, and in 1968, where he served until his resignation on December 31, 1974. He was an unsuccessful candidate for renomination in 1974. He served on the Committee on Banking and Currency in the Senate and on the Committee on Foreign Relations.

Bill Fulbright was an outstanding Senator. He served with many other outstanding Senators, some of whom I have named as having ended their sojourn in this earthly life, and there were other extraordinary men such as John Pastore of Rhode Island, Mike Mansfield of Montana, and Russell Long of Louisiana, all of whom are still among the living. But I have taken the floor today to say that one by one, the old landmarks of our political life have passed away. One by one, the links which connect the glorious past with the present have been sundered.

"Passing away!
'Tis told by the leaf which chill autumn breeze,
Tears ruthlessly its hold from wind-shaken trees;
'Tis told by the dewdrop which sparkles at morn,
And when the noon cometh

'Tis gone, ever gone."

It was my pleasure to serve with Senator Fulbright. I always held him in the highest esteem. He was a gentleman with great courage and unwavering patriotism, a wise and courageous statesman, affable in his temperament, and regarded as one of the outstanding lawyers in the Senate and one of the best informed upon questions regarding international affairs. He was both morally and intellectually honest, simple in his habits, and devoid of all hypocrisy and deceit. He never resorted to the tricks of a demagog to gain favor and, although he was a partisan Democrat, he divested himself of partisanship when it came to serving the best interests of his country. Peace to his ashes!

The potentates on whom men gaze
When once their rule has reached its goal,
Die into darkness with their days.
But monarchs of the mind and soul,
With light unfailing, and unspent,
Illumine flame's firmament.

Socrates, Plato, Aristotle, Cicero, and other great Grecian and Roman philosophers, by pure reason and logic arrived at the conclusion that there is a creating, directing, and controlling divine power, and to a belief in the immortality of the human soul. Throughout the ages, all races and all peoples have instinctively so believed. It is the basis of all religions, be they heathen, Mohammedan, Hebrew, or Christian. It is believed by savage tribes and by semi-civilized and civilized nations, by those who believe in many gods and by those who believe in one God. Agnostics and atheists are, and always have been, few in number. Does the spirit of man live after it has separated from the flesh? This is an age-old question. We are told in the Bible that when God created man from the dust of the ground, "He breathed into his nostrils the breath of life, and man became a living soul."

When the serpent tempted Eve, and induced her to eat of the forbidden fruit of the tree of knowledge, he said to her, "ye shall not surely die."

Job asked the question, "If a man die, shall he live again?" Job later answered the question by saying, "Oh, that my words were written and engraved with an iron pen upon a ledge of rock forever, for I know that my redeemer liveth and someday He shall stand upon the Earth; and though after my skin worms destroy this body, yet in my flesh shall I see God; whom I shall see for myself and mine eyes shall behold, and not another; though my reins"—meaning my heart, my kidneys, my bodily organs—"be consumed within me."

Scientists cannot create matter or life. They can mould and develop both, but they cannot call them into being. They are compelled to admit the truth uttered by the English poet Samuel Roberts, when he said:

"That very power that molds a tear
And bids it trickle from its source,
That power maintains the earth a sphere
And guides the planets in their course."

That power is one of the laws—one of the immutable laws, the eternal laws—of God, put into force at the creation of the universe. From the beginning of recorded time to the present day, most scientists have believed in a divine creator. I have often asked physicians, "Doctor, with your knowledge of the marvelous intricacies of the human body and mind, do you believe that there is a God?" Not one physician has ever answered, "No." Each has answered, readily and without hesitation, "Yes." Some may have doubted some of the tenets of the theology of orthodoxy, but they do not deny the existence of a creator. Science is the handmaiden of true religion, and confirms our belief in the Creator and in immortality.

"Whoever plants a seed beneath the sod
And waits to see it break away the clod
Believes in God."

Mr. President, as Longfellow said, "It is not all of life to live, nor all of death to die." Rather, as Longfellow says:

"There is no death! What seems so is transition;
This life of mortal breath
Is but a suburb of the life Elysian,
Whose portal we call death."

Mr. President, life is only a narrow isthmus between the boundless oceans of two eternities. All of us who travel that narrow isthmus today, must one day board our little frail barque and hoist its white sails for the journey on that vast unknown sea where we shall sail alone into the boundless ocean of eternity, there to meet our Creator face to face in a land where the rose never withers and the rainbow never fades. To that bourne, from which no traveller ever returns, J. William Fulbright has now gone to be reunited with others who once trod these marble halls, and whose voices once rang in this Chamber—voices in this earthly life that have now been forever stilled. Peace be to his ashes!

I recall the words of Thomas Moore:

"Oft, in the stilly night,
Ere slumber's chain has bound me,
Fond Memory brings the light
Of other days around me:
The smiles, the tears
Of boyhood's years,
The words of love then spoken;
The eyes that shone,
Now dimm'd and gone,
The cheerful hearts now broken!
Thus, in the stilly night,
Ere slumber's chain has bound me,
Sad Memory brings the light
Of other days around me.

When I remember all
The friends, so link'd together,
I've seen around me fall
Like leaves in wintry weather,
I feel like one
Who treads alone
Some banquet-hall deserted,
Whose lights are fled,
Whose garlands dead,
And all but he departed!
Thus, in the stilly night,
Ere slumber's chain has bound me,
Sad Memory brings the light
Of other days around me."

Mr. President, I yield the floor. 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. MURKOWSKI. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. SNOWE). Without objection, it is so ordered.

Mr. MURKOWSKI. Madam President, I ask unanimous consent to speak as in morning business for a reasonable period.

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

INCREASED DEPENDENCE ON IMPORTED OIL

Mr. MURKOWSKI. Madam President, I just have been advised of the release by the White House of the Department of Commerce's findings concerning the question of our increased dependence on imported oil. Today in that report, our President reported to the Congress that, indeed, our growing dependence on imported oil is a threat to our national security. However, it is rather disturbing to note that the President failed to propose any new action, direct or indirect, to alleviate this threat. It is the opinion of this Senator from Alaska that such action is unprecedented and wholly unacceptable.

I ask unanimous consent that the press release be printed in the RECORD.

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

[From the White House, Office of the Press Secretary, Feb. 16, 1995]

STATEMENT BY THE PRESIDENT

I am today concurring with the Department of Commerce's finding that the nation's growing reliance on imports of crude oil and refined petroleum products threaten the nation's security because they increase U.S. vulnerability to oil supply interruptions. I also concur with the Department's recommendation that the Administration continue its present efforts to improve U.S. energy security, rather than to adopt a specific import adjustment mechanism.

This action responds to a petition under Section 232 of the Trade Expansion Act of 1962, which was filed by the Independent Petroleum Association of America and others on March 11, 1994. The Act gives the President the authority to adjust imports if they are determined to pose a threat to national security. The petitioners sought such action, claiming that U.S. dependence on oil imports had grown since the Commerce Department last studied the issue in response to a similar, 1988 petition.

In conducting its study, the Department led an interagency working group that included the Departments of Energy, Interior,

Defense, Labor, State, and Treasury, the Office of Management and Budget, the Council of Economic Advisers, and the U.S. Trade Representative. The Commerce Department also held public hearings and invited public comment. Following White House receipt of the Commerce Department's report, the National Economic Council coordinated additional interagency review.

As in the case of its earlier study, the Commerce Department found that the potential costs to the national security of an oil import adjustment, such as an import tariff, outweigh the potential benefits. Instead, the Department recommended that the Administration continue its current policies, which are aimed at increasing the nation's energy security through a series of energy supply enhancement and conservation and efficiency measures designed to limit the nation's dependence on imports. Those measures include:

Increased investment in energy efficiency.

Increased investment in alternative fuels.

Increased government investment in technology, to lower costs and improve production of gas and oil and other energy sources.

Expanded utilization of natural gas.

Increased government investment in renewable energy sources.

Increased government regulatory efficiency.

Increased emphasis on free trade and U.S. exports.

Maintenance of the Strategic Petroleum Reserve.

Coordination of emergency cooperation measures.

Finally, led by the Department of Energy and the National Economic Council, the Administration will continue its efforts to develop additional cost-effective policies to enhance domestic energy production and to revitalize the U.S. petroleum industry.

Mr. MURKOWSKI. Madam President, if we look at the specifics of the recommendation, as indicated in the press release, the specific highlights include increased investment in energy efficiency, certainly a worthy and laudable goal; increased investment in alternative fuels, likewise; increased Government investment in technology to lower costs and improve production of gas and oil and other energy resources; expanded utilization of natural gas; increased Government investment in renewable energy sources; increased Government regulatory efficiency; increased emphasis on free trade and U.S. exports; maintenance of the Strategic Petroleum Reserve which, obviously, is there for emergencies; and coordination for emergency cooperation measures.

Notable by its absence is any mention of efforts to stimulate domestic drilling and production in the United States. I find that extraordinary. I wonder just who is advising the President. I cannot believe that the President himself does not support domestic exploration, development, the creation of jobs. One of the bases of America's industrial might has been our ability to produce energy sources, specifically oil and gas. But there is no mention of exploration for oil. There is no mention of stimulating exploration in the Gulf of Mexico where a good portion of our current resources are coming from.

As we go deeper out in the gulf and invest in new technology, it requires greater engineering, greater risk, but, obviously, the industry is willing to make those commitments and that investment. This is what we call deepwater drilling. It requires substantial capital and substantial incentives.

Furthermore, we have frontier areas where onshore there are no pipelines, no infrastructure, and to encourage the industry to go in those areas and explore, again, may require some concessions, some type of moratorium relative to the application of taxation.

None of these are mentioned, and I find that rather curious. We have the overthrust belt; no mention of opening up areas for oil and gas exploration.

It is rather curious, and I guess it is appropriate, that I be a little sensitive on this because my State of Alaska has been supplying this country with about 24 percent of the total crude oil that is produced in the United States for the last 16 to 17 years. That area where most of that oil comes from is called Prudhoe Bay. It is a huge investment by three major international companies—Exxon, BP, and ARCO. They operate the fields. They produce about 1.6 million barrels of oil per day. That is down from approximately 2 million barrels a few years ago. The field is declining. But the significance is, as it declines we are increasing our imports.

Where do our oil imports come from? Why, it comes from the Mideast. It comes to our shores in foreign flag ships, manned by foreign crews. Many of the corporations that operate those ships are relatively alike in their corporate structure. Some suggest they are even shell corporations.

It is interesting to look at our trade deficit, Madam President, of about $167 billion. A good portion of that is Japan, a portion of it is China, but almost half is the price of imported oil. So we are exporting our dollars, exporting our jobs and becoming more and more dependent on other parts of the world.

I find this trend relatively unnerving; that we should have to depend to such an extent on imported petroleum products and then recognize that it is called to our attention by this special study done by the Department of Commerce that we have been waiting for an extended period of time to identify that, indeed, our national security interests are at stake.

I look at my State of Alaska with the potential to supply more oil as Prudhoe Bay declines, and it is rather ironic, Madam President, that on this floor today was a bill to take the most promising area in North America, namely, ANWR, and put it in a permanent wilderness.

We have always had a difficult time trying to keep Alaska in perspective relative to its size and the type of development and the control that our State as well as the Federal agencies have in developing the resources from the North Slope and the Arctic. And as we reflect on that, the technology that developed Prudhoe Bay is now 20 to 25 years old, but some new technology came along about 10 years ago and resulted in the development of a field called Endicott. Endicott was an expansion of Prudhoe Bay in one sense, but the technology was entirely new. It came on as a production facility, the 10th largest producing field in the United States, at about 107,000 barrels a day. Today it is the seventh largest at about 120,000 barrels a day. But that technology, Madam President, resulted in a footprint of 56 acres. That is a pretty small area. That is the size of the footprint. But the contribution to our energy security, our jobs, was significant.

The last area that has been identified by geologists as potentially carrying the capability of a major discovery is ANWR, but what are the parameters of ANWR?

First of all, there are about 19 million acres in the area. Over 17 million acres are basically set aside in wilderness in perpetuity. That is a pretty good-sized chunk of real estate. We are looking at an area the size of Oregon and Washington put together. Industry tells us that if they can find the oil necessary to develop the field—and they have to find a lot of oil because you do not develop small fields in the Arctic—the footprint would be about 12,500 acres. To put that in perspective, that is about the size of the Dulles International Airport complex in Virginia, assuming the rest of Virginia were a wilderness.

The arguments against opening ANWR are the same arguments that prevailed nearly 20 years ago when we talked about opening Prudhoe Bay: What is going to happen to the caribou? What is going to happen to the moose? What is going to happen to the wildlife?

Well, we have had some 17 or 18 years to observe the process. The caribou herds in Prudhoe Bay were 4,000 to 5,000; now they are 17,000 to 18,000. The growth of those herds is as a consequence of the realization that those areas are absolutely off limits to subsistence hunting of any kind. The Eskimo people in the region do not hunt in those areas, and caribou is a very adaptable animal. If chased down by a snow machine or hunter, obviously it runs away. The common sight of modest activity associated with exploration and development has absolutely no effect. A person can go up there today and observe this process.

So as we reflect on what some of the alternatives are, I wonder if we are really not selling America short. As I said before, they are the same arguments of 17 years ago we are hearing today, that somehow this is the

Serengeti of the Arctic—12,500 acres out of 19 million acres is what we are talking about—somehow the native people of the area will be affected. But I can tell you, Madam President, the native people of the area have been given an opportunity that they never had before, and many of them have chosen the opportunity to have gainful employment, have a tax base, have first-class schools. Schools in Barrow, AK, are the finest schools in the United States, bar none. In areas where we have intense climates, we have indoor play areas. As a consequence of the contribution of oil and the fact that the native people have been able to tax the oil, have been able to tax the pipeline, they have been able to have an alternative to a subsistence lifestyle which jobs offer but never would have been prevalent in the area.

I think we are shortchanging America's ingenuity to suggest we cannot open it safely. There is absolutely no scientific evidence to suggest that we cannot open it safely. The technology is advanced. The footprint is smaller. The environmental concerns, the restoration, are all set in place by the State and the Federal Government. So the risk is diminished dramatically. So why the hesitation?

Well, to some degree, Madam President, it is associated with a cause, and that cause is that Alaska is far away. ANWR has been identified by many of the national environmental groups as an issue where they can challenge; people cannot go up there and see for themselves. It generates revenue. It generates a cause. And as a consequence, they would suggest to you that this area cannot be opened up safely. They do not address the opportunities for employment, the opportunities for new engineering technology and expertise but, rather, that Americans cannot meet a challenge. I find this very, very distressing, but it is something that perhaps Alaskans and others who come from energy States have become uncomfortably accustomed to.

Now, where do we go from here, Madam President? Well, I happen to be chairman of the Energy and Natural Resources Committee, and we are going to hold a number of hearings on this matter as we look at our growing dependence on imported oil and the effect that it has on our national security and look to alternatives.

But, Madam President, we are not going to look to the alternatives suggested by the White House, which are nothing but words.

I can remember coming into this body in 1981 when we were running in the high 30's, low 40's percentile dependence on imported oil. There was concern then. There was an expression if it ever got to the area where it would be approaching 50 percent we would have to do something drastic, we would have to stimulate our industry somehow with incentives. But we went on and on and became more dependent and now 51 percent of our total consumption is imported oil. And now we are told that our national security is at stake.

Out of these hearings I hope we get the experts—not the wordsmiths from the White House who are simply selling America short, relative to its capability to produce additional discoveries of oil and gas within the United States. It is truly distressing to read this report. We knew it was coming. We suspected what it said. And each time we made an inquiry we were advised that the report was still under review because the administration chose, for obvious reasons, to put it off as long as they could. I find it rather coincidental that it comes in at a time when we are almost out for the Presidents' Day extended weekend.

But I think it is time for this body and the other House to reflect on the reality associated with a segment of America's traditional industrial might that the administration proposes to remove from the passing scene and become more dependent on imports and export more dollars and more jobs offshore.

This is not unique to the oil industry. To some extent it follows with the administration's attitude towards domestic mining. But I will save that analysis for another day.

I am pleased the Independent Petroleum Association of America has pursued this matter. I think their President, Mr. Dennis Bode, has made a very commendable and meaningful contribution to bring this report before us. I hope the Energy Coalition, that is made up of both Members of the House and Senate, will reflect upon this report in the very near future. I know they will.

It is interesting to look at the attitude of other nations as they observe our increasing dependence on imports. My many friends in Japan cannot understand. They simply say how unfortunate it is that Japan has no natural resources and must import its entire resources, whether energy or mineral. They only have the human work ethic and the efficiencies associated with Japanese industry that have been perfected over an extended period of time, since the Second World War. We helped them basically during the reconstruction period. They simply cannot understand our mentality and lack of our commitment to use our resources wisely, for the benefit of our people and our economy.

In summary, Madam President, I am disappointed. It is ironic that we should be confronted on the same day with a bill to close the most promising area in North America from exploration and put it into an additional permanent wilderness—and I might add, Madam President, we have 56 million acres of wilderness in our State. There are some who would like to put the whole State in a wilderness. There are others who would like to buy the State back from the United States and go it alone. But that is probably another story, for another day as well. To suggest this is the time to put it in wilderness when we get a report that says our national security interest is at stake is, indeed, ironic.

I know Senator STEVENS will be joining me in commenting on the significance of this report and the lack of responsible—and I stress responsible—analysis of the alternatives that we have available to us, alternatives that are practical, and certainly in the national security interest.

I think that is enough for tonight, Madam President. I wish you a good holiday and I yield the floor.

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

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

Mr. DOLE. Madam President, in a move that defies principle and logic, the Clinton administration has proposed lifting the sanctions on Serbia and Montenegro, while it maintains an illegal and unjust arms embargo on Bosnia and Herzegovina. As the Washington Post editorial page put it today, "the United States and its partners in dealing with the old Yugoslavia have got it upside down."

For 7 months, the Bosnian Serbs have said "no" to the contact group peace plan. Despite their promises last summer of tough measures, the contact group countries have pursued a concessions only approach. And so, instead of putting on more pressure on Serbia and its allies in Bosnia and Croatia, the contact group is now ready to offer an enormous concession to Serbia by agreeing to remove the only real leverage we still have, that is, sanctions. Sanctions provide leverage not only on the situation in Bosnia, and in Croatia, but in Kosova—where Albanians are the latest victims of ethnic cleansing.

Sure, the administration says that Serbian President Milosevic will have to make promises in return. We have seen what his promises are worth. Last August Milosevic promised to cut off the Bosnian Serbs, but what really happened is that support was reduced, not ended. Yes, the administration has managed to see that conditions are attached to this lifting of sanctions, noting that the Europeans and Russians would make such a deal even sweeter for Milosevic. But the bottom line is that this is an ill-conceived policy and any tinkering by the administration on the margins does not change that fact.

The message this action sends is that the contact group countries are incapable of pressuring anyone but the victims of this brutal aggression. That message is a green light to the Bosnian Serbs and to the Krajina Serbs. There are warnings of a wider war, but now we see how the contact group hopes to avoid such a scenario, namely by withholding the Bosnians' right to self-defense. Anyone outside the contact group can see clearly that this is a formula for wider war, not a formula for preventing wider war. As the Washington Post concluded, "seeking a phony peace, the United States and its partners may be stoking a greater war."

Madam President, this is a policy of desperation. This is a policy that highlights the lack of American leadership. This is a policy that puts the United States on the side of rewarding aggression and against the forces of freedom and democracy.

Madam President, I ask unanimous consent that the text of the Washington Post editorial be printed in the RECORD.

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

[From the Washington Post, Feb. 16, 1995]

PHONY PEACE

The United States and its partners in dealing with the old Yugoslavia have got it upside down. What they should be doing is putting more pressure on Serbia and the Serb rebels it supports in Bosnia and Croatia. What they actually are doing is putting on less pressure by prematurely opening up the possibility of ending the already partly suspended, porous sanctions on Serbia that are in place.

This new sweetener concocted by the five-nation Contact Group takes as its stated purpose to draw the Serbian regime of Slobodan Milosevic into formal acceptance of international peace plans for Bosnia and Croatia. But it was always implicit anyway that if Mr. Milosevic decided to rein in his wild ambitions for a Greater Serbia, the sanctions on him would fade away. Now to make it explicit—while he still cheats on his pledges, before he has shown a commitment to restraint—is to invite him to bargain the Contact Group down; to extract a large concession for a minimal policy change.

It is easy enough to grasp why the Contact Group finds itself in the weird position of proposing to suspend not the military embargo on the chief victim, Bosnia, but the economic sanctions on the chief offender, Serbia. It's because none of the group's five members (United States, Russia, France, Britain, Germany) has a taste for employing the force it would take to stiffen their lowest-common-denominator collective diplomacy. To prevent their diplomacy from becoming altogether laughable, they should at the least be stiffening it with tougher sanctions on Serbia. But this they decline to do.

A tragic irony is building. The danger now perceived by the Contact Group is that the war will spread. But the burden of constraining it is being put largely on the Muslims and, to a lesser extent, the Croats. They can fairly wonder whether they are not being asked to swallow huge Serb incursions on their territory, viability and sovereignty for the geopolitical convenience of states far from the battlefield and substantially unaffected by its flows. Feeling abandoned even as their fundamental interests are threatened, Muslims and Croats may yet be confirmed in a judgment that they can satisfy their legitimate political goals only by military means. Seeking a phony peace, the United States and its partners may be stoking a greater war.

(Mr. DEWINE assumed the chair.)

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, it is my hope that we will be able to complete our business in the next few minutes. We are trying to reach some agreement.

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. 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.

50TH ANNIVERSARY ASSAULT ON RIVA RIDGE

Mr. DOLE. Mr. President, 50 years ago tomorrow, the legendary 10th Mountain Division successfully assaulted Riva Ridge in northern Italy's Appennine Mountains. Tomorrow, 12 of my World War II comrades from the 10th Mountain Division will stage a 50th anniversary climb of Riva Ridge to reenact the division's historic capture of this heavily fortified German stronghold.

Using ropes, pitons, and other mountaineering equipment to scale the cliffs, and wearing replicas of our World War II white camouflage suits, this team of ski troop veterans will follow the same route used by 10th Mountain Division units in seizing the strategic 4,500-foot peak a half century earlier.

This assault group of World War II combat veterans—all of whom are now in their early seventies—will be joined in the commemorative operation by mountain soldier veterans of the German gebirgstruppe and the Italian Alpini. This peaceful ascent of Riva Ridge reflects the founding purposes of the International Federation of Mountain Soldiers, an eight-nation organization which represents more than 500,000 mountain soldier veterans, many of whom fought on opposing sides during World War II. Tomorrow's climb is actually a coming together of wartime foes on a rugged mountain summit in Italy.

In addition, these climbers will be joined by today's soldiers. During recent years, we veterans of the wartime 10th Mountain Division have established close bonds of friendship with our young counterparts of today's 10th Mountain Division—light. Following their recent return from Haiti, 10 young soldiers of the 10th Mountain—light—from Fort Drum, NY, will be participating in the reenactment climb. Joining these active duty soldiers will be two climbing experts from the 172d Mountain Battalion, Vermont National Guard.

The reenactment teams are headquartered in the small mountain village of Lizzano, which was the scene of intense fighting during my division's breakthrough from the Apennines northward into the Po River Valley and the Dolomite Mountains. During the 10th Mountain Division's decisive combat operations in northern Italy, nearly 1,000 of my fellow soldiers lost their lives to enemy action, another 4,000 were wounded.

As our Nation observes the 50th anniversary of the end of World War II during 1995, I am tremendously proud to know that a handful of my fellow 10th Mountain Division veterans have undertaken such a meaningful way of commemorating one of their victories in the final months of the war. I salute them for their endeavor, and I am sure that all other Members of the Congress will do the same.

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

TRIBUTE TO DONALD "COOTIE" MASTERS

Mr. PRESSLER. Mr. President, I rise to pay tribute to Donald "Cootie" Masters, the newspaper publisher in my hometown, who recently passed away. D.J. Masters was not only a publisher of a weekly newspaper, he was also a State legislator. He was a fine man, and an inspiration to me.

I think that the role of the weekly editor in America has been overlooked. The importance of the women and men who run our smalltown newspapers is seldom recognized.

Our weekly newspapers have almost been forgotten in this telecommunications age, when we have satellite TV, when we have all the various modern technologies. But our weekly newspapers are still there at the heart of their communities.

I received the Humboldt Journal even when I was in the Army in Vietnam. My mother bought me a subscription and sent it. I received the Humboldt Journal when I was away at the University of South Dakota and later when I was a student at Oxford University in England, and then at Harvard Law School. I still get the Humboldt Journal at home.

You cannot get the weekly hometown paper out of the boy, I suppose you could say.

D.J. Masters was a true South Dakotan. He took great pride in his work,

his family, his community, and his faith. He was an example and inspiration to many.

I do not know if many people really understand the positive impact on the lives of South Dakotans that the editors of our weekly papers have.

As the editor of my hometown newspaper, the Humboldt Journal, Cootie Masters was part of the lives of thousands of South Dakotans.

Born on July 7, 1906, Cootie began his rich and fulfilling life in the town of Humboldt, SD. This small town upbringing and his strong family ties instilled in him a deep respect for traditional values. He graduated from Humboldt High School in 1924 and went on to attend the University of South Dakota. I would like to note that in 1924 it was quite an accomplishment for a young student from a small town to attend college. This was only the beginning of Cootie's many achievements.

In addition to his studies at USD, Cootie participated in basketball and was a fraternity brother in Delta Tau Delta. He demonstrated at a young age the importance in life of social involvement and balance between intellectual and physical pursuits.

After Cootie graduated from college, he became involved in his family business. His father owned and operated the Humboldt Journal and passed on his business knowledge to Cootie. Cootie's father died suddenly in 1936, leaving Cootie as the sole owner and editor of the Journal. Anyone you may know in a family business will tell you that successfully passing on a family business to the next generation is much more difficult than most people realize. Cootie not only succeeded in taking over the Journal in 1936, but also was successful in operating it until well after his official retirement. That is no small feat.

Cootie's life involved much more than his newspaper work. He contributed to the whole State of South Dakota by serving in the State house as a representative from Minnehaha County from 1936 to 1941.

Cootie balanced his successful business and political careers with devotion to his family and friends. On June 12, 1933, he began his family by marrying Mildred Newton. Cootie and Mildred had three sons: Neal, Tom, and Bob. Today, the Masters family includes 7 grandchildren and 11 great-grandchildren. I know that Cootie considered his family to be the most precious blessing in his life.

Aside from his children, grandchildren and great-grandchildren, what may have kept Cootie young for so long was his robust enjoyment of life. After college, he continued to participate in baseball and basketball. He also loved the outdoors. An avid sportsman, Cootie enjoyed fishing and hunting. He certainly picked the right State for enjoying the great outdoors.

What is most impressive about Cootie is that with all of his public activities, he is still described as a man with not one enemy.

Cootie was a true friend to me, to our community, and to our State. I will always remember him fondly.

I extend my deepest sympathies to the Masters family on the loss of their beloved Cootie.

Mr. President, I pay tribute not only to him but to the weekly newspapers of South Dakota and to the South Dakota State House of Representatives from which he served during his career.

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

The Senate continued with the consideration of the joint resolution.

UNANIMOUS-CONSENT AGREEMENT

Mr. DOLE. Mr. President, I ask unanimous consent that the following be the only amendments or motions in order to House Joint Resolution 1 and that all amendments or motions be subject to relevant first and second degree amendments and all first-degree amendments or motions on the list must be filed at the desk with the bill clerk by 12 noon Wednesday with the exception of first-degree amendments to motions. I will submit the list. I will not read the list. I think both the distinguished Democrat leader and I have the same list. I will submit that list.

I further ask that no further amendments be in order to the joint resolution after 3 p.m. on Friday February 24, and that any amendments, motions, or motions pending at that time be disposed of without debate in a stacked sequence beginning at 2:15 p.m. on Tuesday, February 28.

I further ask that the time on Monday, February 27 and on Tuesday, February 28, prior to 12:30 p.m. be equally divided between the two leaders or their designees, and a vote on final disposition of House Joint Resolution 1 occur following the stacked votes beginning at 2:15 on February 28, 1995.

I further ask that no votes occur during the session of the Senate on Friday, February 24, and on Monday, February 27, 1995.

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

Mr. DOLE. Mr. President, I send the list to the desk, and also ask that it be printed in the RECORD.

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

Bumpers:
1. Motion to commit to budget to amend the Budget Act.
Johnston:
1. Impoundment.
Leahy:
1. GAO study.
Feingold:
1. Budgetary surplus; 2. Budgetary surplus; 3. T.V.A.; 4. T.V.A. like agencies.
Wellstone:
1. Children; 2. Education; 3. Veterans; 4. Relevant; 5. Relevant; 6. Relevant; 7. Motion to refer to Budget Committee.
Rockefeller:
1. Veterans (do today).
Graham:
1. Regarding debt; 2. Regarding debt; 3. Effective date.
Kennedy:
1. Impoundment.
Levin:
1. Implementing language; 2. Relevant; 3. Relevant; 4. Relevant.
Conrad:
1. Exemption for recessionary periods.
Kerry:
1. Motion to commit Budget Committee; 2. Exemption for economic recession.
Hollings:
1. Relevant.
Daschle:
1. Relevant; 2. Relevant.
Feinstein:
1. Substitute amendment.
Byrd:
1. Increase taxes by majority vote; 2. Increase debt by majority vote; 3. President to submit an alternative budget; 4. Waiver for war by majority vote; 5. Effective date of 2000; 6. Strike reliance on estimates; 7. Increase revenues by 3/5's vote of both houses; 8. Increase tax revenues by 3/5's vote of both houses; 9. Relevant.
Nunn:
1. National economic emergencies; 2. Judicial powers.
Dorgan:
1. Motion to refer regarding C.B.O. appointment.
Pryor:
1. Relevant.
Dole:
1. Five motions.
Daschle:
1. Three motions.

CLOTURE MOTION VOTES VITIATED

Mr. DOLE. Mr. President, I ask that the two cloture votes scheduled for Wednesday, February 22, be vitiated.

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

MORNING BUSINESS

INDIAN EDUCATION

Mr. DOLE. Mr. President, I ask unanimous consent that the Indian Affairs Committee be discharged from consideration of S. 377, a bill relating to Indian education and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A bill (S. 377) to amend a provision of part A of title IX of the Elementary and Secondary Education Act of 1965, relating to Indian education, to provide a technical amendment, and for other purposes.

Mr. DOLE. Mr. President, I ask unanimous consent that the bill be deemed read a third time, passed and the motion to reconsider be laid upon the table.

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

So the bill (S. 377) was deemed read the third time and passed, as follows:

S. 377

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TECHNICAL AMENDMENT.

Section 9112(a)(1)(A) of the Elementary and Secondary Education Act of 1965 (as added by section 101 of the Improving America's Schools Act of 1994 (Public Law 103-382)) is amended by striking "and" and inserting "or".

S. 377

Mr. McCAIN. Mr. President, S. 377 is a technical corrections bill in its truest form. S. 377 would amend section 9112(a)(1)(A) of the Elementary and Secondary Education Act of 1965. S. 377 would amend section 9112(a)(1)(A), otherwise referred to as the Indian Education Act, by striking the word "and" and inserting the word "or." This technical change would correct an oversight that occurred during the conference of the bill.

Last Congress, the Committee on Indian Affairs received testimony from both Indian educators and tribal organizations on proposals for the reauthorization of the Indian Education Act. These proposals were integrated into the Improving America's School Act of 1994. Among these proposals was a program providing formula grants to schools enrolling Indian children.

During the House and Senate conference regarding this particular section of the act, discussions ensued on whether a minimum of 10 or 20 Indian children would be required in order to be eligible for these programs. The House bill would have required that a school have at least 20 Indian children or that the Indian children make up at least 25 percent of the student body of the school. The Senate bill would have required that a school have a minimum of 10 Indian children or that Indian children make up 25 percent of the student body of the school. The House and Senate Conferees agreed upon the Senate version which required a minimum of 10 Indian students or that Indian students make up 25 percent of the school's enrollment.

The congressional intent behind section 9112 clearly supports the enactment of this technical amendment. The House and Senate debate on this section only contemplated the number of Indian children that would be required for funding pursuant to this section. The conferees did not debate over the conjunction "or." The side-by-side analysis used by both the Senate and House conferees supports this point. However, an apparent error occurred in the redrafting process of the conference approved bill. The drafters inadvertently substituted the word "and" for "or." As a result, the law currently states that "in order for a school to be eligible for an Indian Education Act formula grant, it must have 10 eligible students and have 25 percent of its student population eligible for the program." among these proposals.

This minor oversight will have major ramifications in the education of American Indian and Alaska Native children. The current language unnecessarily restricts a schools eligibility for grant funding by requiring schools to meet both criteria. Consequently, the existing language will result in the disqualification of many schools that serve American Indian and Alaska Native children. The Department of Education is in the process of promulgating regulations which do not accurately reflect the true intent of the Congress. Therefore, it is imperative that this amendment be promptly enacted to clarify and fulfill the true intent of the act, to improve schools for all Americans, including Indians and Alaska Natives.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, 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 sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT RELATIVE TO CHEMICAL AND BIOLOGICAL WEAPONS—MESSAGE FROM THE PRESIDENT—PM 19

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs.

To the Congress of the United States:

On November 16, 1990, in light of the dangers of the proliferation of chemical and biological weapons, President Bush issued Executive Order No. 12735, and declared a national emergency under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). Under section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), the national emergency terminates on the anniversary date of its declaration unless the President publishes in the *Federal Register* and transmits to the Congress a notice of its continuation.

On November 14, 1994, I issued Executive Order No. 12938, which revoked and superseded Executive Order No. 12735. As I described in the report transmitting Executive Order No. 12938, the new Executive order consolidates the functions of Executive Order No. 12735, which declared a national emergency with respect to the proliferation of chemical and biological weapons, and Executive Order No. 12930, which declared a national emergency with respect to nuclear, biological, and chemical weapons, and their means of delivery. The new Executive order continued in effect any rules, regulations, orders, licenses, or other forms of administrative action taken under the authority of Executive Order No. 12735. This is the final report with respect to Executive Order No. 12735.

This report is made pursuant to section 204 of the International Emergency Economic Powers Act and section 401(c) of the National Emergencies Act regarding activities taken and money spent pursuant to the emergency declaration. Additional information on chemical and biological weapons proliferation is contained in the annual report to the Congress provided pursuant to the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991.

The three export control regulations issued under the Enhanced Proliferation Control Initiative are fully in force and continue to be used to control the export of items with potential use in chemical or biological weapons (CBW) or unmanned delivery systems for weapons of mass destruction.

During the final 6 months of Executive Order No. 12735, the United States continued to address actively in its international diplomatic efforts the problem of the proliferation and use of CBW.

At the termination of Executive Order No. 12735, 158 nations had signed the Chemical Weapons Convention (CWC) and 16 had ratified it. On November 23, 1993, I submitted the CWC to the Senate for its advice and consent to ratification. The United States continues to press for prompt ratification of the Convention to enable its entry into force as soon as possible. We also continue to urge those countries that have not signed the Convention to do so. The United States has remained actively engaged in the work of the CWC Preparatory Commission headquartered in The Hague, to elaborate the technical and administrative procedures for implementing the Convention.

The United States was an active participant in the Special Conference of States Parties, held September 19-30, 1994, to review the consensus final report of the Ad Hoc Group of experts mandated by the Third Biological Weapons Convention (BWC) Review conference. The Special Conference

produced a mandate to establish an Ad Hoc Group whose objective is to develop a legally binding instrument to strengthen the effectiveness and improve the implementation of the BWC. The United States strongly supports the development of a legally binding protocol to strengthen the Convention.

The United States maintained its active participation in the Australia Group (AG), which welcomed the Czech Republic, Poland, and Slovakia as the 26th, 27th, and 28th AG members, respectively. The Group reaffirmed members' collective belief that full adherence to the CWC and the BWC provides the only means to achieve a permanent global ban on CBW, and that all states adhering to these conventions have an obligation to ensure that their national activities support these goals.

The AG also reiterated its conviction that harmonized AG export licensing measures are consistent with and indeed actively support, the requirement under Article I of the CWC that States Parties never assist, in any way, the manufacture of chemical weapons. These measures also are consistent with the undertaking in Article XI of the CWC to facilitate the fullest possible exchange of chemical materials and related information for purposes not prohibited by the Convention, as they focus solely on preventing assistance to activities banned under the CWC. Similarly, such efforts also support existing nonproliferation obligations under the BWC.

The United States Government determined that one foreign individual and two foreign commercial entities—respectively, Nahum Manbar, and Mana International Investments and Europol Holding Ltd.—had engaged in chemical weapons proliferation activities that required the imposition of trade sanctions against them, effective on July 16, 1994. A separate determination was made and sanctions imposed against Alberto di Salle, an Italian national, effective on August 19, 1994. Additional information on these determinations will be contained in a classified report to the Congress, provided pursuant to the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991.

Pursuant to section 401(c) of the National Emergencies Act, I report that there were no expenses directly attributable to the exercise of authorities conferred by the declaration of the national emergency in Executive Order No. 12735 during the period from November 16, 1990, through November 14, 1994.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *February 16, 1995.*

REPORT RELATIVE TO NUCLEAR, CHEMICAL AND BIOLOGICAL WEAPONS—MESSAGE FROM THE PRESIDENT—PM 20

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs.

To the Congress of the United States:

On September 29, 1994, in Executive Order No. 12930, I declared a national emergency under the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701 et seq.) to deal with the threat to the national security, foreign policy, and economy of the United States posed by the continued proliferation of nuclear, biological, and chemical weapons, and their means of delivery. Specifically, this order provided necessary authority under the Enhanced Proliferation Control Initiative (EPCI), as provided in the Export Administration Regulations, set forth in Title 15, Chapter VII, Subchapter C, of the Code of Federal Regulations, Parts 768 to 799 inclusive, to continue to regulate the activities of United States persons in order to prevent their participation in activities that could contribute to the proliferation of weapons of mass destruction and their delivery means.

I issued Executive Order No. 12930 pursuant to the authority vested in me as President by the Constitution and laws of the United States of America, including the IEEPA, the National Emergencies Act (NEA) (50 U.S.C. 1601 et seq.), and section 301 of title 3 of the United States Code. At that time, I also submitted a report to the Congress pursuant to section 204(b) of the IEEPA (50 U.S.C. 1703(b)).

Executive Order No. 12930 was revoked by Executive Order No. 12938 of November 14, 1994. Executive Order No. 12938 consolidates a number of authorities and eliminated certain redundant authorities. All authorities contained in Executive Order No. 12930 were transferred to Executive Order No. 12938.

Section 204 of the IEEPA requires follow-up reports, with respect to actions or changes, to be submitted every 6 months. Additionally, section 401(c) of the NEA requires that the President: (1) within 90 days the end of each 6-month period following a declaration of a national emergency, report to the Congress on the total expenditures directly attributable to that declaration; or (2) within 90 days after the termination of an emergency, transmit a final report to the Congress on all expenditures. This report, covering the period from September 29, 1994, to November 14, 1994, is submitted in compliance with these requirements.

Since the issuance of Executive Order No. 12930, the Department of Commerce has continued to administer and enforce the provisions contained in the Export Administration Regulations concerning activities by United States persons that may contribute to the proliferation of weapons of mass destruction and missiles. In addition, the Department of Commerce has conducted ongoing outreach to educate concerned communities regarding these restrictions. Regulated activities may include financing, servicing, contracting, or other facilitation of missile or weapons projects, and need not be linked to exports or reexports of U.S.-origin items. No applications for licenses to engage in such activities were received during the period covered by this report.

No expenses directly attributable to the exercise of powers or authorities conferred by the declaration of a national emergency in Executive Order No. 12930 were incurred by the Federal Government in the period from September 29, 1994, to November 14, 1994.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *February 16, 1995.*

MESSAGES FROM THE HOUSE

At 3:49, p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 30. Concurrent resolution providing for the adjournment of the two Houses.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. THURMOND, from the Committee on Armed Services.

Mr. THURMOND. Mr. President, from the Committee on Armed Services, I report favorably the attached listing of nominations.

Those identified with a single asterisk (*) are to be placed on the Executive Calendar. Those identified with a double asterisk (**) are to lie on the Secretary's desk for the information of any Senator since these names have already appeared in the RECORDS of January 6 and 23, 1995 and to save the expense of printing again.

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

(The nominations ordered to lie on the Secretary's desk were printed in the RECORDS of January 6 and 23, 1995 at the end of the Senate proceedings.)

(*) Lt. Gen. Dale W. Thompson, Jr., U.S. Air Force to be placed on the retired list in the grade of lieutenant general (reference No. 160).

(*) Lt. Gen. Jerry R. Rutherford, U.S. Army to be placed on the retired list in the grade of lieutenant general (reference No. 161).

(*) Rear Adm. John A. Lockard, U.S. Navy to be vice admiral (reference No. 162).

(**) In the Air Force there are 5 promotions to the grade of colonel and below (list begins with Alan L. Christensen) (reference No. 166).

(**) In the Army Reserve there are 29 promotions to the grade of colonel and below (list begins with Rodger T. Hosig) (reference No. 167).

(**) In the Army Reserve there is 1 appointment to the grade of lieutenant colonel (Frederick B. Brown) (reference No. 168).

(**) In the Navy there are 3 appointments to the grade of ensign (lists begins with the James P. Screen III) (reference No. 169).

(**) In the Air Force there are 662 promotions to the grade of colonel and below (list begins with Barrett W. Bader) (reference No. 170).

(**) In the Air Force Reserve there are 60 promotions to the grade of colonel (list begins with Jonathan E. Adams) (reference No. 171).

(**) In the Air Force Reserve there are 202 promotions to the grade of colonel (list begins with Timothy L. Anderson) (reference No. 172).

(**) In the Army Reserve there are 1,371 promotions to the grade of lieutenant colonel (list begins with Ronnie Abner) (reference No. 173).

Total: 2,336.

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 Ms. SNOWE:

S. 427. A bill to amend various Acts to establish offices of women's health within certain agencies, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. ROTH (for himself, Mr. BAUCUS, Mr. BIDEN, Mrs. BOXER, Mr. FEINGOLD, Mr. DODD, Mr. HARKIN, Mr. JEFFORDS, Mr. KERRY, Mr. LAUTENBERG, Mr. LEAHY, Mr. LIEBERMAN, Mrs. MURRAY, Mr. PELL, and Mr. WELLSTONE):

S. 428. A bill to improve the management of land and water for fish and wildlife purposes, and for other purposes; to the Committee on Environment and Public Works.

By Mr. BRYAN (for himself and Mr. REID):

S. 429. A bill to amend the Nuclear Waste Policy Act of 1982 to allow commercial nuclear utilities that have contracts with the Secretary of Energy under section 302 of that Act to receive credits to offset the cost of storing spent fuel that the Secretary is unable to accept for storage on and after January 31, 1998; to the Committee on Energy and Natural Resources.

By Ms. SNOWE:

S. 430. A bill to amend XIX of the Social Security Act to require States to adopt and enforce certain guardianship laws providing protection and rights to wards and individuals subject to guardianship proceedings as a condition of eligibility for receiving funds under the medicaid program, and for other purposes; to the Committee on Finance.

S. 431. A bill to amend the Magnuson Fishery Conservation and Management Act to authorize the Secretary of Commerce to prepare fishery management plans and amendments to fishery management plans under negotiated rulemaking procedures, and for other purposes; to the Committee on Commerce, Science, and Transportation.

S. 432. A bill to amend the Magnuson Fishery Conservation and Management Act to require the Secretary of Commerce to prepare conservation and management measures for the northeast multispecies (groundfish) fishery under negotiated rulemaking procedures, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. KERRY:

S. 433. A bill to regulate handgun ammunition, and for other purposes; to the Committee on the Judiciary.

By Mr. KOHL:

S. 434. A bill to amend the Internal Revenue Code of 1986 to increase the deductibility of business meal expenses for individuals who are subject to Federal limitations on hours of service; to the Committee on Finance.

By Mr. FAIRCLOTH:

S. 435. A bill to provide for the elimination of the Department of Housing and Urban Development, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. CAMPBELL (for himself, Mr. INOUYE, Mr. MCCAIN, and Mr. DASCHLE):

S. 436. A bill to improve the economic conditions and supply of housing in Native American communities by creating the Native American Financial Services Organization, and for other purposes; to the Committee on Indian Affairs.

By Ms. SNOWE:

S. 437. A bill to establish a Northern Border States-Canada Trade Council, and for other purposes; to the Committee on Finance.

S. 438. A bill to reform criminal laws, and for other purposes; to the Committee on the Judiciary.

By Mr. THOMAS (for himself, Mr. LOTT, Mr. SIMPSON, Mr. INHOFE, Mr. COATS, Mr. MURKOWSKI, and Mr. COCHRAN):

S. 439. A bill to direct the Director of the Office of Management and Budget to establish commissions to review regulations issued by certain Federal departments and agencies, and for other purposes; to the Committee on Governmental Affairs.

By Mr. WARNER (for himself, Mr. CHAFEE, Mr. BAUCUS, Mr. MOYNIHAN, Mr. BOND, Mr. FAIRCLOTH, Mr. KEMPTHORNE, Mr. LAUTENBERG, Mr. LIEBERMAN, Mr. INHOFE, Mr. REID, Mr. SMITH, Mr. LUGAR, Mrs. BOXER, Mr. GRAHAM, and Mr. PELL):

S. 440. A bill to amend title 23, United States Code, to provide for the designation of the National Highway System, and for other purposes; to the Committee on Environment and Public Works.

By Mr. MCCAIN:

S. 441. A bill to reauthorize appropriations for certain programs under the Indian Child Protection and Family Violence Prevention Act, and for other purposes; to the Committee on Indian Affairs.

By Ms. SNOWE (for herself and Mr. DOLE):

S. 442. A bill to improve and strengthen the child support collection system, and for other purposes; to the Committee on Finance.

By Mr. GRAMS:

S. 443. A bill to reaffirm the Federal Government's commitment to electric consumers and environmental protection by reaffirming the requirement of the Nuclear Waste Policy Act of 1982 that the Secretary of Energy provide for the safe disposal of spent nuclear fuel beginning not later than January 31, 1998, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 444. A bill to amend the Alaska Native Claims Settlement Act to provide for the purchase of common stock of Cook Inlet Region, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. D'AMATO (for himself, Mr. MACK, Mr. BENNETT, Mr. FAIRCLOTH, and Mr. BRYAN):

S. 445. A bill to expand credit availability by lifting the growth cap on limited service financial institutions, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. INOUYE (for himself, Mr. HATFIELD, Mr. LEVIN, Mr. D'AMATO, Mr. AKAKA, Mr. COCHRAN, Mr. DODD, Mr. GRASSLEY, Mr. HATCH, Mr. HEFLIN, Mr. HOLLINGS, Mr. KENNEDY, Ms. MIKULSKI, Mr. MOYNIHAN, Mr. ROBB, and Mr. SIMON):

S. 446. A bill to require the Secretary of the Treasury to mint coins in commemoration of the public opening of the Franklin Delano Roosevelt Memorial in Washington, D.C; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. INHOFE (for himself and Mr. NICKLES):

S. 447. A bill to provide tax incentives to encourage production of oil and gas within the United States, and for other purposes; to the Committee on Finance.

By Mr. GRASSLEY (for himself, Mr. PRYOR, and Mr. REID):

S. 448. A bill to amend section 118 of the Internal Revenue Code of 1986 to provide for certain exceptions from rules for determining contributions in aid of construction, and for other purposes; to the Committee on Finance.

By Mr. SIMON (for himself and Ms. MOSELEY-BRAUN):

S. 449. A bill to establish the Midewin National Tallgrass Prairie in the State of Illinois, and for other purposes; to the Committee on Armed Services.

By Mr. GRASSLEY:

S. 450. A bill for the relief of Foad Miahi-Neysi and his wife, Haiedeh Miahi-Neysi; to the Committee on the Judiciary.

By Mr. NICKLES (for himself, Mr. INHOFE, and Mr. DOLE):

S. 451. A bill to encourage production of oil and gas within the United States by providing tax incentives and easing regulatory burdens, and for other purposes; to the Committee on Finance.

By Mr. MOYNIHAN (for himself and Mr. DASCHLE) (by request):

S. 452. A bill to amend the Internal Revenue Code of 1986 to provide tax relief for the middle class; to the Committee on Finance.

By Mr. MOYNIHAN (for himself and Mr. DASCHLE) (by request):

S. 453. A bill to amend the Internal Revenue Code of 1986 to modify the eligibility criteria for the earned income tax credit, to improve tax compliance by United States persons establishing or benefiting from foreign trusts, and for other purposes; to the Committee on Finance.

By Mr. MCCONNELL (for himself, Mr. LIEBERMAN, and Mrs. KASSEBAUM):

S. 454. A bill to reform the health care liability system and improve health care quality through the establishment of quality assurance programs, and for other purposes; to

the Committee on Labor and Human Resources.

By Mr. KEMPTHORNE (for himself and Mr. CRAIG):

S. 455. A bill to clarify the procedures for consultation under the Endangered Species Act on management plans for, and specific activities on, federal lands, and for other purposes; to the Committee on Environment and Public Works.

By Mr. BRADLEY (for himself, Mr. DODD, Mr. ROCKEFELLER, Mr. CHAFEE, Mrs. FEINSTEIN, Ms. SNOWE, Mr. LIEBERMAN, Mr. DORGAN, and Mr. KENNEDY):

S. 456. A bill to improve and strengthen the child support collection system, and for other purposes; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Ms. SNOWE:

S. Con. Res. 8. A concurrent resolution expressing the sense of the Congress on the need for accurate guidelines for breast cancer screening for women ages 40–49, and for other purposes; to the Committee on Labor and Human Resources.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. SNOWE:

S. 427. A bill to amend various acts to establish offices of women's health within certain agencies, and for other purposes; to the Committee on Labor and Human Resources.

THE WOMEN'S HEALTH OFFICES ACT OF 1995

• Ms. SNOWE. Mr. President, today I am introducing legislation to focus attention on the special health needs of women by establishing offices of women's health within the Office of the Assistant Secretary for Health, the Centers for Disease Control, the Agency for Health Care Policy and Research, the Health Resources and Services Administration, and the Food and Drug Administration.

The directors of these offices of women's health will assess the current level of activity regarding women's health within their respective agencies, established short-range and long-range goals and objectives for women's health, identify projects in women's health that should be conducted or supported, consult with health professionals, nongovernmental organizations, consumer organizations, and other appropriate groups on their agency's women's health policies, and coordinate agency activities on women's health.

Congress has already taken a first step in recognizing that women's unique health needs should be addressed separately. In the 103d Congress, the 1993 NIH revitalization bill established an Office of Woman's Health within the National Institutes of Health. We must build upon that progress in the 104th Congress.

For too long, women have been systematically excluded from medical research studies, received less aggressive treatment for heart disease and other serious ailments, and lacked access to important preventive services. By statutorily establishing offices of women's health in Federal agencies which research and disseminate information about health, we ensure that women's needs and concerns will be given the consideration they deserve.•

By Mr. ROTH (for himself, Mr. BAUCUS, Mr. BIDEN, Mrs. BOXER, Mr. FEINGOLD, Mr. DODD, Mr. HARKIN, Mr. JEFFORDS, Mr. KERRY, Mr. LAUTENBERG, Mr. LEAHY, Mr. LIEBERMAN, Mrs. MURRAY, Mr. PELL, and Mr. WELLSTONE):

S. 428. A bill to improve the management of land and water for fish and wildlife purposes, and for other purposes; to the Committee on Environment and Public Works.

THE FISH AND WILDLIFE MANAGEMENT ACT OF 1995

• Mr. ROTH. Mr. President, I read recently that "the best thing we have learned from nearly 500 years of contact with the American wilderness is restraint," the need to stay our hand and preserve our precious environment and future resources rather than destroy them for momentary gain.

With this in mind, I offer legislation today that designates the coastal plain of Alaska as wilderness area. At the moment this area is a national wildlife refuge, one of our beautiful and last frontiers. By changing its designation, Mr. President, we can protect it forever.

And I can't stress how important this is.

The Alaskan wilderness area is not only a critical part of our earth's ecosystem—the last remaining region where the complete spectrum of arctic and subarctic ecosystems comes together—but it is a vital part of our national consciousness. It is a place we can cherish and visit for our soul's good. It offers us a sense of well-being and promises that not all dreams have been dreamt.

The Alaskan wilderness is a place of outstanding wildlife, wilderness and recreation, a land dotted by beautiful forests, dramatic peaks and glaciers, gentle foothills, and undulating tundra. It is untamed—rich with caribou, polar bear, grizzly, wolves, musk oxen, Dall sheep, moose, and hundreds of thousands of birds—snow geese, tundra swans, black brant, and more. In all, about 165 species use the coastal plain. It is an area of intense wildlife activity. Animals give birth, nurse and feed their young, and set about the critical business of fueling up for winters of unspeakable severity.

The fact is, Mr. President, there are parts of this Earth where it is good that man can come only as a visitor. These are the pristine lands that belong to all of us. And perhaps most importantly, these are the lands that belong to our future.

Considering the many reasons why this bill is so important, I came across the words of the great western writer, Wallace Stegner. Referring to the land we are trying to protect with this legislation, he wrote that it is "the most splendid part of the American habitat; it is also the most fragile." And we cannot enter "it carrying habits that [are] inappropriate and expectations that [are] surely excessive."

The expectations for oil exploration in this pristine region are excessive. There is only a one-in-five chance of finding any economically recoverable oil in the refuge. And if oil is found, the daily production of 400,000 barrels per day is less than .7 percent of world production—far too small to meet American's energy needs for more than a few months.

In other words, Mr. President, there is much more to lose than might ever be gained by tearing this frontier apart. Already, some 90 percent of Alaska's entire North Slope is open to oil and gas leasing and development. Let's keep this area as the jewel amid the stones.

What this bill offers—and what we need—is a brand of pragmatic environmentalism, an environmental stewardship that protects our important wilderness areas and precious resources, while carefully and judiciously weighing the short-term desires or our country against its long-term needs.

Together, we need to embrace environmental policies that are workable and pragmatic, policies based on the desire to make the world a better place for us and for future generations. I believe a strong economy, liberty, and progress are possible only when we have a healthy planet—only when resources are managed through wise stewardship—only when an environmental ethic thrives among nations and only when people have frontiers that are untrammeled and able to host their fondest dreams.•

By Mr. BRYAN (for himself and Mr. REID):

S. 429. A bill to amend the Nuclear Waste Policy Act of 1982 to allow commercial nuclear utilities that have contracts with the Secretary of Energy under section 302 of that act to receive credits to offset the cost of storing spent fuel that the Secretary is unable to accept for storage on and after January 31, 1998; to the Committee on Energy and Natural Resources.

THE INDEPENDENT SPENT NUCLEAR FUEL STORAGE ACT OF 1995

Mr. BRYAN. Mr. President, I rise today to introduce again legislation I have introduced in each of the past two Congresses, the Independent Spent Nuclear Fuel Storage Act.

As many of my colleagues are aware, since 1987, contrary to Nevada State law, and against the wishes of the vast majority of Nevadans, Nevada has been the sole site considered for the ultimate disposal of the United States' high-level nuclear waste.

Today, in spite of the expenditure of billions of dollars, the Yucca Mountain site is no closer to accepting waste from our Nation's nuclear reactors than it was 13 years ago, when the Nuclear Waste Policy Act of 1982 was enacted.

I strongly oppose the purely political decision made by Congress in 1987 to identify Yucca Mountain as the sole site to be characterized for a permanent repository. Now that the permanent repository program is an obvious failure, with the Department of Energy saying there is no hope of opening any type of storage facility before 2010, the nuclear power industry and its allies have conceived a new strategy.

Contrary to all objective scientific judgment, and general common sense, the nuclear industry's new effort is to instruct the DOE to build an interim storage facility at the Yucca Mountain site. As offensive as the 1987 act, commonly referred to in Nevada as the "screw Nevada bill," was, the new effort of the nuclear power industry is even more of an outrage to Nevadans.

The nuclear power industry's newest proposal is nothing less than a direct assault on the health and safety of Nevadans. Frustrated by its inability to overcome the insurmountable safety concerns raised in relation to a permanent repository, the industry is now seeking to circumvent the objections of credible, objective scientists to a permanent repository at Yucca Mountain.

I am convinced, like many others, that any centralized interim storage facility will become the de facto permanent repository.

Funding for an interim storage program will necessarily come at the expense of the permanent repository program. The expression "out of sight, out of mind" could not be truer. Once the waste is removed from the reactor sites, the nuclear industry's commitment to finding a permanent solution to the waste problem will vanish. And since it is the nuclear power industry's obsession with moving this waste off the reactor sites that drives the Federal Civilian Nuclear Waste Program, the Federal commitment to permanent storage will vanish as well.

The nuclear power industry as much as concedes this—every version of their interim storage legislation I am aware of provides for licensing the interim site for 100 years, subject to renewal.

The permanent repository program is a failure. The nuclear power industry and its advocates, including the Department of Energy, have created a program which was bound to fail. Careless science, poor management, unreasonable deadlines and timetables, and the ill-fated decision to pursue only one site for characterization, thus leaving the program with no options or alternatives, have all contributed to the failure of the program.

The industry's suggestion to build an interim storage facility in Nevada is simply one more in a long series of irresponsible and ill-founded proposals by the nuclear power industry to solve their high level waste problem at the expense of the health and safety of all Nevadans.

I will concede that the nuclear power industry has a waste problem. I strongly object, however, to the industry's solution, which is simply to send their problem, their waste to Nevada.

The question arises, do we need a centralized interim storage site? If we are truly talking about interim storage, the answer is obviously no.

A few nuclear utilities, looking at the future uncertainty of the Federal nuclear waste program, have done the responsible thing and built interim dry cask storage at the reactor site. In dry cask storage, spent fuel assemblies are removed from the reactor pools and stored in various systems of canisters, casks, and concrete shells.

I recently visited one of these dry cask storage facilities, at Calvert Cliffs in Maryland, and, I must say, I was impressed by the simplicity and efficiency of the spent fuel management operation. It is a responsible action taken by the industry, and I commend their example to others. The Calvert Cliffs dry cask storage program provides a reasonable solution to the interim storage problem, the spent fuel is stored on site, where security and safety precautions already exist, until a safe plan for the long-term disposition of the waste can be finalized.

A centralized interim storage facility is simply not needed, or desirable. The original Nuclear Waste Policy Act recognized this fact, and placed restrictions on the DOE's authority to accept responsibility for interim storage. The nuclear power industry, faced with the reality of the failure to build a permanent repository at Yucca Mountain, is now engaged in yet another exercise of political muscle with one purpose: To make Nevada the final destination for their toxic and highly dangerous waste.

Even if we concede, which we do not, that there is a need for a centralized interim storage facility, there is no defensible reason to site the facility in Nevada. A simple look at a map easily shows that Nevada is one of the least central sites to store nuclear waste. The great majority of the reactor sites producing high-level waste are east of the Mississippi—93 reactors out of the U.S. total of 118.

Shipping thousands of tons of high level waste to Nevada will create dramatic threats to the safety of communities throughout the United States. An analysis of one proposal supported by the nuclear power industry reveals that interim storage in Nevada will require 15,000 shipments by rail and truck through 43 States to begin as early as 1998 and continue for 30 years.

Interim storage in Nevada is not the answer to the nuclear power industry's waste problem. The responsible answer to the waste problem, if the nuclear utilities choose to continue to run their reactors, is on-site, dry cask storage.

Unfortunately, most nuclear utilities appear to be unwilling to develop dry cask storage facilities for a variety of reasons, both political and financial.

There is not much we can do about the local political opposition faced by utilities. The utilities, and communities, that benefited from the operation of the powerplant should bear responsibility for their own waste. High-level waste storage is not popular, and there are political costs to the utilities for living up to their responsibilities.

Asking Nevada to solve the political problems in the communities they serve places the nuclear utilities on completely indefensible ground. The outright hypocrisy of the nuclear power industry's advocates, and their shameless attempts to exert political influence to solve complex scientific and environmental problems, has created an atmosphere of complete distrust and antagonism for the industry in Nevada.

There are also financial barriers to on-site, dry cask storage. Ratepayers have been making contributions to the nuclear waste trust fund with the exception that the Federal Government will dispose of their nuclear waste. I am somewhat sympathetic to the ratepayers' concerns. The Federal disposal program is a failure.

The civilian nuclear waste program has been so poorly managed, and so misguided, that Congress has had good reason not to release the full balance of the trust fund to the program. The ratepayers deserve some financial relief while the Federal Government attempts to meet its obligations, and while the utilities invest the needed capital to store their own waste.

The legislation I am introducing today recognizes the nuclear power industry's need for interim storage, as well as the financial impact on ratepayers caused by delays in the repository program. The legislation provides credits against utilities' payments to the nuclear waste trust fund for costs incurred for on-site, dry cask storage.

The legislation provides an equitable solution to a difficult problem. It recognizes the financial contributions of the utilities' ratepayers to the trust fund, and recognizes the reality that a permanent repository will not be available to meet the needs of the nuclear power industry.

Mr. President, together with their advocates in Congress and the Department of Energy, the nuclear power industry has spared no expense or effort in moving its waste to Nevada. I have attempted to fight the industry at every turn.

I hope that Congress will not take the failure of the permanent repository program as a signal to bow to the nuclear power industry once again, and accelerate plans to store nuclear waste in Nevada, but instead to take this opportunity to find an equitable solution to a difficult problem which does not threaten the health and safety of future generations of Nevadans.

I urge my colleagues to support the legislation I am introducing today.

By Ms. SNOWE:

S. 430. A bill to amend title XIX of the Social Security Act to require States to adopt and enforce certain guardianship laws providing protection and rights to wards and individuals subject to guardianship proceedings as a condition of eligibility for receiving funds under the Medicaid Program, and for other purposes; to the Committee on Finance.

THE GUARDIANSHIP RIGHTS AND RESPONSIBILITIES ACT

• Ms. SNOWE. Mr. President, today I am introducing the Guardianship Rights and Responsibilities Act of 1995, which establishes a bill of rights for adults who, because of physical or mental incapacity, become wards of the courts.

Wards are individuals whose legal rights, decisionmaking authority and possessions have been transferred to the control of a guardian or conservator based on a judgment that the person is no longer capable of handling these affairs. This legal system severely limits an individual's personal autonomy and has considered problems and widespread abuses. Horror stories abound about guardians who force unnecessary nursing home care, embezzle assets, or otherwise abuse their wards.

The Guardianship Rights and Responsibilities Act of 1995 would require States to adopt and enforce laws to provide basic protection and rights to wards as a condition of receiving Federal Medicaid funds. It would assure due process protections such as counsel, the right to be present at their proceedings and to appeal decisions. Also required would be: Clear and convincing evidence to determine the need for a guardianship; adequate court monitoring; and standards, training and oversight for guardians.

This legislation will help to protect the most vulnerable elderly and disabled from exploitation, and will help to assure them the highest possible autonomy. I hope my colleagues will join me in supporting this bill.•

By Ms. SNOWE:

S. 431. A bill to amend the Magnuson Fishery Conservation and Management Act to authorize the Secretary of Commerce to prepare fishery management plans and amendments to fishery management plans under negotiated rulemaking procedures, and for other purposes; to the Committee on Commerce, Science, and Transportation.

S. 432. A bill to amend the Magnuson Fishery Conservation and Management Act to require the Secretary of Commerce to prepare conservation and management measures for the northeast multispecies—groundfish—fishery under negotiated rulemaking procedures, and for other purposes; to the Committee on Commerce, Science, and Transportation.

NEGOTIATED RULEMAKING FOR FISHERIES LEGISLATION

• Ms. SNOWE. Mr. President, as many stories in the national media have reported, the New England groundfish industry is now facing the most difficult challenges in its long history. Scientists report that once plentiful stocks of cod, haddock, flounder, and other fish species have reached historic lows. In response to these stock assessments, the New England Fishery Management Council has approved severe restrictions on fishing that will probably force many fishermen out of business. These restrictions include a 5-year program to cut fishing efforts in half, mandatory use of large-mesh nets, a moratorium on new entrants into the fishery, and the emergency closure of large areas on the George's Bank fishing grounds off Massachusetts.

Most fishermen in Maine recognize that the groundfish stocks are low and that effective conservation measures are needed to help rebuild the fishery. But too many fishermen also believe that the specific program approved by the council will not succeed at restoring groundfish populations, and will place unnecessary economic burdens on working fishermen. In their view, the council, despite public hearings, dismissed too many of their recommendations despite the fact that they and others before them have been fishing the waters off New England for three centuries. In short, they have no support for or confidence in the council-developed management program under which they must operate.

The success of any regulatory program depends in large part on the confidence of the regulated community that the action takes their views into account, will achieve its ends, and is sensible and necessary. I am introducing legislation today that aims to restore the confidence of New England fishermen in the credibility of the Federal fisheries management process by giving them and other citizens with an interest in fisheries the ability to participate directly in that process.

My bills bring the concept of negotiated rulemaking or regulatory negotiation to fisheries management. The concept was established in Federal law by the negotiated Rulemaking Act of 1990. Under negotiated rulemaking, representatives of all stakeholder groups involved in a dispute negotiate directly on the regulatory solution with the aid of a professional facilitator. It provides a collaborative, consensus-based dispute resolution tool that agencies can use to develop potentially controversial regulations. If the negotiating group can reach consensus, then the agency can propose the agreement as a new regulation or rule. Negotiated rulemaking has been used—sometimes successfully, sometimes unsuccessful—by other Federal agencies, and it is time that this tool be made available in the fisheries management process.

The first bill that I have introduced today gives the Secretary of Commerce explicit authority to use negotiated rulemaking to develop fishery management plans or plan amendments. Under the Magnuson Act, the Secretary can only submit management plans or plan amendments under limited circumstances which preclude his flexibility in using this important tool effectively. Also, negotiated rulemaking is specifically used to develop rules, but fishery management plans are not technically rules. My bill removes these potential obstacles and clears the way for the Secretary to use this dispute resolution tool on controversial issues.

The second bill directs the Secretary to use negotiated rulemaking in the specific case of the New England groundfish fishery. Alternative dispute resolution is used more and more commonly in lieu of the traditional adversarial regulatory process, and I believe that it should be tried in the case of the New England groundfish issue.

These bills do not directly affect any existing fisheries management programs, or impose new management measures. They only offer an alternative route for devising plans that will restore fish stocks off the coast of New England and other parts of the country. They could lead to new management measures that not only do a better job of rebuilding fish stocks, but do so in a manner that minimizes the economic impact on fishermen and coastal communities, and in a manner that gains the confidence and support of most fishermen. Surely, given the extremely high stakes in an area like New England these days, we must explore every opportunity, every possibility, for achieving such critically important results.•

By Mr. KERRY:

S. 433. A bill to regulate handgun ammunition, and for other purposes; to the Committee on the Judiciary.

THE AMMUNITION SAFETY ACT OF 1995

• Mr. KERRY. Mr. President, no gun works without a bullet. Yet for no good

reason, Congress in the early 1980's repealed laws that regulate ammunition. And while a background check is required to stop felons from purchasing guns, no such background check is required to stop them from buying ammunition for the guns they may already have.

In the meantime, bullets are getting meaner and more deadly. Law enforcement officers know all too well of the danger they face each and every time a gun is pointed at them.

Advances in technology only promise to make matters worse. When a large percentage of gun-related deaths involve handguns, and a large percentage of gun related deaths is accidental, it is insane for the public to fear the creation of new, more destructive bullets.

The fact is 157 police officers and State troopers were killed in this country last year. Five lost their lives in my home State of Massachusetts.

And more than 200 people die from the accidental use of handguns every year. In 1992 alone, 233 accidental deaths occurred because of handguns. This included 6 babies, 36 kids under the age of 14, and 8 senior citizens, 2 of whom were over the age of 80.

In light of these sad and disturbing facts, there is no good reason to have ever more dangerous bullets on the market. And there is every good reason to keep off our streets and out of our homes bullets that supply handguns with the destructive power of assault weapons.

That is why the Ammunition Safety Act of 1995 does two things: it reestablishes reasonable regulations for the sale of handgun ammunition, and it outlaws all exceedingly destructive handgun ammunition—whether or not such ammo has been invented yet—by expanding and updating the ban on armor-piercing handgun ammunition.

This bill would provide a weapon for law enforcement to crack down on crime and would make ordinary people safer from handgun violence and accidental shootings. The bill accomplishes these goals in three steps.

First, the bill reinstates and strengthens ammunition control language that Congress repealed during the Reagan era. It would require dealers of handgun ammunition to be licensed by the Federal Government. It would restrict interstate sale and transportation of handgun ammunition to licensed dealers. And it would double the maximum penalties for sale to and for possession of handgun ammunition by felons and persons under age 21.

Second, the bill would apply Brady bill provisions to handgun ammunition. To prevent the sale of handgun ammunition to felons, once the nationwide, instantaneous background check the Brady bill created is in place, every purchaser of ammunition will have to pass a background check before ammunition could be sold to him or her. These regulations would be a vital tool to law enforcement in investigating crime, and would provide equity to a system that currently monitors and restricts the flow of guns, but—inexplicably—not of ammunition.

Third, the bill expands the definition of illegal armor-piercing handgun ammunition to include any new conceivable kind of armor-piercing bullet. The bill establishes a new method to accomplish this goal.

To date, no law has been able to effectively ban all armor-piercing bullets. You can't ban what you can't define because vague laws are constitutionally void—and definitions to date have failed to cover all armor-piercing bullets. All that existing law does is ban bullets based on the materials of which they are made—consequently, bullets made of hard metals are illegal—in the hope that this definition will blanket most armor-piercing bullets. But the existing composition-based definition fails to prevent the sale of certain bullets that pierce armor—like large lead bullets that aren't intended for handguns but can be used in them—or the invention of new armor-piercing bullets—for example, a plastic bullet hard enough to pierce armor.

This bill calls on the Treasury Department to define armor-piercing bullets not by what they are but by what they are not. Fulfilling this new responsibility would entail four steps.

First, within 1 year, the Treasury Department is charged with determining a standard test to ascertain the destructive capacity of any and all bullets. This will probably result in something along the lines of a rating system equal to the width times the depth of the hole a projectile bores in a block of gelatin when it is shot with no extra powder from a standard Colt .45 at a distance of 10 feet.

Second, utilizing this destructive rating test, the Treasury Department would then determine a rating threshold which would be the rating of the least destructive bullet to pierce today's standard body armor.

Third, all manufacturers of bullets for sale in the United States would be required to cover the costs incurred by the Treasury Department in testing and determining the destructive rating of every existing bullet available on the market.

Fourth, this bill would make it illegal to manufacture, sell, import, use, or possess any bullet—existing or newly invented—that has a destructive rating equal to or higher than the armor-piercing threshold. This would be in addition to the existing composition-based definition.

This bill contains reasonable exemptions. Those bullets exclusively manufactured for law enforcement would be exempt; so would be those bullets designed for sporting purposes that Congress specifically exempts by law; and those bullets that are proven by their manufacturer at its expense to have a destructive rating below the armor-piercing threshold.

By setting the legal standard at the armor-piercing threshold, all armor-piercing bullets would be illegal. And there is an additional advantage to setting a legal threshold in this fashion: The threshold would ban more than armor-piercing bullets. It would ban any new, sick, perverse bullet that has yet to be invented that explodes on impact, that turns to shrapnel, that does things today's technology cannot yet fathom, or that by any other means is exceptionally destructive.

Setting a legal standard this way draws a hard and fast line between those bullets currently on the market and future bullets that do more damage than we can imagine today. This bills says that America is satisfied that the bullets of today are dangerous enough, and America will tolerate no greater likelihood of accidental death as a result of new bullets.

This bill recognizes the fact that regulating only weapons is naive. Among other reasons, guns last centuries, but ammunition has a shelf-life of not much more than 20 years. Felons who want to kill will always be able to find guns, but have to come out of the woodwork to purchase ammunition. When they do, this bill will be there to stop them.

Of course, felons can make bullets at home, but it isn't easy, it isn't cheap, and it isn't safe. Mr. President, I recognize that there is a limit to what the Government can do to stop gun violence and accidental death. But today, the Government is shirking its responsibility. This bill is a vital first step toward ensuring that the Government does what is necessary to save lives.

The law enforcement community and the public will never again have to react to advertisements like the one for the infamous Rhino bullet. This add states:

> The Rhino inflicts a wound of 8 inches in diameter. Each of these fragments becomes lethal shrapnel and is hurled into vital organs, lungs, circulatory system components, the heart and other tissues. The wound channel is catastrophic. * * * Death is nearly instantaneous.

If this bill is enacted, opportunistic manufacturers like the man who created the Rhino will have nothing to gain from advertising the dramatic innovations of their bullets. If an advertisement claims that a new bullet is unusually destructive, the public will know that the advertisement is either an outright lie or that the product is illegal. Either way, the public will know in advance that no such bullet will ever hit the street, and the public will have no cause for hysteria.

When this bill becomes law, no new bullets that are more dangerous than

those of today will make it to market. When this bill becomes law, those bullets that are on the market won't end up in the wrong hands.

This bill is a solid step toward returning sanity and safety to our Nation's streets and household. The Government has no greater responsibility than to work toward this goal.

I welcome the support of colleagues who share my concerns, as many do. I urge them to join me in sponsoring this legislation.

Mr. President, I ask unanimous consent that the full text of the legislation appear in the RECORD.

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

S. 433

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 "Ammunition Safety Act of 1995".

SEC. 2. DEALERS OF AMMUNITION.

(a) DEFINITION.—Section 921(a)(11)(A) of title 18, United States Code, is amended by inserting "or ammunition" after "firearms".

(b) LICENSING.—Section 923(a) of title 18, United States Code, is amended—

(1) in the matter preceding paragraph (1) by striking "or importing or manufacturing ammunition" and inserting "or importing, manufacturing, or dealing in ammunition"; and

(2) in paragraph (3)—

(A) in subparagraph (A), by striking "or" the last place it appears;

(B) in subparagraph (B), by striking the period at the end and inserting "; or"; and

(C) by inserting the following new subparagraph:

"(C) in ammunition other than ammunition for destructive devices, $10 per year.".

(c) UNLAWFUL ACTS.—Section 922(a)(1)(A) of title 18, United States Code, is amended—

(1) in paragraph (1)—

(A) in subparagraph (A)—

(i) by inserting "or ammunition" after "firearms"; and

(ii) by inserting "or ammunition" after "firearm"; and

(B) in subparagraph (B), by striking "or licensed manufacturer" and inserting "licensed manufacturer, or licensed dealer";

(2) in paragraph (2), in the matter preceding subparagraph (A), by inserting "or ammunition" after "firearm";

(3) in paragraph (3), by inserting "or ammunition" after "firearm" the first place it appears;

(4) in paragraph (5), by inserting "or ammunition" after "firearm" the first place it appears; and

(5) in paragraph (9), by inserting "or ammunition" after "firearms".

(d) PENALTIES.—Section 924 of title 18, United States Code, is amended—

(1) in paragraph (5)—

(A) in subparagraph (A)(i), by striking "1 year" and inserting "2 years"; and

(B) in subparagraph (B)—

(i) in clause (i), by striking "1 year" and inserting "2 years"; and

(ii) in clause (ii), by striking "10 years" and inserting "20 years"; and

(2) by adding at the end the following new subsection:

"(o) Except to the extent a greater minimum sentence is otherwise provided, any person at least 18 years of age who violates section 922(g) shall be subject to—

"(1) twice the maximum punishment authorized by this subsection; and

"(2) at least twice any term of supervised release.".

(e) APPLICATION OF BRADY HANDGUN VIOLENCE PREVENTION ACT TO TRANSFER OF AMMUNITION.—Section 922(t) of title 18, United States Code, is amended by inserting "or ammunition" after "firearm" each place it appears.

SEC. 3. REGULATION OF ARMOR PIERCING AND NEW TYPES OF DESTRUCTIVE AMMUNITION.

(a) TESTING OF AMMUNITION.—Section 921(a)(17) of title 18, United States Code, is amended—

(1) by redesignating subparagraph (D), as added by section 2(e)(2), as subparagraph (E); and

(2) by inserting after subparagraph (C) the following new subparagraph:

"(D)(i) Notwithstanding subchapter II of chapter 5 of title 5, United States Code, not later than 1 year after the date of enactment of this subparagraph, the Secretary shall—

"(I) establish uniform standards for testing and rating the destructive capacity of projectiles capable of being used in handguns;

"(II) utilizing the standards established pursuant to subclause (I), establish performance-based standards to define the rating of 'armor piercing ammunition' based on the rating at which the projectiles pierce armor; and

"(III) at the expense of the ammunition manufacturer seeking to sell a particular type of ammunition, test and rate the destructive capacity of the ammunition utilizing the testing, rating, and performance-based standards established under subclauses (I) and (II).

"(ii) The term 'armor piercing ammunition' shall include any projectile determined to have a destructive capacity rating higher than the rating threshold established under subclause (II), in addition to the composition-based determination of subparagraph (B).

"(iii) The Congress may exempt specific ammunition designed for sporting purposes from the definition of 'armor piercing ammunition'.".

(b) PROHIBITION.—Section 922(a) of title 18, United States Code, is amended—

(1) in paragraph (7)—

(A) by striking "or import" and inserting ", import, possess, or use";

(B) in subparagraph (B), by striking "and";

(C) in subparagraph (C), by striking the period at the end and inserting "; and"; and

(D) by adding at the end the following new subparagraph:

"(D) the manufacture, importation, or use of any projectile that has been proven, by testing performed at the expense of the manufacturer of the projectile, to have a lower rating threshold than armor piercing ammunition."; and

(2) in paragraph (8)—

(A) in subparagraph (B), by striking "and";

(B) in subparagraph (C), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following new subparagraph:

"(D) the manufacture, importation, or use of any projectile that has been proven, by testing performed at the expense of the manufacturer of the projectile, to have a lower rating threshold than armor piercing ammunition.".●

By Mr. KOHL:

S. 434. A bill to amend the Internal Revenue Code of 1986 to increase the deductibility of business meal expenses for individuals who are subject to Federal limitation on hours of service; to the Committee on Finance.

THE BUSINESS MEAL DEDUCTION FAIRNESS ACT OF 1995

● Mr. KOHL. Mr. President, in 1993, the 103d Congress took a crucial and difficult stand on the deficit. In August of that year we passed the omnibus budget reconciliation bill. I am proud to stand here today and say that that legislation has helped to produce falling deficits and sustained economic growth.

As my colleagues know, I am one of this body's strongest advocates for deficit reduction. I attribute much of my deep commitment to this goal to my days in business. As a businessman, I learned that you must balance your books and live within your means. I also learned that you must treat people fairly, and admit when you make a mistake. I have come to the floor today to once again acknowledge that a mistake was made in the 1993 reconciliation bill; a mistake which must be corrected.

During consideration of the reconciliation bill, I opposed tax increases on working middle- and lower-income Americans. However, in fighting to eliminate increases in broad taxes on middle- and lower-income Americans, Congress overlooked a provision which places a hidden tax on those hard-working Americans who work in the transportation sector. It is for this reason that I rise today to reintroduce the business meal deduction fairness bill.

Included in the 1993 reconciliation bill was a provision which lowered the deductible portion of business meals and entertainment expenses from 80 to 50 percent. On the surface, this seems only a tax on those rich enough to spend their lunchtimes in luxury restaurants and their nighttimes on luxury yachts. But contrary to popular belief, the business meal deduction is not only used by lobbyists and fat cats for three-martini lunches. Due to regulations limiting travel hours, many transportation workers must eat out. That means the reduced business meal deduction is a tax on workers who have no control over the length of their trips, the amount of time they must rest during a delivery, or, in many cases, the places they can stop to eat.

Let me provide you with a brief example to illustrate my point. The average truck driver earns approximately $30,000 a year. The reduced deduction will cost that driver between $750 and $1,000 per year. This is just one of many examples I could give to demonstrate the burden this change has placed on hard-working, middle-income Americans. The legislation I am introducing today, will lift this burden and restore some common sense to the tax code.

Mr. President, the business meal deduction fairness bill repeals the hidden tax created last year by restoring the business meal deduction to 80 percent for those individuals covered by the Department of Transportation hours-of-service limit. This legislation is simple, straightforward, and most importantly, fair.

Mr. President, I would like to remind my colleagues of a similar bill we worked on to correct another mistake which hurt tens of thousands of hard-working, middle-income Americans. As my colleagues remember, the 1990 deficit reduction bill imposed a surtax on specific luxury items. At the time, it was argued that the surtax would only affect the wealthiest segment of society. However, after it went into effect, it became clear that, instead of paying the tax, the wealthy decided not to buy the new boat or the diamond ring. As a result, the middle- and lower-income Americans producing and selling those luxury items ended up bearing the burden of the tax through lost wages and jobs.

Once it was apparent that the luxury tax was not achieving its intended goal, I began working with a number of my colleagues to repeal it. Fortunately, we were successful in getting a repeal in the 1993 reconciliation bill. Unfortunately, far too many people were hurt by this mistake because we did not correct it quickly enough. We cannot let that happen again. Therefore I am requesting the support and assistance of my colleagues to ensure that the business meal deduction fairness bill becomes law. Mr. President, I ask unanimous consent that a copy of my legislation be printed in the RECORD.

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

S. 434

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INCREASED DEDUCTIBILITY OF BUSINESS MEAL EXPENSES FOR INDIVIDUALS SUBJECT TO FEDERAL LIMITATIONS ON HOURS OF SERVICE.

(a) IN GENERAL.—Section 274(n) of the Internal Revenue Code of 1986 (relating to only 50 percent of meal and entertainment expenses allowed as deduction) is amended by adding at the end the following new paragraph:

"(3) SPECIAL RULE FOR INDIVIDUALS SUBJECT TO FEDERAL LIMITATIONS ON HOURS OF SERVICE.—In the case of any expenses for food or beverages consumed by an individual during, or incident to, any period of duty which is subject to the hours of service limitations of the Department of Transportation, paragraph (1) shall be applied by substituting '80 percent' for '50 percent'."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1994.●

By Mr. FAIRCLOTH:

S. 435. A bill to provide for the elimination of the Department of Housing and Urban Development, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

LEGISLATION TO ABOLISH HUD

Mr. FAIRCLOTH. Mr. President, today I am pleased to introduce legislation that will abolish the Department of Housing and Urban Development.

Mr. President, HUD was created in 1965. When it was created, the purpose of this Department was to revitalize our urban areas and provide more housing for America.

Mr. President, in short, HUD has been a collosal failure. Since 1965, HUD has spent hundreds of billions of dollars—that adjusted to inflation—probably exceeds a trillion dollars. Yet today, despite this massive spending, our Nation's urban areas are more decayed and more dangerous today than ever. Homelessness, hardly a problem 30 years ago, is now a major concern.

Public housing has been a disaster and home ownership is down.

Solving these problems was supposed to be HUD's mission. In each, it has failed miserably.

Imagine if we applied a performance standard like this to other Federal agencies. Suppose that when we created NASA with the purpose of putting a man on the Moon, that 30 years later, they still had not done it. We might consider abolishing them. That is exactly what we should do with HUD because they failed to accomplish their mission.

Suppose that instead of creating HUD, we had given a trillion dollars to an entrepreneur like Bill Gates. Do you think our inner cities would be any worse off, or do you think that they would be more livable places today? I think the answer is clear.

Take Fannie Mae for example. Fannie Mae plans to spend $1 trillion on affordable housing before the end of the decade. The plan will finance homes for 10 million people. This would provide a home to one in three renters in America. This plan, however, unlike HUD, won't cost American taxpayers one cent, and yet it will provide homes for millions of Americans.

Mr. President, I have no faith that HUD can be reinvented. Thirty years of failure is too much. Since the November 8 election, HUD Secretary Henry Cisneros has put on a masterful public relations plan to save his Department. I for one am not fooled. If he really believed in what he was doing, he would have done it 2 years ago.

Most importantly, what are the savings from the Cisneros plan? There are none. The only clearly identified savings will amount to one-half of 1 percent over 5 years. Mr. President, let me repeat that, the total savings in the Cisneros plan amount to only one-half of 1 percent over 5 years.

Of course, there are promises of more savings, but they are just that—promises.

Actually, if you look at the projected outlays by HUD in the fiscal year 1996 budget for the years 1995–99, spending is $3 billion more than was projected in last year's budget. Yes, that's right, spending will actually increase despite the reorganization.

Furthermore, my favorite line from the President's budget is on page 190. It is a chart about HUD's program consolidation. It says:

"Net impact, HUD consolidations"—spending of $29.4 billion in 1995 to $30.3 billion in 1996.

Yes, that's right. Spending will actually go up by $1 billion because of HUD's consolidations—not down.

The Wall Street Journal reported on February 15, 1995, that HUD's projected savings may have been oversold, and that down at HUD they knew this before they submitted their plan to Congress.

For these reasons, I am introducing a bill to abolish HUD. The bill will abolish HUD, effective January 1, 1998. The bill will direct the Secretary to make one housing block grant available to States and localities; transform all rental assistance into vouchers; and make FHA a Government-controlled corporation with income targeting and risk sharing.

By Mr. CAMPBELL (for himself, Mr. INOUYE, Mr. MCCAIN, and Mr. DASCHLE):

S. 436. A bill to improve the economic conditions and supply of housing in native American communities by creating the Native American Financial Services Organization, and for other purposes; to the Committee on Indian Affairs.

NATIVE AMERICAN FINANCIAL SERVICES ORGANIZATION ACT

Mr. CAMPBELL. Mr. President, today I am introducing legislation entitled the Native American Financial Services Organization Act. I am pleased to add my distinguished colleagues, the chairman and vice-chairman of the Indian Affairs Committee, Senators MCCAIN and INOUYE, and Senator DASCHLE, as cosponsors of this important legislation.

Mr. President, there is a continued need for assistance to improve the housing conditions that exist in many Indian reservation communities, Alaska Native villages, and native Hawaiian communities. Statistics from the Bureau of Indian Affairs estimated in 1993 that as many as 90,000 native American families were in need of improved housing and nearly 50,000 families need new homes.

Further, a study completed by the Commission on American Indian, Alaska Native, and Native Hawaiian Housing, found that housing shortages and deplorable living conditions are at crisis proportions in many native American communities. In its study the commission documented several obstacles that stand between Indian people

and affordable, adequate, and available housing.

The Commission found there is currently little, if any, conventional lending available to native people seeking to purchase a home.

In addition, many Indian housing authorities lack the expertise to manage, coordinate, and maintain viable programs.

And importantly, tribal governments have had to rely primarily on Federal Government grant and loan programs to finance housing and economic development projects.

As a result of the study, the Commission recommended the creation of an entity that could serve as an intermediary financing institution with the authority to package mortgage loans, provide technical assistance, and serve as a clearinghouse of information for alternative financing programs.

Mr. President, the Native American Financial Services Organization Act is the culmination of extensive deliberations between officials from the Department of Housing and Urban Development, the Department of Treasury, the USDA, members of my staff, and staff of the Senate Committee on Indian Affairs. The purpose of this legislation is to create a financial infrastructure for commercial financing opportunities by and for Indian people. The primary mechanism that will bridge Indian tribes with the commercial lending markets will be the creation of a Native American Financial Services Organization.

The Native American Financial Services Organization would establish a limited Government-chartered corporation. A Federal grant would capitalize the federally chartered organization, which would cease to exist upon a designated date. At that point the charter would become a private corporation.

More specifically, the legislation is designed to:

First, establish and organize native American community lending institutions, that will be called Native American Financial Institutions. These lending institutions could be any type of financial institution, including community banks, credit unions and saving banks, that together, could provide a wide range of financial services;

Second, develop and provide financial expertise and technical assistance to the Native American Financial Institutions, including methods of underwriting, securing, and selling mortgage and small commercial and consumer loans; and

Third, develop and provide specialized technical assistance on how to overcome barriers to primary mortgage lending on native American lands, including issues related to trust lands, discrimination, and inapplicability of standard underwriting criteria.

Importantly, this legislation will work in conjunction with the Community Development Financial Institutions [CDFI] fund established in the Reigle Community Development Banking and Regulatory Improvement Act, signed into law by the President last year. Under a cooperative agreement with the CDFI fund, this legislation will provide technical assistance and other services to Native American Financial Institutions.

This week, Secretary Cisneros testified before the Committee on Indian Affairs. In his remarks, he stated that this legislation will "neither conflict nor duplicate the functions of CDFI or any other Government-sponsored enterprise, but is intended to supplement the efforts of existing organizations."

In short, the Native American Financial Services Organization would help provide financial independence to the native American community and would begin to address the housing deficiencies by working to attract private capital into the Indian housing market.

Mr. President, I would like to conclude my remarks by making reference to a letter I recently received from the chairperson of the Ute Mountain Ute Tribe, that I believe illustrates the great necessity for this legislation. The letter states that the shortage of housing in the community is so severe that among the approximately 1,500 tribal members, 400 are without a permanent home and that a waiting list for new housing approaches 300 people.

It is for this reason, that I believe the Native American Financial Services Organization is much needed. Statistics such as this merit the need for an innovative financing mechanism the Native American Financial Services Organization can provide.

Mr. President, in closing, I ask unanimous consent that the bill be printed in the RECORD immediately following the full text of my statement and that the statements of Senators MCCAIN and INOUYE, who are both original cosponsors, appear in the RECORD immediately following the bill.

I also ask unanimous consent to include letters from the Ute Mountain Ute Tribe, the Native American Indian Housing Council, and HUD's Secretary Henry Cisneros to be printed in the RECORD.

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

S. 436

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the "Native American Financial Services Organization Act of 1995".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title.

TITLE I—STATEMENT OF POLICY; DEFINITIONS

Sec. 101. Policy.
Sec. 102. Statement of purposes.
Sec. 103. Definitions.

TITLE II—NATIVE AMERICAN FINANCIAL SERVICES ORGANIZATION

Sec. 201. Establishment of the organization.
Sec. 202. Authorized assistance and service functions.
Sec. 203. Native American lending services grant.
Sec. 204. Audits.
Sec. 205. Annual housing and economic development reports.
Sec. 206. Advisory Council.

TITLE III—CAPITALIZATION OF ORGANIZATION

Sec. 301. Capitalization of the organization.
Sec. 302. Obligations and securities of the organization.
Sec. 303. Limit on total assets and liabilities.

TITLE IV—REGULATION, EXAMINATION, AND REPORTS

Sec. 401. Regulation, examination, and reports.
Sec. 402. Authority of the Secretary of Housing and Urban Development.

TITLE V—FORMATION OF NEW CORPORATION

Sec. 501. Formation of new corporation.
Sec. 502. Adoption and approval of merger plan.
Sec. 503. Consummation of merger.
Sec. 504. Transition.
Sec. 505. Effect of merger.

TITLE VI—AUTHORIZATIONS OF APPROPRIATIONS

Sec. 601. Authorization of appropriations for Native American Financial Institutions.
Sec. 602. Authorization of appropriations for organization.

TITLE I—STATEMENT OF POLICY; DEFINITIONS

SEC. 101. POLICY.

(a) IN GENERAL.—Based upon the findings and recommendations of the Commission on American Indian, Alaska Native and Native Hawaiian Housing established by the Department of Housing and Urban Development Reform Act of 1989, the Congress has determined that—

(1) housing shortages and deplorable living conditions are at crisis proportions in Native American communities throughout the United States; and

(2) the lack of private capital to finance housing and economic development for Native Americans and Native American communities seriously exacerbates these housing shortages and poor living conditions.

(b) POLICY OF THE UNITED STATES TO ADDRESS NATIVE AMERICAN HOUSING SHORTAGE.—It is the policy of the United States to improve the economic conditions and supply of housing in Native American communities throughout the United States by creating the Native American Financial Services Organization to address the housing shortages and poor living conditions described in subsection (a).

SEC. 102. STATEMENT OF PURPOSES.

The purposes of this Act are—

(1) to help serve the mortgage and other lending needs of Native Americans by assisting in the establishment and organization of Native American Financial Institutions, developing and providing financial expertise and technical assistance to Native American Financial Institutions, including assistance concerning overcoming—

(A) barriers to lending with respect to Native American lands; and

(B) the past and present impact of discrimination;

(2) to promote access to mortgage credit in Native American communities in the United States by increasing the liquidity of financing for housing and improving the distribution of investment capital available for such financing, primarily through Native American Financial Institutions;

(3) to promote the infusion of public capital into Native American communities throughout the United States and to direct sources of public and private capital into housing and economic development for Native American individuals and families, primarily through Native American Financial Institutions; and

(4) to provide ongoing assistance to the secondary market for residential mortgages and economic development loans for Native American individuals and families, Native American Financial Institutions, and other borrowers by increasing the liquidity of such investments and improving the distribution of investment capital available for such financing.

SEC. 103. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) ALASKA NATIVE.—The term "Alaska Native" has the meaning given the term "Native" by section 3(b) of the Alaska Native Claims Settlement Act.

(2) BOARD.—The term "Board" means the Board of Directors of the Organization established under section 201(a)(2).

(3) CHAIRPERSON.—The term "Chairperson" means the chairperson of the Board.

(4) COUNCIL.—The term "Council" means the Advisory Council established under section 206.

(5) DESIGNATED MERGER DATE.—The term "designated merger date" means the specific calendar date and time of day designated by the Board under section 502(b).

(6) DIRECTOR.—The term "Director" means the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development.

(7) FUND.—The term "Fund" means the Community Development Financial Institutions Fund established under section 104 of the Riegle Community Development and Regulatory Improvement Act of 1994.

(8) INDIAN TRIBE.—The term "Indian tribe" 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 that is recognized as eligible for the special programs and services provided by the Federal Government to Indians because of their status as Indians.

(9) MERGER PLAN.—The term "merger plan" means the plan of merger adopted by the Board under section 502(a).

(10) NATIVE AMERICAN.—The term "Native American" means any member of an Indian tribe.

(11) NATIVE AMERICAN FINANCIAL INSTITUTION.—The term "Native American Financial Institution" means a person (other than an individual) that—

(A) qualifies as a community development financial institution under section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994;

(B) satisfies the requirements established by the Riegle Community Development and Regulatory Improvement Act of 1994 and the Fund for applicants for assistance from the Fund;

(C) demonstrates a special interest and expertise in serving the primary economic development and mortgage lending needs of the Native American community; and

(D) demonstrates that the person has the endorsement of the Native American community that the person intends to serve.

(12) NATIVE AMERICAN LENDER.—The term "Native American lender" means a Native American governing body, Native American housing authority, or other Native American Financial Institution that acts as a primary mortgage or economic development lender in a Native American community.

(13) NEW CORPORATION.—The term "new corporation" means the corporation formed in accordance with title V.

(14) NONQUALIFYING MORTGAGE LOAN.—The term "nonqualifying mortgage loan" means a mortgage loan that is determined by the Organization, on the basis of the quality, type, class, or principal amount of the loan, to fail to meet the purchase standards of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation in effect on September 30, 1994.

(15) ORGANIZATION.—The term "Organization" means the Native American Financial Services Organization established under section 201.

(16) QUALIFYING MORTGAGE LOAN.—The term "qualifying mortgage loan" means a mortgage loan that is determined by the Organization, on the basis of the quality, type, class or principal amount of the loan, to meet the purchase standards of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation in effect on September 30, 1994.

(17) TRANSITION PERIOD.—The term "transition period" means the period beginning on the date on which the merger plan is approved by both the Secretary of Housing and Urban Development and the Secretary of the Treasury and ending on the designated merger date.

TITLE II—NATIVE AMERICAN FINANCIAL SERVICES ORGANIZATION

SEC. 201. ESTABLISHMENT OF THE ORGANIZATION.

(a) CREATION; BOARD OF DIRECTORS; POLICIES; PRINCIPAL OFFICE; MEMBERSHIP; VACANCIES.—

(1) CREATION.—

(A) IN GENERAL.—There is established and chartered a corporation to be known as the Native American Financial Services Organization.

(B) PERIOD OF TIME.—The Organization shall be a congressionally chartered body corporate until the earlier of—

(i) the designated merger date; or

(ii) the date on which the charter is surrendered by the Organization.

(C) CHANGES TO CHARTER.—The right to revise, amend, or modify the Organization charter is specifically and exclusively reserved to the Congress.

(2) BOARD OF DIRECTORS; PRINCIPAL OFFICE.—

(A) BOARD.—The powers of the Organization shall be vested in a Board of Directors. The Board shall determine the policies that govern the operations and management of the Organization.

(B) PRINCIPAL OFFICE; RESIDENCY.—The principal office of the Organization shall be in the District of Columbia. For purposes of venue, the Organization shall be considered to be a resident of the District of Columbia.

(3) MEMBERSHIP.—

(A) IN GENERAL.—

(i) NINE MEMBERS.—Except as provided in clause (ii), the Board shall consist of 9 members, 3 of whom shall be appointed by the President and 6 of whom shall be elected by the class A stockholders, in accordance with the bylaws of the Organization.

(ii) THIRTEEN MEMBERS.—If class B stock is issued under section 301(b), the Board shall consist of 13 members, 9 of whom shall be appointed and elected in accordance with clause (i) and 4 of whom shall be elected by the class B stockholders, in accordance with the bylaws of the Organization.

(B) TERMS.—Each member of the Board shall be elected or appointed for a 4-year term, except that the members of the initial Board shall be elected or appointed for the following terms:

(i) Of the 3 members appointed by the President—

(I) 1 member shall be appointed for a 2-year term;

(II) 1 member shall be appointed for a 3-year term; and

(III) 1 member shall be appointed for a 4-year term;

as designated by the President at the time of the appointments.

(ii) Of the 6 members elected by the class A stockholders—

(I) 2 members shall each be elected for a 2-year term;

(II) 2 members shall each be elected for a 3-year term; and

(III) 2 members shall each be elected for a 4-year term.

(iii) If class B stock is issued and 4 additional members are elected by the class B stockholders—

(I) 1 member shall be elected for a 2-year term;

(II) 1 member shall be elected for a 3-year term; and

(III) 2 members shall each be elected for a 4-year term.

(C) QUALIFICATIONS.—Each member appointed by the President shall have expertise in 1 or more of the following areas:

(i) Native American housing and economic development programs.

(ii) Financing in Native American communities.

(iii) Native American governing bodies and court systems.

(iv) Restricted and trust land issues, economic development, and small consumer loans.

(D) CHAIRPERSON.—The Board shall select a Chairperson from among its members, except that the initial Chairperson shall be selected from among the members of the initial Board who have been appointed or elected to serve for a 4-year term.

(E) VACANCIES.—

(i) APPOINTED MEMBERS.—Any vacancy in the appointed membership of the Board shall be filled by appointment by the President, but only for the unexpired portion of the term.

(ii) ELECTED MEMBERS.—Any vacancy in the elected membership of the Board shall be filled by appointment by the Board, but only for the unexpired portion of the term.

(F) TRANSITIONS.—Any member of the Board may continue to serve after the expiration of the term for which the member was appointed or elected until a qualified successor has been appointed or elected.

(b) POWERS OF THE ORGANIZATION.—The Organization may—

(1) adopt, alter, and use a corporate seal;

(2) adopt bylaws, consistent with this Act, regulating, among other things, the manner in which—

(A) the business of the Organization shall be conducted;

(B) the elected members of the Board shall be elected;

(C) the stock of the Organization shall be issued, held, and disposed of;

(D) the property of the Organization shall be disposed of; and

(E) the powers and privileges granted to the Organization by this Act and other law shall be exercised;

(3) make and perform contracts, agreements, and commitments, including entering into a cooperative agreement with the Fund;

(4) prescribe and impose fees and charges for services provided by the Organization;

(5)(A) settle, adjust, and compromise; and

(B) with or without consideration or benefit to the Organization, release or waive in whole or in part, in advance or otherwise, any claim, demand, or right of, by, or against the Organization;

if such settlement, adjustment, compromise, release, or waiver is not adverse to the interests of the United States;

(6) sue and be sued, complain and defend, in any tribal, Federal, State, or other court;

(7) acquire, take, hold, and own, and to deal with and dispose of any property;

(8) determine the necessary expenditures of the Organization and the manner in which such expenditures shall be incurred, allowed, and paid, and appoint, employ, and fix and provide for the compensation and benefits of officers, employees, attorneys, and agents as the Board determines reasonable and not inconsistent with this section;

(9) incorporate a new corporation under State, District of Columbia, or tribal law, as provided in section 501;

(10) adopt a plan of merger, as provided in section 502;

(11) consummate the merger of the Organization into the new corporation, as provided in section 503; and

(12) have succession until the designated merger date or any earlier date on which the Organization surrenders its Federal charter.

(c) INVESTMENT OF FUNDS; DESIGNATION AS DEPOSITARY, CUSTODIAN, OR AGENT.—

(1) INVESTMENT OF FUNDS.—Funds of the Organization that are not required to meet current operating expenses shall be invested in obligations of, or obligations guaranteed by, the United States or any agency thereof, or in obligations, participations, or other instruments that are lawful investments for fiduciary, trust, or public funds.

(2) DESIGNATION AS DEPOSITARY, CUSTODIAN, OR AGENT.—Any Federal Reserve bank or Federal home loan bank, or any bank as to which at the time of its designation by the Organization there is outstanding a designation by the Secretary of the Treasury as a general or other depositary of public money, may—

(A) be designated by the Organization as a depositary or custodian or as a fiscal or other agent of the Organization; and

(B) act as such depositary, custodian, or agent.

(d) ACTIONS BY AND AGAINST THE ORGANIZATION.—Notwithstanding section 1349 of title 28, United States Code, or any other provision of law—

(1) the Organization shall be deemed to be an agency covered under sections 1345 and 1442 of title 28, United States Code;

(2) any civil action to which the Organization is a party shall be deemed to arise under the laws of the United States, and the appropriate district court of the United States shall have original jurisdiction over any such action, without regard to amount or value; and

(3) any civil or other action, case, or controversy in a tribal court, court of a State, or in any court other than a district court of the United States, to which the Organization is a party, may at any time before the commencement of the trial be removed by the Organization, without the giving of any bond or security and by following any procedure for removal of causes in effect at the time of the removal—

(A) to the district court of the United States for the district and division in which the action is pending;

(B) or, if there is no such district court, to the district court of the United States for the District of Columbia.

SEC. 202. AUTHORIZED ASSISTANCE AND SERVICE FUNCTIONS.

(a) TECHNICAL ASSISTANCE AND SERVICES.—The Organization may—

(1) assist the Fund in the establishment and organization of Native American Financial Institutions;

(2) assist the Fund in developing and providing financial expertise and technical assistance to Native American Financial Institutions, including methods of underwriting, securing, servicing, packaging, and selling mortgage and small commercial and consumer loans;

(3) develop and provide specialized technical assistance on overcoming barriers to primary mortgage lending on Native American lands, including issues related to trust lands, discrimination, high operating costs, and inapplicability of standard underwriting criteria;

(4) assist the Fund in providing mortgage underwriting assistance (but not in originating loans) under contract to Native American Financial Institutions;

(5) work with the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and other participants in the secondary market for home mortgage instruments in identifying and eliminating barriers to the purchase of Native American mortgage loans originated by Native American Financial Institutions and other lenders in Native American communities;

(6) obtain capital investments in the Organization from Indian tribes, Native American organizations, and other entities;

(7) assist the Fund in the operation of the Organization as an information clearinghouse by providing information on financial practices to Native American Financial Institutions; and

(8) assist the Fund in monitoring and reporting to the Congress on the performance of Native American Financial Institutions in meeting the economic development and housing credit needs of Native Americans.

(b) PURCHASES AND SALES OF MORTGAGES AND MORTGAGE-BACKED SECURITIES.—

(1) IN GENERAL.—

(A) AUTHORIZATION.—If a determination is made in accordance with subparagraph (B), the Organization may, upon receipt of a written authorization from the Secretary of Housing and Urban Development under this paragraph, carry out any activity described in paragraph (3).

(B) DETERMINATION.—For purposes of subparagraph (A), a determination made under this section is a determination by the Secretary of Housing and Urban Development that the combined purchases by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation of residential Native American nonqualifying mortgage loans originated by Native American Financial Institutions and other lenders on housing consisting of between 1 and 4 dwelling units—

(i) in the second year following the establishment of the Organization, total less than $20,000,000 (unless the Organization can demonstrate to the Secretary of Housing and Urban Development that such purchase goal could not be met); or

(ii) in any succeeding year, total less than that amount that the Secretary of Housing and Urban Development has determined and published as a reasonable Native American mortgage purchase goal (in accordance with paragraph (2)) for such combined purchases by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation in such year.

(2) FACTORS CONSIDERED.—In determining the purchase goal described in paragraph (1)(B)(ii), the Secretary shall take into account the study by the Fund of Native American lending and investment conducted pursuant to section 117(c) of the Riegle Community Development and Regulatory Improvement Act of 1994.

(3) POWERS OF THE ORGANIZATION.—Upon receiving a written authorization from the Secretary of Housing and Urban Development under paragraph (1), the Organization may, at any time—

(A) with respect to residential mortgage loans originated by Native American Financial Institutions that are qualifying mortgage loans—

(i) purchase such qualifying mortgage loans;

(ii) hold such qualifying mortgage loans for a period of not to exceed 12 months; and

(iii) resell such qualifying mortgage loans to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or other secondary market participants, as provided in section 303(b);

(B) with respect to residential mortgage loans originated by the Native American Financial Institutions that are nonqualifying mortgage loans—

(i) purchase such nonqualifying mortgage loans from the Native American Financial Institutions for such terms as the Organization determines to be appropriate, including the life of the mortgage loan, if, with respect to any such loan—

(I) the Organization has reasonable assurance that the loan will be repaid within the time agreed;

(II) the Native American Financial Institution selling the loan retains a participation of not less than 10 percent in the mortgage;

(III) the Native American Financial Institution selling the loan agrees for such period of time and under such circumstances as the Organization may require, to repurchase or replace the mortgage upon demand of the Organization in the event that the loan is in default; or

(IV) that portion of the outstanding principal balance of the loan which exceeds 80 percent of the value of the property securing such loan is guaranteed or insured by a qualified insurer, as determined by the Organization; and

(ii) issue mortgage-backed securities or other forms of participations based on pools of such nonqualifying mortgage loans, as provided in section 303(c); and

(C) purchase, service, sell, lend on the security of, and otherwise deal in—

(i) residential mortgages that are secured by a subordinate lien against a property consisting of 1 to 4 dwelling units that is the principal residence of the mortgagor; and

(ii) residential mortgages that are secured by a subordinate lien against a property consisting of five or more dwelling units.

(4) RIGHTS AND REMEDIES.—

(A) IN GENERAL.—The rights and remedies of the Organization, including any rights and remedies of the Organization on, under, or with respect to any mortgage or any obligation secured thereby, shall be immune from impairment, limitation, or restriction by or under any State, District of Columbia, or tribal—

(i) law that becomes effective after the acquisition by the Organization of the subject or property on, under, or with respect to which such right or remedy arises or exists or would so arise or exist in the absence of such law; or

(ii) administrative or other action that becomes effective after such acquisition.

(B) QUALIFICATION.—The Organization may conduct its business without regard to any qualification or similar requirement in the District of Columbia, or any State or tribal jurisdiction.

SEC. 203. NATIVE AMERICAN LENDING SERVICES GRANT.

(a) INITIAL GRANT PAYMENT.—If the Fund and the Organization enter into a cooperative agreement for the Organization to provide technical assistance and other services to Native American Financial Institutions, such agreement shall, to the extent that funds are available as provided in section 602, provide that the initial grant payment, anticipated to be $5,000,000, shall be made when all members of the initial Board have been appointed under section 201.

(b) PAYMENT OF GRANT BALANCE.—The payment of the grant balance of $5,000,000 shall be made to the Organization not later than 1 year after the date on which the initial grant payment is made under subsection (a).

SEC. 204. AUDITS.

(a) INDEPENDENT AUDITS.—

(1) IN GENERAL.—The Organization shall have an annual independent audit made of its financial statements by an independent public accountant in accordance with generally accepted auditing standards.

(2) DETERMINATIONS.—In conducting an audit under this subsection, the independent public accountant shall determine and report on whether the financial statements of the Organization—

(A) are presented fairly in accordance with generally accepted accounting principles; and

(B) to the extent determined necessary by the Director, comply with any disclosure requirements imposed under section 401.

(b) GAO AUDITS.—

(1) IN GENERAL.—Beginning after the first 2 years of the operation of the Organization, unless an earlier date is required by any other statute, grant, or agreement, the programs, activities, receipts, expenditures, and financial transactions of the Organization shall be subject to audit by the Comptroller General of the United States under such rules and regulations as may be prescribed by the Comptroller General.

(2) ACCESS.—To carry out this subsection, the representatives of the General Accounting Office shall—

(A) have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Organization and necessary to facilitate the audit;

(B) be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians; and

(C) have access, upon request to the Organization or any auditor for an audit of the Organization under subsection (a), to any books, accounts, financial records, reports, files, or other papers, or property belonging to or in use by the Organization and used in any such audit and to any papers, records, files, and reports of the auditor used in such an audit.

(3) REPORTS.—The Comptroller General of the United States shall submit to the Congress a report on each audit conducted under this subsection.

(4) REIMBURSEMENT.—The Organization shall reimburse the General Accounting Office for the full cost of any audit conducted under this subsection.

SEC. 205. ANNUAL HOUSING AND ECONOMIC DEVELOPMENT REPORTS.

Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Organization shall collect, maintain, and provide to the Secretary of Housing and Urban Development, in a form determined by the Secretary, such data as the Secretary determines to be appropriate with respect to the Organization's—

(1) mortgages on properties consisting of between 1 and 4 dwelling units;

(2) mortgages on properties consisting of five or more dwelling units; and

(3) activities relating to economic development.

SEC. 206. ADVISORY COUNCIL.

(a) ESTABLISHMENT.—The Board shall establish an Advisory Council in accordance with this section.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Council shall consist of 13 members, who shall be appointed by the Board, including 1 representative from each of the 12 districts established by the Bureau of Indian Affairs and 1 representative from the State of Hawaii.

(2) QUALIFICATIONS.—Not less than 6 of the members of the Council shall have financial expertise, and not less than 9 members of the Council shall be Native Americans.

(3) TERMS.—Each member of the Council shall be appointed for a 4-year term, except that the initial Council shall be appointed, as designated by the Board at the time of appointment, as follows:

(A) Four members shall each be appointed for a 2-year term.

(B) Four members shall each be appointed for a 3-year term.

(C) Five members shall each be appointed for a 4-year term.

(c) DUTIES.—The Council shall advise the Board on all policy matters of the Organization. Through the regional representation of its members, the Council shall provide information to the Board from all sectors of the Native American community.

TITLE III—CAPITALIZATION OF ORGANIZATION

SEC. 301. CAPITALIZATION OF THE ORGANIZATION.

(a) CLASS A STOCK.—The class A stock of the Organization shall—

(1) be issued only to Indian tribes;

(2) be allocated on the basis of Indian tribe population, as determined by the Secretary of Housing and Urban Development in consultation with the Secretary of the Interior;

(3) have such par value and other characteristics as the Organization shall provide;

(4) be vested with voting rights, each share being entitled to 1 vote;

(5) be nontransferable; and

(6) be surrendered to the Organization if the holder ceases to be recognized as an Indian tribe under this Act.

(b) CLASS B STOCK.—

(1) IN GENERAL.—The Organization may issue class B stock evidencing capital contributions in the manner and amount, and subject to any limitations on concentration of ownership, as may be established by the Organization.

(2) CHARACTERISTICS.—Any class B stock issued under paragraph (1) shall—

(A) be available for purchase by investors;

(B) be entitled to such dividends as may be declared by the Board in accordance with subsection (c);

(C) have such par value and other characteristics as the Organization shall provide;

(D) be vested with voting rights, each share being entitled to 1 vote; and

(E) be transferable only on the books of the Organization.

(c) CHARGES AND FEES; EARNINGS.—

(1) CHARGES AND FEES.—The Organization may impose charges or fees, which may be regarded as elements of pricing, with the objectives that—

(A) all costs and expenses of the operations of the Organization should be within the income of the Organization derived from such operations; and

(B) such operations would be fully self-supporting.

(2) EARNINGS.—All earnings from the operations of the Organization shall be annually transferred to the general surplus account of the Organization. At any time, funds in the general surplus account may, in the discretion of the Board, be transferred to the reserves of the Organization.

(d) CAPITAL DISTRIBUTIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Organization may make such capital distributions (as such term is defined in section 1303 of the Federal Housing Financial Safety and Soundness Act of 1992) as may be declared by the Board. All capital distributions shall be charged against the general surplus account of the Organization.

(2) RESTRICTION.—The Organization may not make any capital distribution that would decrease the total capital (as such term is defined in section 1303 of the Federal Housing Financial Safety and Soundness Act of 1992) of the Organization to an amount less than the capital level for the Organization established under section 401, without prior written approval of the distribution by the Director.

SEC. 302. OBLIGATIONS AND SECURITIES OF THE ORGANIZATION.

(a) IN GENERAL.—

(1) AUTHORIZATION.—The Organization may—

(A) borrow funds to give security or pay interest or other return; and

(B) issue upon the approval of the Secretary of the Treasury, notes, debentures, bonds, or other obligations having maturities and bearing such rate or rates of interest as may be determined by the Organization with the approval of the Secretary of the Treasury;

if such borrowing and issuing of obligations qualifies as a transaction by an issuer not involving any public offering under section 4(2) of the Securities Act of 1933.

(2) RESTRICTIONS.—

(A) IN GENERAL.—Obligations issued by the Organization under this section shall not be obligations of the United States or any agency of the United States.

(B) NO GUARANTEES.—Payment of the principal of or interest on such obligations shall not be guaranteed by the United States or any agency of the United States. The obligations issued by the Organization under this section shall so plainly state.

(b) RESALES OF QUALIFYING MORTGAGE LOANS.—The sale or other disposition by the

Organization of qualifying mortgage loans under section 202(b) shall be on such terms and conditions relating to resale, repurchase, substitution, replacement or otherwise as the Organization may prescribe, except that the Organization may not guarantee or insure the payment of any mortgage loan sold under section 202(b).

(c) SECURITIES BACKED BY NONQUALIFYING MORTGAGE LOANS.—Securities in the form of debt obligations or trust certificates of beneficial interest, or both, and based upon nonqualifying mortgage loans held and set aside by the Organization under section 202(b)—

(1) may be issued upon the approval of the Secretary of the Treasury; and

(2) shall have such maturities, and shall bear such rate or rates of interest, as may be determined by the Organization with the approval of the Secretary of the Treasury;

if such issuance qualifies as a transaction by an issuer not involving any public offering under section 4(2) of the Securities Act of 1933.

(d) PROHIBITIONS AND RESTRICTIONS; CREATION OF LIENS AND CHARGES.—

(1) IN GENERAL.—The Organization may, by regulation or by writing executed by the Organization—

(A) establish prohibitions or restrictions on the creation of indebtedness or obligations of the Organization or of liens or charges upon property of the Organization, including after-acquired property; and

(B) create liens and charges, which may be floating liens or charges, upon all or any part or parts of the property of the Organization, including after-acquired property.

(2) EFFECT.—Any prohibition, restriction, lien, or charge established under paragraph (2) shall—

(A) have such effect, including such rank and priority, as may be provided by regulations of the Organization or by any writing executed by the Organization; and

(B) create a cause of action which may be enforced by action in the United States district court for the District of Columbia or in the United States district court for any judicial district in which any of the property affected is located.

(3) JURISDICTION; SERVICE OF PROCESS.—Process in any action described in paragraph (2) may run to or be served in any judicial district or in any place subject to the jurisdiction of the United States.

(e) VALIDITY OF PROVISIONS; VALIDITY OF RESTRICTIONS, PROHIBITIONS, LIENS, OR CHARGES.—This section and any restriction, prohibition, lien, or charge referred to in subsection (b) shall be fully effective notwithstanding any other law, including any law of or relating to sovereign immunity or priority.

SEC. 303. LIMIT ON TOTAL ASSETS AND LIABILITIES.

The aggregate of—

(1) the total equity of the Organization, including all capital from any issuance of class B stock; and

(2) the total liabilities of the Organization, including all obligations issued or incurred by the Organization;

shall not at any time exceed $20,000,000.

TITLE IV—REGULATION, EXAMINATION, AND REPORTS

SEC. 401. REGULATION, EXAMINATION, AND REPORTS.

(a) EFFECTIVE DATE OF SECTION.—This section shall take effect on the date on which the Secretary of Housing and Urban Development makes a determination in accordance with section 202(b) that the Organization may purchase and sell mortgages and mortgage-backed securities.

(b) IN GENERAL.—The Organization shall be subject to the regulatory authority of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development with respect to all matters relating to the financial safety and soundness of the Organization.

(c) DUTY OF DIRECTOR.—The Director shall ensure that the Organization is adequately capitalized and operating safely as a congressionally chartered body corporate.

(d) POWERS OF DIRECTOR.—The Director shall have all of the exclusive powers granted the Director under subsections (b), (d), and (e) of section 1313 of the Housing and Community Development Act of 1992, as determined by the Director to be necessary or appropriate to regulate the operation of the Organization.

(e) REPORTS TO DIRECTOR.—

(1) ANNUAL REPORT.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Organization shall submit to the Director a report describing the financial condition and operations of the Organization. The report shall be in such form, contain such information, and be submitted on such date as the Director shall require.

(2) OTHER REPORTS.—In addition to the reports submitted under paragraph (1), the Organization shall submit to the Director any report required by the Director pursuant to section 1314 of the Housing and Community Development Act of 1992.

(3) CONTENTS OF REPORT.—Each report submitted under this subsection shall contain a declaration by the president, vice president, treasurer, or any other officer of the Organization designated by the Board to make such declaration, that the report is true and correct to the best of such officer's knowledge and belief.

(f) FUNDING OFHEO OVERSIGHT.—

(1) ASSESSMENT AND COLLECTION.—The Director shall assess and collect from the Organization such amounts as are necessary to reimburse the Office of Federal Housing Enterprise Oversight for the reasonable costs and expenses of the activities undertaken by the Office of Federal Housing Enterprise Oversight to carry out the duties of the Director under paragraph (2), including the costs of examinations and overhead expenses.

(2) REQUIREMENTS.—Annual assessments imposed by the Director shall be—

(A) imposed prior to October 1 of each year;

(B) collected at such time or times during each assessment year as determined necessary or appropriate by the Director;

(C) deposited into the Federal Housing Enterprises Oversight Fund established by section 1316(f) of the Housing and Community Development Act of 1992; and

(D) available, to the extent provided in appropriations Acts, for carrying out the responsibilities of the Director under this section.

SEC. 402. AUTHORITY OF THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT.

Except for the authority of the Director under in section 401, the Secretary of Housing and Urban Development shall—

(1) have general regulatory power over the Organization; and

(2) issue such rules and regulations applicable to the Organization as determined necessary or appropriate by the Secretary to ensure that the purposes specified in section 102 are accomplished.

TITLE V—FORMATION OF NEW CORPORATION

SEC. 501. FORMATION OF NEW CORPORATION.

(a) IN GENERAL.—In order to continue the accomplishment of the purposes specified in section 102 beyond the terms of the charter of the Organization, the Board shall, not later than 10 years after the date of enactment of this Act, cause the formation of a new corporation under the laws of any tribe, any State, or the District of Columbia.

(b) POWERS OF NEW CORPORATION NOT PRESCRIBED.—Except as provided in this section, the new corporation may have any corporate powers and attributes permitted under the laws of the jurisdiction of its incorporation which the Board shall determine, in its business judgment, to be appropriate.

(c) USE OF NAFSO NAME PROHIBITED.—The new corporation may not use in any manner the name "Native American Financial Services Organization" or "NAFSO" or any variation of thereof.

SEC. 502. ADOPTION AND APPROVAL OF MERGER PLAN.

(a) IN GENERAL.—Not later than 10 years after the date of enactment of this Act, the Board shall prepare, adopt, and submit to the Secretary of Housing and Urban Development and the Secretary of the Treasury for approval, a plan for merging the Organization into the new corporation.

(b) DESIGNATED MERGER DATE.—

(1) IN GENERAL.—The Board shall establish the designated merger date in the merger plan as a specific calendar date on which and time of day at which the merger of the Organization into the new corporation shall take effect.

(2) CHANGES.—The Board may change the designated merger date in the merger plan by adopting an amended plan of merger.

(3) RESTRICTION.—Except as provided in paragraph (4), the designated merger date in the merger plan or any amended merger plan shall not be later than 11 years after the date of enactment of this Act.

(4) EXCEPTION.—Subject to the restriction contained in paragraph (5), the Board may adopt an amended plan of merger that designates a date later than 11 years after the date of enactment of this Act if the Board submits to both the Secretary of Housing and Urban Development and the Secretary of the Treasury a report—

(A) stating that an orderly merger of the Organization into the new corporation is not feasible before the latest date designated by the Board;

(B) explaining why an orderly merger of the Organization into the new corporation is not feasible before the latest date designated by the Board;

(C) describing the steps that have been taken to consummate an orderly merger of the Organization into the new corporation not later than 11 years after the date of enactment of this Act; and

(D) describing the steps that will be taken to consummate an orderly and timely merger of the Organization into the new corporation.

(5) LIMITATION.—The date designated by the Board in an amended merger plan shall not be later than 12 years after the date of enactment of this Act.

(6) CONSUMMATION OF MERGER.—The consummation of an orderly and timely merger of the Organization into the new corporation shall not occur later than 13 years after the date of enactment of this Act.

(c) GOVERNMENTAL APPROVALS OF MERGER PLAN REQUIRED.—The merger plan or any amended merger plan shall take effect on the

date on which the plan is approved by both the Secretary of Housing and Urban Development and the Secretary of the Treasury.

(d) REVISION OF DISAPPROVED MERGER PLAN REQUIRED.—If either the Secretary of Housing and Urban Development or the Secretary of the Treasury, or both, disapprove the merger plan or any amended merger plan—

(1) each Secretary that disapproves the plan shall notify the Organization of such disapproval and indicate the reasons for the disapproval; and

(2) not later than 30 days after the date of notification of disapproval under paragraph (1), the Organization shall submit to both the Secretary of Housing and Urban Development and the Secretary of the Treasury for approval an amended merger plan responsive to the reasons for the disapproval indicated in such notification.

(e) NO STOCKHOLDER APPROVAL OF MERGER PLAN REQUIRED.—The approval or consent of the stockholders of the Organization shall not be required to accomplish the merger of the Organization into the new corporation.

SEC. 503. CONSUMMATION OF MERGER.

The Board shall ensure that the merger of the Organization into the new corporation is accomplished in accordance with—

(1) the merger plan approved by the Secretary of Housing and Urban Development and the Secretary of the Treasury; and

(2) all applicable laws of the jurisdiction in which the new corporation is incorporated.

SEC. 504. TRANSITION.

(a) CONTINUATION OF RIGHTS, DUTIES, AND RESTRICTIONS.—Except as provided in this section, the Organization shall, during the transition period, continue to have all of the rights, privileges, duties, and obligations, and shall be subject to all of the limitations and restrictions, set forth in this Act.

(b) COLLATERALIZATION OF OUTSTANDING OBLIGATIONS.—

(1) IN GENERAL.—The Organization shall provide for all debt obligations of the Organization that are outstanding on the date before the designated merger date to be secured as to principal and interest by obligations of the United States held in trust for the holders of such obligations.

(2) REQUIREMENTS, TERMS, AND CONDITIONS.—The collateralization and the trust referred to in the preceding sentence shall be subject to such requirements, terms, and conditions as the Secretary of the Treasury determines to be necessary or appropriate.

(c) ISSUANCE OF NEW OBLIGATIONS DURING TRANSITION PERIOD.—As needed to carry out the purposes for which it was formed, the Organization may, during the transition period, continue to issue obligations under section 303. Any new obligation issued during the transition period shall mature before the designated merger date.

SEC. 505. EFFECT OF MERGER.

(a) TRANSFER OF ASSETS AND LIABILITIES.—

(1) TRANSFER OF ASSETS.—On the designated merger date, all property, real, personal, and mixed, all debts due on any account, and any other interest of or belonging to or due to the Organization shall be transferred to and vested in the new corporation without further act or deed, and title to any property, whether real, personal, or mixed, shall not in any way be impaired by reason of the merger.

(2) TRANSFER OF LIABILITIES.—On the designated merger date, the new corporation shall be responsible and liable for all obligations and liabilities of the Organization and neither the rights of creditors nor any liens upon the property of the Organization shall be impaired by the merger.

(b) TERMINATION OF THE ORGANIZATION AND ITS FEDERAL CHARTER.—On the designated merger date—

(1) the surviving corporation of the merger shall be the new corporation;

(2) the Federal charter of the Organization shall terminate; and

(3) the separate existence of the Organization shall terminate.

(c) REFERENCES TO THE ORGANIZATION IN LAW.—After the designated merger date, any reference to the Organization in any law or regulation shall be deemed to refer to the new corporation.

(d) SAVINGS CLAUSE.—

(1) PROCEEDINGS.—The merger of the Organization into the new corporation shall not abate any proceeding commenced by or against the Organization before the designated merger date, except that the new corporation shall be substituted for the Organization as a party to any such proceeding as of the designated merger date.

(2) CONTRACTS AND AGREEMENTS.—All contracts and agreements to which the Organization is a party and which are in effect on the day before the designated merger date shall continue in effect according to their terms, except that the new corporation shall be substituted for the Organization as a party to those contracts and agreements as of the designated merger date.

TITLE VI—AUTHORIZATIONS OF APPROPRIATIONS

SEC. 601. AUTHORIZATION OF APPROPRIATIONS FOR NATIVE AMERICAN FINANCIAL INSTITUTIONS.

(a) IN GENERAL.—There are authorized to be appropriated to the Fund, without fiscal year limitation, $20,000,000 to provide financial assistance to Native American Financial Institutions.

(b) NOT MATCHING FUNDS.—To the extent that a Native American Financial Institution receives a portion of an appropriation made under subsection (a), such funds shall not be considered to be matching funds required of the Native American Financial Institution under section 108(e) of the Riegle Community Development and Regulatory Improvement Act of 1994.

SEC. 602. AUTHORIZATION OF APPROPRIATIONS FOR ORGANIZATION.

The Secretary of Housing and Urban Development may, to the extent provided in advance in an appropriations Act, provide not more than $10,000,000 to the Fund for the funding of a cooperative agreement to be entered into by the Fund and the Organization for technical assistance and other services to be provided by the Organization to Native American Financial Institutions.

UTE MOUNTAIN UTE TRIBE
TOWAOC, COLORADO,
January 26, 1995.

Senator BEN NIGHTHORSE CAMPBELL,
Russell Office Building, Washington, DC.

DEAR SENATOR CAMPBELL: Thank you for your letter of January 25, 1995 requesting my comments on the draft Native American Financial Services Organization Act (NAFSO) attached thereto. Based on this Tribe's experience and on the House Committee on Banking, Finance and Urban Affairs report referenced in the draft, this type of assistance to Tribes is desperately needed. Your efforts to remedy the current housing situation for Native Americans is greatly appreciated.

After a brief review of the draft NAFSO, I have some initial observations. First, with respect to governance of NAFSO, it will be important to ensure that financial services experts are either on the Board of Directors or in a position to directly advise them. The issue here is that such experts will be required for a successful NAFSO and to assist in the establishment of NAFIs. Experts are necessary for the fiscal management of NAFSO itself.

Second, along these same lines, there probably should be some federal oversight, but not necessarily regulatory control, consistent with the United States's trust responsibility, to make sure NAFSO and NAFIs are properly established and operated. This oversight would be in addition to that required by the draft if NAFSO is authorized to purchase and sell Native American mortgages. Please advise if NAFIs would be subject to banking and lending laws as other such institutions are. Third, a more detailed explanation of what the "tribal contribution" will amount to in NAFSO's future would be beneficial. Many tribes with limited financial resources will have concerns about this facet of the legislation and some indication of what such contributions will entail may help to alleviate apprehension about them. Nevertheless, some tribes may oppose any tribal contributions at all. One would hope that the NAFSO could operate on its own resources if it is indeed successful.

To sum up, my primary concern involves ensuring that NAFSO will be successful, particularly considering it will be up to the Tribes in large part to do so. Some expert or federal representation on the Board of Directors would be helpful in this regard.

Coupled with this consideration is the importance of oversight for operations of NAFIs. This seems appropriate since the draft implies these institutions will be very similar to banks, institutions which are already highly regulated.

As you may be aware, the Department of Veteran's Affairs entered into a Cooperative Agreement with the Tribe on November 15, 1993 to assist us in obtaining home loans for veteran tribal members. To date, no loans have been processed under this Cooperative Agreement. At the same time, I have some concern about HUD's involvement in this program based on their inability to resolve this problem on its own. Nevertheless, surely HUD has learned much from its mistakes and should add to the process. Whether that agency should be a majority voice in the decision-making or policy formulating process is something that should be examined.

The shortage of suitable housing on this Reservation is severe. We currently have close to 400 individuals without a permanent home and near 300 which have placed themselves on the waiting list for housing. Out of the 1500 or so tribal members which reside here, this means over 25% of our people are without a permanent home. We also have information which indicates that upwards of 200 families are forced to share their homes with other families to provide the most basic of human needs, shelter. As you can understand, this desperate situation seriously affects tribal member's sense of self-worth and self-esteem.

Although this Tribe operates a Casino as well as other successful enterprises, we must utilize those funds for operation of the Tribal budget and economic development to keep our people working and reduce unemployment. It is for this reason that your draft NAFSO/NAFI legislation is urgently needed. Again, I cannot stress enough how much your efforts in this regard are appreciated. The Tribe acknowledges this effort and will endeavor to help where we can.

Thank you very much for the opportunity to comment. Please contact my office if you require anything further.

Sincerely,

JUDY KNIGHT FRANK,
Chairperson.

NATIONAL AMERICAN INDIAN HOUSING COUNCIL,
Washington, DC, January 24, 1995.

Hon. BEN NIGHTHORSE CAMPBELL,
U.S. Senate, Washington, DC.

DEAR SENATOR: On behalf of the NAIHC's Board of Directors and membership, I am writing to thank you for supporting legislation that is very important to the Native American community. In particular, your support for the Native American Financial Services Organization (NAFSO) is greatly appreciated as NAIHC believes this legislation will bring much needed relief to solving the housing problems for Native Americans.

The housing needs in Indian Country remain acute and we recognize that we must move beyond housing assistance from the federal government. NAFSO will help us do so. We believe that allowing the creation of Native American Financial Institutions (NAFIs) will also stimulate local economies and encourage privately financed housing.

Your recognization that NAFSO will have a positive affect on Indian Country is appreciated and valued. Please feel free to contact me if I can be of further support regarding this legislation.

Sincerely,

RUTH A. JAURE,
Executive Director.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,
Washington, DC, September 22, 1994.

Hon. ALBERT GORE, Jr.,
President of the U.S. Senate,
Washington, DC.

DEAR MR. PRESIDENT: I am pleased to transmit to you the "Native American Financial Services Organization Act of 1994." For the past several months, the Department of Housing and Urban Development has been working with the Departments of the Treasury, the Interior, Agriculture and Veterans' Affairs, in consultation with the Native American Community to develop this bill.

Based upon the findings and recommendations of the Commission on American Indian, Alaska Native and Native Hawaiian Housing, established by Public Law 101-235, HUD believes that housing shortages and deplorable living conditions have reached crisis proportions in Native American communities throughout the United States.

Historically, financing for most Native American housing and economic development has been provided through government programs. These federal programs, however, do not fully meet the needs of Native American communities. Furthermore, there are few financial institutions that provide financial services to these communities.

To begin to address this crisis, the Department is proposing this legislation to improve the conditions and supply of housing in Native American communities by creating the Native American Financial Services Organization. This legislation would establish a limited government-chartered corporation to be known as the Native American Financial Services Organization (NAFSO). A Federal grant would capitalize the federally-chartered, for-profit NAFSO through a cooperative agreement. Under the agreement, NAFSO could assist Native Americans in creating local financial institutions to address their capital needs. The Federal NAFSO charter would cease to exist upon a designated date, by which time it would be merged into a private corporation. The legislation also provides for an "asset cap" that is designed to limit the size of the NAFSO to $20 million. It is anticipated that the NAFSO will be privatized in order to grow beyond this limit. It also is anticipated that tribal contributions would assist the NAFSO in becoming self-sufficient over time.

The governance of the NAFSO would be vested in a Board of Directors that would be representative of the Native American community. Shares would be equitably distributed among federally-recognized tribes; the Board could elect to distribute additional shares on an investment basis.

It is the purpose of this Act—

(1) to help serve the mortgage, economic development, and other lending needs of Native Americans by assisting in the establishment and organization of Native American community lending institutions that would be called Native American Financial Institutions (NAFIs); NAFIs would be any type of financial institution, including community banks, credit unions and savings banks, and therefore could provide a wide range of financial services;

(2) to develop and provide financial expertise and technical assistance to NAFIs, including assistance on how to overcome barriers to lending on Native American lands, and the past and present impact of discrimination;

(3) to promote access to mortgage and economic development credit throughout Native American communities by increasing the liquidity of financing for housing and improving the distribution of investment capital available for such financing, primarily through NAFIs;

(4) to direct sources of public and private capital into housing and economic development for Native American individuals and families, primarily through NAFIs; and,

(5) to provide ongoing assistance to the secondary market for residential mortgages and economic development loans for Native American individuals and families, NAFIs, and other borrowers by increasing the liquidity of such mortgage investments and improving the distribution of investment capital available for such residential mortgage financing.

At the outset, it is contemplated that the NAFSO itself will not purchase and sell Native American mortgages originated by the NAFIs, but rather will work with the existing secondary market for residential mortgages to increase the liquidity for such investment. However, if it is later determined that the secondary market is not meeting reasonable mortgage purchase goals established by this department, the NAFSO will be authorized to purchase and sell such mortgages.

The Secretary of Housing and Urban Development would be authorized to provide up to $10 million, subject to appropriations, for the funding of a cooperative agreement for technical assistance and other services to be provided by the NAFSO to NAFIs. In addition, there would be authorized, without fiscal year limitation, $20 million to provide financial assistance through the NAFSO to NAFIs. Funding would be made available from the Community Development Financial Institution (CDFI) fund. NAFIs are not eligible for additional funding under the CDFI fund if the NAFI elects to receive funding under this Act.

This legislation further provides that the Office of Federal Housing Enterprise Oversight would regulate matters pertaining to the financial safety and soundness of the NAFSO in the event that the NAFSO is authorized to purchase and sell Native American mortgages and the Department of Housing and Urban Development would have general regulatory authority.

The "Native American Financial Services Act of 1994" would provide financial independence to the Native American community that has never been enjoyed before. It provides the structure to marry private financial resources with Federal and tribal resources in a way that benefits all parties. The creation of the NAFSO would have the ripple effect of opening avenues to economic development and housing that have not been available heretofore.

The Office of Management and Budget has advised that it has no objection to the transmittal of this legislation to Congress.

I request that the bill be referred to the appropriate committee and urge its early consideration. I am sending a similar letter to the Speaker of the House of Representatives, Thomas S. Foley.

Sincerely,

HENRY G. CISNEROS,
Secretary.

Mr. INOUYE, Mr. President, I rise today to express my support for a measure being introduced by my esteemed colleague from Colorado, Senator BEN NIGHTHORSE CAMPBELL. This measure, the Native American Financial Services Organization Act of 1995, is being introduced at the request of the administration. It is the end-product of a multiagency Federal working group whose goal was to craft a legislative proposal which would encourage, promote, and foster the delivery of housing and economic development financing to native American families and communities.

Mr. President, it is difficult for many of us here to comprehend the sheer magnitude of the housing needs of this Nation's native communities. In 1993, the Bureau of Indian Affairs of the U.S. Department of Interior estimated that 88,689 native American families were in need of housing assistance. But anyone familiar with Indian country would agree that these figures reflect a gross underestimation. I am pleased to note that in the next few months, the Department of Housing and Urban Development will be releasing the results of an assessment of Indian housing needs and programs. This survey is one of the most ambitious and comprehensive ever undertaken, and it is my hope that we in the Congress will finally be provided with a more accurate picture of the housing needs and conditions of native American families.

The Native American Financial Services Organization Act has its genesis in the finding and recommendations of the National Commission on American Indian, Alaska Native, and Native Hawaiian housing. The Commission, established pursuant to Public Law 101-235, documented that native American Families and communities were overwhelmingly and consistently access to conventional financing mechanisms,

often due to the unique legal status of Indian trust lands. The Commission recommended the creation of a Native American Finance Authority to direct sources of capital to native Americans, native American families, and other eligible mortgagors in order that they might meet their housing and related infrastructure needs.

Mr. President, this administration heeded the Commission's call for action. The Department of Housing and Urban Development spearheaded a multi-departmental effort, which included representatives for the Department of the Treasury, the Bureau of Indian Affairs, and the Office of Management and Budget. The working group began with the Commission's legislative proposal, and ended with the measure which I am honored to be co-sponsoring today. This administration deserves to be commended for recognizing the distressed housing conditions under which many of our native American families live and for taking deliberate and meaningful steps to change and improve these circumstances.

In many, many respects, the measure being introduced today addresses the concerns of the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing and embodies the spirit of the Commission's recommendations. But Mr. President, I wish to point out one very fundamental difference between this measure, and the Commission's legislative proposal. The omission—one which I have just cause to be concerned about—is a glaring one, for while the original proposal included native Hawaiians, the bill before us today does not.

Mr. President, the Commission's final report documented that native Hawaiians are among the neediest in the State of Hawaii—they have the worst housing conditions and the highest percentage of homelessness, representing over 30 percent of the State's homeless population. Under any circumstances, the figures would be deplorable, but the truth is that this situation can only worsen. I surely do not need to point out that Hawaii is one of the most expensive States in which to build, rent, or purchase a home, and that, according to a recent survey conducted by the National Association of Home Builders, Honolulu ranked 179th out of 185 places in home affordability.

Mr. President, I stand here, not only as a co-sponsor, in support of this measure, but as the senior Senator from the State of Hawaii and one who has long sought to address the housing needs of the native Hawaiian people. I must express for the record my disappointment that this bill departs from the recommendation of the very Commission which was the genesis for the concept of a financial service organization—namely that native Hawaiians should be included in this measure. I assure you that I will seek to honor the Commission's recommendations.

Mr. McCAIN. Mr. President, today I am pleased to join as an original cosponsor of a bill to establish a Native American Financial Services Organization [NAFSO] that will provide financial incentives to increase homeownership opportunities in Indian and Alaska Native communities.

Indian housing problems have reached crisis proportions with seriously deteriorating conditions and severe overcrowding. The latest U.S. Census report indicates that 18 percent of Indian reservation homes are overcrowded, while the comparable data for the Nation as a whole is 2. The shortage of housing is made even more acute by the deplorable condition of existing housing in native American communities. Many Indian homes lack running water, indoor bathrooms, sufficient heat, or weatherization.

To date, most of the housing construction done on reservations has been financed directly by the U.S. Government. But Indian housing needs have far out-stripped the capacity of Federal housing construction efforts. Everyone who has looked at the problem agrees that one main reason for the Indian housing disaster is an absence of private capital participation in financing housing in Indian and Alaska Native communities.

The bill I am cosponsoring today would begin to change the Federal role in Indian housing in ways that strengthen and empower local tribal governments in their efforts to increase housing opportunities in their communities. The bill would do this by federally chartering a limited, for-profit corporation to be known as the Native American Financial Services Organization [NAFSO]. NAFSO would assist Indians and Alaska Natives to create local financial institutions that will attract capital investment in housing in Indian communities. It would also work within the existing secondary market to increase the liquidity of mortgages placed on housing located on land held in trust for Indians by the United States. If sufficient levels of private lending are not achieved, at a later date NAFSO could enter the secondary market itself to purchase and sell portages.

I am particularly pleased that the bill contains a sunset-type provision under which the Federal charter would cease and NAFSO would be merged into a private corporation to permit further growth and attract private contributions, including those of tribes with funds to invest in Indian and native American housing.

I look forward to a hearing on this bill because it will provide an opportunity for the Committee on Indian Affairs to evaluate this proposal to ensure that it is properly designed to accomplish its goals. While a commission on Indian and native American housing recommended the concepts underlying this bill, and while many tribal governments already are on record in support of the bill as introduced, I will ask tribes and tribal organizations to scrutinize the bill and provide the committee with recommendations to improve it and sharpen its focus on the serious problems plaguing Indian housing.

I commend HUD Secretary Cisneros for his increased support for Indian housing efforts, one of which is reflected in the Department's development of this NAFSO proposal, and I look forward to working with the administration to enact this important legislation.

By Ms. SNOWE:

S. 437. A bill to establish a Northern Border States-Canada Trade Council, and for other purposes; to the Committee on Finance.

ESTABLISHMENT OF A NORTHERN BORDER STATES COUNCIL ON UNITED STATES AND CANADIAN TRADE

• Ms. SNOWE. Mr. President, today I am introducing legislation that would establish the Northern Border States Council on United States-Canada Trade. The purpose of this Council is to oversee cross-border trade with our Nation's largest trading partner—an action that I believe is long overdue. The Council will serve as an early warning system to alert State and Federal trade officials to problems in cross-border traffic and trade. And the Council will help the United States more efficiently manage the administration of its trade policy with Canada by applying the wealth of insight, knowledge and expertise that resides in our northern border States on this critical policy issue.

Yes, we already have the Department of Commerce and a U.S. Trade Representative. But the fact is that these both are federal entities, responsible for our larger, national U.S. trade interest. Too often, they do not look after the interests of the 12 Northern States that share a border with Canada. The Northern Border States Council will provide State trade officials a mechanism to share information about cross-border traffic and trade. The Council will then advise the Congress, the President, the United States Trade Representative, the Secretary of Commerce, and other Federal and State trade officials on United States-Canada trade policies, practices, and relations.

Canada is America's largest trading partner. Trade with Canada accounts for approximately one-fifth of total United States exports and Canada is the top purchaser of U.S. exports. Canada is also the largest supplier of United States imports. Canada needs to maintain close trade ties with the United States to assure its survival. The Canadian economy is heavily oriented on exports, and most—roughly 75 percent—of that trade is directly with the United States.

Over the last decade, Canada and the United States have signed two major trade agreements—the United States-Canada Free-Trade Agreement in 1989, and the North American Free-Trade Agreement in 1993. Notwithstanding these trade accords, numerous disagreements have caused trade negotiators to shuttle back and forth between Washington and Ottawa. Most of the more well-known trade disputes with Canada have dealt with agricultural commodities such as durum wheat, peanut butter, dairy products, and poultry products, and these disputes have impacted more than just the 12 northern border States.

But each and every day an enormous quantity of trade and traffic crosses the United States-Canada border. There are literally thousands of businesses, large and small, that rely on this cross-border traffic and trade for their livelihood. Any disruption in that flow of traffic and trade, whether intentional or not, would have traumatic economic consequences on hundreds of thousands, if not millions, of people in the 12 northern border States.

The people best qualified to monitor that cross-border traffic and trade live in the States along our northern border—States that share that border with Canada. This is why it is important that the members of this Council be from those States.

My own State of Maine has had a long-running dispute with Canada over that Nation's unfair policies in support of its potato industry. Specifically, Canada protects its domestic potato growers from United States competition through a system of nontariff trade barriers, such as setting container size limitations and a prohibition on bulk imports from the United States. This bulk import prohibition effectively blocks United States potato imports into Canada. At the same time, Canada artificially enhances the competitiveness of its product through domestic subsidies for potato growers.

Another trade dispute with Canada, specifically with the province of New Brunswick, served as the inspiration for this legislation. In July 1993, Canadian Federal Customs Officials began stopping Canadians returning from Maine and collecting from them the 11-percent New Brunswick provincial sales tax [PST] on goods purchased in Maine. Canadian Customs Officers had already been collecting the Canadian Federal sales tax all across the United States-Canada border. The collection of the New Brunswick PST was specifically targeted against goods purchased in Maine—not on goods purchased in any of the other provinces bordering New Brunswick. The premier of New Brunswick even admitted that his province had no intention of trying to collect the PST along any of its provincial borders. Only along the border with Maine.

After months of imploring the United States Trade Representative to do something about the imposition of the unfair tax, Ambassador Kantor agreed that the New Brunswick PST was a violation of NAFTA, and that the United States would include the PST in the NAFTA dispute settlement process. It has languished in that process for almost a year because Canada and Mexico have been stubbornly refusing to finalize the details of the NAFTA dispute resolution process.

Throughout the early months of the PST dispute, we in the State of Maine had enormous difficulty convincing our Federal trade officials that the PST was in fact an international trade dispute that warranted their attention action. We had no way of knowing if the PST was a national problem, or a localized one. If a body like the Northern State Trade Council had been in existence when the collection of the PST began, if would have immediately started investigating the issue to determine its causes and make recommendations on how to deal with it.

In short, the Northern Border States Council will serve as the eyes and ears for our States that share a border with Canada, and are vulnerable to fluctuations in cross-border trade and traffic. The Council will be a tool for Federal and State officials to use in monitoring their cross-border trade. It will help ensure that national trade policy regarding America's largest trading partner will be developed and implemented with an eye toward the unique burdens and opportunities present to the northern border States.

The Northern Border States Council will be an advisory body, not a regulatory one. Its fundamental purpose will be to determine the nature and course of cross-border trade issues or disputes, and to recommend how to resolve them.

The duties and responsibilities of the Council will include, but are not limited to, providing advice and policy recommendations on such matters as taxation and the regulation of cross-border wholesale and retail trade in goods and services; taxation, regulation and subsidization of food, agricultural, energy, and forest-products commodities; and the potential for Federal, State, and Canadian provincial laws and regulations—including customs and immigrations regulations—to act as nontariff barriers to trade.

As an advisory body, the Council will review and comment on all Federal and/or State reports, studies, and practices concerning United States-Canada trade, with particular emphasis on all reports from the dispute settlement panel established under the North American Free Trade Agreement. These Council reviews will be conducted upon the request of the U.S Trade Representative, the Secretary of Commerce, any Member of Congress from a Council State, and the Governor of a Council State.

If the Council determines that the origin of a cross-border trade dispute resides with Canada, the Council must determine, to the best of its ability, if the source of the dispute is the Canadian Federal Government or a Canadian provincial government.

My goal is not to create another Federal trade bureaucracy. The Council will be made up of individuals nominated by the Governors and approved by the Secretary of Commerce. Each Northern border State will have two members on the Council. The Council members will be unpaid, and serve a 2-year term.

The Northern Border States Council on United States-Canada Trade will not solve all of our trade problems with Canada. But it will ensure that the voices and views of our northern border States are heard in Washington by our Federal trade officials. For too long their voices were ignored, and the northern border States have had to suffer severe economic consequences at times because of it. This legislation will restore our northern border States to their rightful position as full partners in administering and managing cross-border trade and traffic with America's largest trading partner.

I urge my colleagues to join me in supporting this important legislation.•

By Ms. SNOWE:

S. 438. A bill to reform criminal laws, and for other purposes; to the Committee on the Judiciary.

LEGISLATION TO STRENGTHEN AMERICA'S ANTI-CRIME LAWS

• Ms. SNOWE. Mr. President, today I am introducing legislation to address the serious problem of crime in America, while offering stronger protection to the victims of crime. My legislation will propose mandatory minimum sentences for criminals who use a firearm while committing violent State crimes; require truth-in-sentencing provisions so that criminals complete at least 85 percent of their sentences; eliminate prison luxuries that coddle prisoners, and require courts to order restitution for the victims of crimes.

Many of these proposals—which are designed to strengthen the crime package passed by Congress last year—are not new. Some have already won passage in the Senate as part of the Senate-passed crime bill. But they are important proposals—and it is important for our citizens and especially for our children—that we include these plans to get tough on crime.

When 23 million households will suffer from crimes this year, it is no wonder that crime is the number one concern of most Americans, whether in a relatively safe State like Maine, or here in the District of Columbia. As Americans scan the front page of the newspapers every morning, word of

crimes right in our own neighborhoods catches our eye, puts us on guard—and keeps the American people on edge. We have been raised in a humane and advanced nation—and our citizens place a premium on safety, security. For too many Americans, the home is no longer a castle. Too many Americans must lock up their homes like a fortress, and walk through our streets with fear because of the scourge of violent crime.

Indeed, Americans no longer feel safe in their own neighborhoods. In the 35 years since 1960, the population of the United States has increased by 44 percent. Over that same time, violent crime in America has increased by more than 500 percent. Our Nation has lost its edge in law enforcement and in humane social efforts that meet the root causes of crime. Indeed, according to a recent study published in Business Week, crime bears an enormous cost: The total direct and indirect cost of crime in America is a staggering $425 billion.

Sadly, crime does not discriminate across regional or social boundaries. Crime reaches to us all—and exacts a devastating personal toll on its victims and their families and loved ones. Few among us have escaped the devastating impact of crime. Every day, 14 Americans are murdered, 48 are raped, and 578 are robbed. In our lifetimes, one-third of all Americans will be robbed. Three-fourths will be assaulted.

In the course of the average day in America, there is a murder every 21 minutes. Rape is committed once every 5 minutes. Robberies occur every 46 seconds. Burglaries occur every 10 seconds. Imagine: A boy born in 1978 stands a greater chance of being murdered in the United States than one of our brave soldiers in World War II stood of dying in combat.

Last year, Congress passed the President's crime bill—a package that took steps to punish violent criminals and keep them off the streets, and to address the root problems of crime. Unfortunately, however, the President's bill stopped short of proposals that I believe will give our Nation's anticrime laws teeth.

My legislation includes tough provisions to provide mandatory minimum sentences for violent State crimes, or State drug trafficking crimes involving the use or possession of a firearm. Clearly, we must crack down on the violent offenders who have been proven responsible for the vast majority of crimes.

Studies by the criminologist Marvin Wolfgang show that just 7 percent of each age group was responsible for two-thirds of all violent crime, including three-fourths of all rapes and robberies—and virtually every murder. According to Mr. Wolfgang's study—conducted in Philadelphia over a 13-year period—this 7 percent of the population had five or more arrests by the age of 18. For every arrest, each individual had gotten away with another dozen crimes.

Indeed, it is estimated that last year, more than 1,100 convicted murderers did not go to prison; more than 6,900 convicted rapists did not go to prison; more than 37,000 individuals convicted of aggravated assault did not go to prison.

My proposal will impose tough mandatory minimum sentences on violent criminals. For first-time offenders, we will direct the courts to impose sentences of 10 years for those who possess a firearm; 20 years if they discharge that firearm with the intent to harm another person; and 30 years for possession of a machine gun or other weapon equipped with a firearm silencer or muffler.

Too often, however, even a tough first sentence is not enough to stop the endless cycle of crime. More than 40 percent of murderers released from State prisons are re-arrested for a felony or serious misdemeanor within 3 years—more than 20 percent for another violent crime. Of the 50,000 violent criminals who are put on probation this year, more than 9,000 will not learn their lesson. They will be re-arrested in the same State within 3 years for another violent crime. An astonishing 10 percent of America's jail population—39,000 people in 1989—committed their current crime while out on parole.

So for second-time offenders, we will make our mandatory minimum sentences tougher; 20 years for possession of a firearm, 30 years for discharge of a firearm with the intent to injure another person, and life in prison for possession of a machine gun.

And for a third offense? Three strikes and they're out—for life imprisonment for any violent offender.

My provisions for mandatory minimum sentences will prohibit States from offering probation or suspended sentences, and we will direct the courts that sentences cannot run concurrently. This legislation also provides for Good Samaritans or for citizens who act in self-defense: the provision will not apply to those acting in defense of person or property during the course of a crime committed by another person.

Criminals have also learned, over times, that the odds in sentencing are in their favor. For every 100 violent crimes reported, only 4 criminals go to prison. The risk of punishment for a serious criminal offense has declined by two-thirds since 1950, while the annual number of serious crimes is seven times greater than it was then. This fact is not lost on criminals, who know that if they scoff at the criminal justice system—and hire a good lawyer—they can go free in little, if any time. Even when criminals are convicted and sent to prison after appeals, they know that the average violent offender—who in 1990 received a sentence of 7.8 years—will serve just over 3 years in jail.

To make sure that convicted criminals serve their time, my legislation will enact truth-in-sentencing provisions. In order to be eligible for prison funding under the 1994 crime bill, this legislation will require that States change their laws to require violent offenders to serve a minimum of 85 percent of their required sentence.

Prison is not meant to be a pleasant experience: it is meant, instead, to serve as both a deterrent to crime and to rehabilitate criminals so that they can again become productive members of society. Too often, however, our criminal justice system has coddled prisoners with luxury items that even hard-working Americans can not afford. Indeed, our Federal prison system has earned the nickname "Club Fed" because of its luxury. I believe our Federal prison system must instead address the root causes of crime as it rehabilitates prisoners. We should eliminate the luxuries in our prisons from expansive weight lifting equipment to X-rated movies, cable television, computer, even miniature golf.

Instead, we should require every able-bodied prisoner to work, and begin to return to society part of what the prisoner has taken. My legislation will give the Attorney General 120 days to implement and enforce regulations mandating prison work for able-bodied inmates in Federal penal and correctional institutions.

In addition to these provisions that get tough on criminals and make our tough sentences stick, my legislation includes provisions to require increased fairness—and awareness—of the victims of crimes. For the 5 million people each year who are victims of violent crimes—such as rape, murder, robbery or assault—these provisions will provide increased security and peace of mind. While criminals can pursue one legal remedy after another, victims of crimes quickly exhaust their options and are frequently forced to quietly bear the brunt of the crime, alone, and without restitution.

Victim restitution presently can be ordered by courts, at the discretion of the court. My legislation will require courts to order restitution, and extends to the victims of crimes the same sort of safeguards that we extended to women in the Violence Against Women Act, which I cosponsored in the House.

This legislation will state that victims should be reimbursed for all necessary expenses related to the investigation and prosecution of crime, whether child care, transportation or other expenses. No longer will the economic cost of prosecution serve as a deterrent that could keep victims from vigorously pursuing justice.

This legislation also will require reimbursement to the victim for medical services resulting from physical, psychiatric or psychological care, physical and occupational therapy costs due to rehabilitation, and all other losses suffered by the victim because of the crime. I believe that these provisions provide basic fairness for the victims of crime, and begin to balance our criminal justice system again by keeping in mind the needs of crime victims.

Mr. President, the people of Maine and America have a right to be personally secure, free from the fear of violent crime. My legislation combines positive steps that punish criminals and keep them off the streets, and to meet the often-overlooked needs of the victims of crime. This is legislation that is overdue, and will improve our Nation's crime-fighting efforts.

I urge my colleagues to join me in supporting this legislation.•

By Mr. THOMAS (for himself, Mr. LOTT, Mr. SIMPSON, Mr. INHOFE, Mr. COATS, Mr. MURKOWSKI, and Mr. COCHRAN):

S. 439. A bill to direct the Director of the Office of Management and Budget to establish commissions to review regulations issued by certain Federal departments and agencies, and for other purposes; to the Committee on Governmental Affairs.

REGULATORY REFORM COMMISSION ACT

• Mr. THOMAS. Mr. President, it is well known that Federal regulations stifle economic growth. The cost of complying with Federal regulations alone is estimated to be between $300 and $500 billion per year—$4,000 to $6,000 for every working man and woman in America. The private sector spends 6.6 billion hours year complying with Federal paperwork requirements. The number of pages in the Federal Register last year was 45 percent higher than the number in 1986—without the Clinton health care bill going anywhere.

These excessive and misguided mandates impose enormous economic costs that limit economic growth and job creation. Small and medium-sized businesses—which are the businesses in my State of Wyoming—are disproportionately hurt by overregulation because they have fewer resources to allocate for compliance.

Mr. President, the 1994 elections were about change. The American people want less government in their lives. They don't want OSHA inspectors breathing down their necks, they don't want to pay for unnecessary EPA mandated facilities and they don't want Washington bureaucrats telling them how to live their lives.

That is why I am introducing the Regulatory Reform Commissions Act. This measure is designed to look back, review, and reduce existing regulations. My legislation would establish three bipartisan Regulatory Review Commissions, one for each selected Federal department or agency. Initially, I have selected the Departments of Interior, Labor, and the Environmental Protection Agency [EPA]. Over a 2-year period, the commissions will examine all regulations within the selected Federal department or agency and determine if the regulations are justified and report all appropriate changes to Congress, the department, and the Director of the Office of Management and Budget [OMB]. The commissions will examine the department's or agency's rules based on the following criteria: Whether the regulations are within the scope of authority of the statutes under which the regulations were issued; whether the regulations are consistent with the original intent of Congress; whether the regulations are based on cost/benefit analysis; and whether the regulations are subject to judicial review.

There have been several different proposals, which I support, to prevent new onerous regulations. This legislation is a perfect fit with those efforts, because it reviews the rules already on the books.

I urge my colleagues to join me in the effort against overregulation.•

By Mr. WARNER (for himself, Mr. CHAFEE, Mr. BAUCUS, Mr. MOYNIHAN, Mr. BOND, Mr. FAIRCLOTH, Mr. KEMPTHORNE, Mr. LAUTENBERG, Mr. LIEBERMAN, Mr. INHOFE, Mr. REID, Mr. SMITH, Mr. LUGAR, Mrs. BOXER, Mr. GRAHAM, and Mr. PELL):

S. 440. A bill to amend title 23, United States Code, to provide for the designation of the National Highway System, and for other purposes; to the Committee on Environment and Public Works.

THE NATIONAL HIGHWAY SYSTEM DESIGNATION ACT OF 1995

• Mr. WARNER. Mr. President, I am pleased to be joined today by Chairman CHAFEE, Senator BAUCUS, Senator LAUTENBERG, Senator BOND, and others.

We are here today to provide assurances to the States, to commercial activities dependent on a viable transportation system, and to the motoring public that the Congress will enact the National Highway System legislation this year.

The legislation I am introducing to designate the National Highway System is sponsored by 14 of my colleagues.

The National Highway System is the cornerstone of the 1991 ISTEA statute which preserves a Federal role in a core surface transportation network.

As we come to the completion of the Eisenhower Interstate System, the NHS is the next generation of Federal focus to meet transportation challenges into the 21st century.

This system of 159,000 miles—although only a small fraction of highways in this country—consists of the 44,000-mile Interstate System and other primary routes.

Today, we affirm that Federal responsibility by ensuring a consistency of road engineering and safety among the States to provide for the free flow of commerce and to efficiently move people.

Ideally, Congress has only to approve the map which is the product of a joint effort between the Department of Transportation and our States. But, pragmatically, we all know that this legislation will be the 18-wheeler that will carry other issues.

We must not, however, be detoured from our mission.

Without passage of this bill, we know that our States will be crippled by the sanction of a loss of $6 billion until Congress does its job.

The NHS also will allow States to benefit from the flexibility and intermodalism which is the hallmark of ISTEA.

For the first time, States will focus their investments on connecting our rail, air, commercial water ports, and highways so that performance of the entire system can be maximized.

The NHS also provides an opportunity for States to target their future investments on these routes which carry high volumes of commuter traffic and commercial truck traffic.

Improving the safety of the motoring public must remain a Federal priority.

Routes on the NHS must be among the first to benefit from the application of new and emerging technologies to improve safety and reduce congestion.

In Virginia, the twin problems of congestion and safety in major urban/suburban areas have been the focus of our transportation policies for some time.

We only need to look at Sunday's Washington Post to remind us of the dangers of driving on the Capital Beltway.

Again this morning, our commuters and commerce suffered extensive delays on the Capital Beltway when a tractor-trailer accident at the Cabin John Bridge closed a large segment of the beltway for hours.

As a result of this gridlock, commuters cannot get to work and interstate commerce is delayed. That translates into reduced productivity and wasted resources for all Americans.

The legislation we are introducing today also includes modest provisions to provide uniformity and flexibility to States as they continue to implement ISTEA.

As States enter the fourth year of ISTEA and we have sufficient information and experience to support these modifications.

As we move this legislation forward, my focus will be to reduce mandates on

our States, without jeopardizing the safety of the traveling public, and to increase flexibility for States to allocate funds to meet their own needs.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

NATIONAL HIGHWAY SYSTEM DESIGNATION ACT OF 1995—SECTION BY SECTION ANALYSIS

Sec. 1: Short Title.

Sec. 2:

Section 2 approves the most recent National Highway System submitted to Congress by the Secretary of Transportation. The section also specifies the procedure for future changes and modifications to the NHS after Congress has adopted the initial system. At the request of a State, the Secretary may add a new route segment to the NHS or delete an existing route segment and any connection to the route segment, as long as the segment or connection is within the jurisdiction of the requesting State and the total mileage of the NHS (including any route segment or connection proposed to be added) does not exceed 165,000 miles.

If a State requests a modification to the NHS as adopted by Congress, the State must establish that each change in a route segment or connection has been identified by the State in cooperation with local officials. This cooperative process between the State and local officials will be carried out under the existing transportation planning activities for metropolitan areas and the statewide planning processes established under ISTEA.

Congress will not approve or disapprove any subsequent modifications made to the NHS. The cooperative planning process between State and local officials, along with the approval of the Secretary, is the appropriate forum for considering modifications to the NHS following enactment of this legislation.

Sec. 3:

Section 3 amends section 103(i) of title 23 to permit States to use National Highway System and Congestion Mitigation and Air Quality funds for operational expenses of Intelligent Vehicle Highways System (IVHS) projects for an unlimited period of time rather than the two years currently stipulated.

Sec. 4:

Section 4 amends section 104 of title 23 to permit a State to transfer 60 percent of its bridge apportionments to its National Highway System or Surface Transportation Program categories.

Sec. 5:

Section 5 amends section 129(a)(5) of title 23 to provide that the Federal share for participation in toll highways, bridges, and tunnels shall be a percentage as determined by the State but not to exceed 80 percent. Depending on the facility, the federal share currently ranges from 50 to 80 percent.

Sec. 6:

Section 6 amends 217(f) of title 23 to permit states to apply the federal lands sliding scale match to bicycle and pedestrian projects.

Sec. 7:

Section 7 amends section 323 of title 23 to allow private funds, materials and services to be donated to an activity eligible under title 23 and permits a state to apply 100 percent of such donated funds, materials or services to the State's matching share under title 23.

Sec. 8:

Section 8 states that notwithstanding any requirements of the Metric Conversion Act of 1975, no state is required to erect signs which establish speed limits, distance or other measurements using the metric system. If a state chooses to use its federal-aid highway funds for such a purpose, it may do so.

Sec. 9:

Section 9 requires states to receive U.S. Department of Transportation approval for Intelligent Vehicle Highway System (IVHS) projects within two years of receiving funds for this purpose. If after two years the Secretary has not approved a plan, the DOT may redirect unobligated funds to another IVHS project. Prior to such redirection, the Secretary shall notify the intended recipient that they are in danger of losing their funds.•

• Mr. CHAFEE. Mr. President, I am pleased to join Senator WARNER in introducing legislation today that will approve the designation of the National Highway System.

As my colleagues will remember, the Environment and Public Works Committee fashioned what I believe is a landmark surface transportation bill now known as the Intermodal Surface Transportation Efficiency Act of 1991 or ISTEA. The purpose of this surface transportation law is to provide mobility for all our citizens, to enable our country to be competitive internationally, to promote economic development, and to provide transportation facilities that are sensitive to the environment and the communities they pass through.

The National Highway System, established by the surface transportation law, is an important part of our country's National Transportation System.

The National Highway System, which includes the Interstate System represents 4 percent of the highway system but carries 40 percent of the Nation's highway travel. Even more importantly, it connects intermodal and strategic facilities including our ports, airports, train stations, and military bases.

The U.S. Department of Transportation worked with the States and local governments to develop the National Highway System. In December of 1993 the Department transmitted the proposed System to Congress. Congress must approve the National Highway System by September 30 of this year, or States will not receive over $6 billion in highway funds.

The NHS legislation we are introducing today maintains the important principles that ISTEA established for the National Highway System.

First, it maintains the flexibility of the NHS so that the System can change as our transportation needs change. The legislation enables States, in consultation with local officials, and the Secretary of Transportation to add to and delete routes from the System.

Second, the amount of funding a State receives for the NHS program is not tied to the number of miles it has on the NHS System. There is no incentive to pad the System with a lot of miles in hopes of receiving more of the Federal money.

And third, the NHS funds retain their flexibility. States continue to have the ability to transfer NHS funds to other categories to target their highest priority needs.

In addition to the approval of the National Highway System, the legislation we are introducing today includes several other provisions that are in keeping with the principles of ISTEA to provide flexibility wherever possible.

Stability is very important in the Federal-aid highway program. States need the assurance of long-term funding to efficiently manage their transportation programs. As the NHS legislation makes its way through Congress this year, there may be a temptation to reopen the surface transportation law and debate items that are controversial. To disrupt this program and make significant changes in midstream will damage the transportation program. If we are to meet the September 30 deadline for approval of the National Highway System, contentious issues must be postponed until ISTEA is reauthorized in 1997.

I am pleased to join my colleagues in introducing the National Highway System bill and will work with them for its early approval.•

By Mr. MCCAIN:

S. 441. A bill to reauthorize appropriations for certain programs under the Indian Child Protection and Family Violence Prevention Act, and for other purposes; to the Committee on Indian Affairs.

THE INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PROTECTION ACT

• Mr. MCCAIN. Mr. President, today I am introducing a bill to reauthorize Public Law 101-630, the Indian Child Protection and Family Violence Prevention Act. This bill will provide a 2-year reauthorization of appropriations pursuant to sections 409, 410, and 411 of the act. These sections are critical to Indian tribal governments in preventing and treating incidents of child abuse and family violence at the local level. Specifically, section 409 requires the Indian Health Service [IHS] and the Bureau of Indian Affairs [BIA] to cooperatively establish an Indian Child Abuse Treatment Grant Program, section 410 requires the BIA to establish Indian child resource and family services centers to provide technical assistance, training, and to develop policies and procedures on child abuse for Indian tribes, and section 411 requires the BIA to establish an Indian Child Protection and Family Violence Prevention Program.

Mr. President, the Indian Child Protection and Family Violence Prevention Act was enacted into law on November 28, 1990 to address concerns

raised by the findings of the Senate Select Committee on Indian Affairs and the Special Committee on Investigations. What these committees found through public hearings was that Indian country was literally a safe haven for child abuse perpetrators to prey upon Indian children. I'm sure that many of my colleagues in the Congress will recall the notorious cases of multiple child sexual abuse that rose within the Hopi, Navajo, and Cherokee Indian reservations. These crimes were perpetrated over the course of many years, and in some cases, the crimes were perpetrated upon generations of families. The Federal investigation and prosecution of these crimes provided insight into the purposeful plan of the perpetrators in committing their crimes in Indian communities. Child abuse perpetrators were aware that the conditions of detecting, reporting, investigating, and preventing crimes upon children were in such a sorry state that there crimes would rarely be detected. As a result, hundreds of Indian children, their families, and communities needlessly suffered.

Both the Special Committee on Investigations and the Committee on Indian Affairs held numerous hours of testimony in which both tribal and Federal witnesses testified about the serious deficiencies in the Federal Government's efforts to assist tribal governments in preventing and treating child abuse and family violence. The hearings disclosed that the BIA's failure to implement effective background checks on potential employees having contact with children resulted in negligent hiring practices, and child abuse reporting procedures deterred employees from reporting suspected child abuse. Tribal witnesses testified that law enforcement and social services lacked coordinated approaches to address child victimization. As a result, victims were often further traumatized by repeated interviews by physicians, social workers, investigators, and prosecutors. The hearings also revealed that due to scare resources, tribal social workers and mental health professional experienced case loads exceeding national standards. It also became very clear that both the IHS and the BIA lacked the professional experience necessary to treat incidents of child sexual abuse.

The Indian Child Protection and Family Violence Prevention Act was intended to give the Federal Government an opportunity to meet it's responsibility to Indian children and families by establishing policies and programs which would prevent the tragedies of child abuse and family violence. To accomplish the goals of the act, appropriations were authorized per fiscal year from 1990 through 1995 to establish prevention and treatment programs within the BIA and IHS. The act also authorized the BIA and IHS to assist tribes in establishing on-reservation child abuse prevention and treatment programs. The act also created mandatory Federal child abuse reporting and prescribed a process by which child abuse allegations would be handled to prevent further trauma to a victim.

Mr. President, the implementation of this act has had positive results in Indian country. Indian tribal governments have initiated local public education programs on the prevention and detection of child abuse and domestic violence. However, these local efforts have been so successful that reports of child abuse and domestic violence incidents have increased substantially. Therefore, the need for funding for treatment of these victims has also substantially increased. Last Congress, the Committee on Indian Affairs received testimony from tribal governments which documented these needs, and which called for more vigorous implementation of the act by the Federal agencies.

Finally, I believe that the possible benefits of the act have not been fully realized. Neither the BIA nor the IHS have successfully requested or received appropriations to fully implement the programs that are so critical to the protection of vulnerable Indian children and families. As a result, Indian tribal governments that are in desperate need of these services have had to rely on special appropriations and congressional earmarks to fund their efforts. Those tribes that are unable to obtain earmarks must struggle to provide child abuse and family violence prevention and treatment services using existing resources and piecemeal grants.

Mr. President, I strongly believe that extending the authorization of appropriations for the Indian Child Protection and Family Violence Prevention Act will enable the Federal agencies and Indian tribal governments the opportunity to continue and enhance the work that has begun on behalf of Indian children and families.

Mr. President, I ask unanimous consent that 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. 441

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REAUTHORIZATION OF PROGRAMS.

Sections 409(e), 410(h), and 411(i) of the Indian Child Protection and Family Violence prevention Act (25 U.S.C. 3208(e), 3209(h), and 3210(i), respectively) are each amended by striking "and 1995" and inserting "1995, 1996, and 1997".●

By Ms. SNOWE (for herself and Mr. DOLE):

S. 442. A bill to improve and strengthen the child support collection system, and for other purposes; to the Committee on Finance.

THE CHILD SUPPORT RESPONSIBILITY ACT OF 1995

● Ms. SNOWE. Mr. President, I am pleased to introduce, on behalf of myself and Senator DOLE, the Child Support Responsibility Act of 1995.

This bill improves upon existing child support enforcement mechanisms and establishes new enforcement systems where none currently are in place. Furthermore, it recognizes that the issue of child support enforcement goes far beyond parochial interests or state lines, that as a national problem for our children and their families, child support enforcement merits a national solution.

When two people, whether married or not, have a baby, they incur an obligation to provide for and care for their child. When parents live apart, the parent not living with, and providing day-to-day care for, the parent is expected to provide financial assistance for the child.

Consider the facts: millions of American single parents and children continue to suffer from the consequences of a parent who financially and emotionally abandons them. For mothers who have obtained a child support order—and more than 40 percent have not—only half of those actually receive what is owed—the other half receives partial payments or nothing. Never-married single parents have a particularly difficult time obtaining child support—1990 census data indicates that of all never-married custodial mothers, 75 percent did not have child support orders and more than 50 percent had household incomes below the poverty line. These statistics add up to significant economic and emotional burdens for single parents and their dependent children.

The Child Support Enforcement Program was first created in 1975 and significantly modified in 1984 and 1988. The program's purpose is to strengthen existing State and local efforts to locate noncustodial parents, to establish paternity for them, to obtain child support orders and collect child support payments. My proposed legislation, a companion to the House bill introduced by Congresswomen JOHNSON and ROUKEMA, would assist the Child Support Enforcement Program with each of these goals.

To strengthen efforts to locate parents, it expands the Federal parent locator system and provides for State-to-State access of the network. To increase paternity establishment, the bill simplifies paternity procedures, facilitates voluntary acknowledgment, and encourages outreach. To facilitate the setting of effective child support orders, it calls for the establishment of a National Child Support Guidelines Commission to develop a national child support guideline for consideration by Congress, and provides for a simplified

process for review and adjustment of child support orders. And to facilitate child support enforcement and collection, the bill expands the penalties for child support delinquency to include the denial of professional, recreational, and driver's license to deadbeat parents, the imposition of liens on real property, and the automatic reporting of delinquency to credit unions. It also grants families who are owed child support the right of first access to an IRS refund credited to a deadbeat dad and permits the denial of a passport for individuals who are more than $5,000 or 24 months in arrears.

Other provisions include developing a national registry of child support orders, developing centralized State registries, and requiring States to adopt the Uniform Interstate Family Support Act, as approved by the National Conference of Commissioners on Uniform State Laws in August 1992.

Through the enactment of this child support legislation I would like to begin to ease, and eventually lift, the economic and emotional burdens caused by delinquent child support payments. Noncustodial parents must begin to accept and bear responsibility for their children, who will reap the support they so justly deserve and desperately need.●

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 444. A bill to amend the Alaska Native Claims Settlement Act to provide for the purchase of common stock of Cook Inlet region, and for other purposes; to the Committee on Energy and Natural Resources.

THE ALASKA NATIVE CLAIMS ACT AMENDMENT ACT OF 1995

● Mr. MURKOWSKI. Mr. President, I am pleased to introduce a bill to amend the Alaska Native Claims Act of 1971 at the request of Cook Inlet Region, Inc. [CIRI] to allow CIRI to purchase stock from their shareholders and retire the stock.

Congress enacted the Alaska Native Claims Settlement Act [ANCSA] in 1971 to address claims to lands in Alaska by the Eskimo, Indian, and Aleut Native people. Lands and other benefits transferred to Alaska Natives under the act were conveyed to corporations formed under this act. CIRI is one of the corporations formed under ANCSA and has approximately 6,262 Alaska Natives enrolled, each of whom were issued 100 shares of stock in CIRI, as required under ANCSA.

ANCSA stock, unlike most corporate stock, cannot be sold, transferred, or pledged by the owners of the shares. Rather, transfers can only happen through inheritance, or in limited case, by court decree.

To date, no Native corporation has sought to lift the restriction. For the most part, this is because Native shareholders continue to value Native ownership of the corporations and Native control of the lands and other assets held by them. These shareholders, whose numbers consistently register at the 70- 80-percent level, see economic benefits in the continuation of Native ownership, and also value the important cultural goals, values, and activities of their ANCSA corporation. However, a minority of shareholders favor assessing some or all of the value of their CIRI stock through the sale of that stock. These shareholders include, but are not limited to, elderly shareholders who have real current need yet doubt that sale of stock will be available to them in their lifetime; holder of small, fractional shares received through one or more cycles of inheritance; non-Natives who have acquired stock through inheritance but without attendant voting privileges; and shareholders who have few ties to the corporation or to Alaska, 25 percent of CIRI shareholders live outside of Alaska.

Under current law, these two legitimate but conflicting concerns cannot be addressed, because lifting restrictions on the sale of stock in an all or nothing proposition. In order to allow the minority of shareholders to exercise their desire to sell some or all of their stock, the majority of shareholders would have to sacrifice their important desire to maintain Native control and ownership of CIRI.

CIRI believes this conflict will eventually leave the interests of the majority of its shareholders vulnerable to political instability. In addition, CIRI recognizes that responding to the desire of those shareholders who wish to sell CIRI stock is a legitimate corporate responsibility. CIRI believes there is a way to address the needs and desires of both groups of shareholders, those who wish to sell stock and those who desire to maintain their Native ownership. The method embodied in this legislation is one that other companies routinely use, buying back of its own stock. The acquired stock would then be retired.

Mr. President, I have discussed this bill at length with CIRI and I am convinced this is the best solution. This bill is identical to one that passed the House, and was approved by the Senate Energy Committee last session, and I look forward to its passage.●

By Mr. D'AMATO (for himself, Mr. MACK, Mr. BENNETT, Mr. FAIRCLOTH, and Mr. BRYAN):

S. 445. A bill to expand credit availability by lifting the growth cap on limited service financial institutions, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

THE LIMITED-PURPOSE BANK GROWTH CAP RELIEF ACT

● Mr. D'AMATO. Mr. President, I am today introducing the Limited-Purpose Bank Growth Cap Relief Act with Senators MACK, BENNETT, FAIRCLOTH, and BRYAN as cosponsors.

Mr. President, this bill would lift the 7-percent cap on the annual asset growth of limited-purpose banks. This growth cap, which was imposed temporary under the 1987 Competitive Equality Banking Act [CEBA], imposes an arbitrary and unnecessary regulatory burden. The removal of this cap would enhance the ability of limited-purpose banks to serve their customers, increase the availability of credit, and allow such banks to maintain assets on their balance sheets.

By way of background, the ownership of limited-purpose banks by certain non-banking holding companies was protected by a grandfather provision in CEBA. A grandfathered non-bank holding company was permitted to maintain its ownership of limited-purpose bank if the bank, first, did not both accept demand deposits and engage in commercial lending; second, limited its cross-marketing of financial services with affiliates; third, did not participate in activities in which the bank did not already engage prior to the passage of CEBA; fourth, did not provide daylight overdrafts to affiliates; and fifth, limited its annual asset growth to 7 percent. Except for these restrictions, limited-purpose banks were subjected to the same capital requirements, regulatory supervision, community reinvestment obligations, consumer protection laws and banking laws as full-service banks.

Mr. President, Congress intended these CEBA restrictions on limited-purpose banks to be only a temporary measure coexistent with the moratorium on the ability of the bank regulators to permit banks to engage in additional securities, insurance and real estate activities. The legislative history is clear that these restrictions would be reconsidered as part of comprehensive banking legislation. The overall purpose of CEBA was merely to preserve the opportunity for Congress—not the regulators or the courts—to define more precisely regulatory supervision over financial service institutions and competition among financial service providers.

Mr. President, Congress has not enacted comprehensive banking legislation, although I am hopeful this important national policy objective can be accomplished in this Congress with the enactment of S. 337, the Depository Institution Affiliation Act of 1995, which I introduced on February 2. Despite the significant changes in the laws and regulation governing the financial services industry over the past 8 years that have enhanced the diversification opportunities of banks, securities firms, insurance companies and other financial providers, the temporary and arbitrary restrictions CEBA imposed on limited purpose banks remain in place.

The number of limited-purpose banks has sharply dropped from nearly 160 to only 23. And the remaining institutions are forced to labor under severe restrictions that cannot be justified from a regulatory, public policy, or competitive standpoint.

Mr. President, limited service banks have been frozen in time. Congress has enacted numerous laws to render full-service banks more competitive, efficient and financially strong. The growth cap is no longer necessary from a regulatory perspective. In 1989 and 1991, Congress enacted legislation to increase the ability of regulators to ensure that all banks are run in a safe and sound manner, including the authority to freeze bank asset growth if capital levels decline significantly. And the restriction is not necessary from a competitive standpoint. The 103d Congress enacted interstate banking legislation. Finally, bank regulators and the courts continue to approve a growing list of securities, insurance, and other financial services activities for banks.

Mr. President, only a small category of specialized and limited purpose banks remain subject to onerous limitations on their growth, activities, products, and customer relationships. This situation is both unfair and unnecessary.

Mr. President, the Limited-Purpose Bank Growth Cap Relief Act would lift the 7-percent asset growth cap for limited-purpose banks. It would not remove any of the other CEBA restrictions and it would not allow the chartering of additional limited-purpose banks from a statutory requirements that has outlived its usefulness.

Mr. President, the repeal of the growth cap is entirely consistent with the objectives of the Depository Institutions Affiliation Act, which I introduced several weeks ago. Both bills seek to enhance the global competitiveness of the U.S. financial services industry and to ready the regulation of that industry for the next century.●

● Mr. BRYAN. Mr. President, today I am introducing legislation which repeals a restriction on the ability of limited-purpose banks to increase their assets by more than 7 percent per year. I believe that a removal of this restriction will promote increased credit availability, and will enhance the safety and soundness of the 22 institutions that are subject to the growth limitation.

This asset growth limitation was adopted in 1987, in legislation which stated that the restriction was being imposed temporarily. It remains in place nearly 8 years later, although the objectives it was intended to accomplish have been achieved by subsequent legislation, regulatory act on and judicial decisions. For example, supporters of this limitation said that it would help offset full-service banks' inability to establish interstate branches, an issue that has now been addressed.

Today, the growth restriction is not needed to protect the banks, their customers, or competitors. To the contrary, the growth cap harms these banks, by imposing enormous and unnecessary compliance costs and by forcing them to dispose of assets despite adverse marketplace conditions and negative safety and soundness implications. It hurts their depositors and borrowers—and other consumers—by reducing limited-purpose banks' ability to offer competitive banking services. And it provides no legitimate benefit to full service banks, whose ability to compete will not be impaired if a small number of limited-purpose banks are permitted to grow assets on their balance sheets rather than outside of the banks.

The legislation I am introducing addresses only one of the restrictions on limited-purpose banks: The 7-percent asset growth cap. These banks will continue to be subject to the same requirements as other banks, including the provision enacted in 1991 requiring the asset growth of any undercapitalized institution to be curtailed. And they will remain subject to additional restrictions unique to limited-purpose institutions, such as a limitation on engaging in new banking activities, and a restrictions on cross marketing with affiliates. The need to retain these restrictions is an issue that should be addressed in the near future, as we consider broader legislation addressing bank ownership, affiliations and permissible powers. But the asset growth restriction is a regulatory burden unrelated to these issues, and needs to be addressed now.

In the last Congress, a number of my colleagues on both sides of the aisle supported the removal of the 7-percent growth cap. I am especially pleased that the distinguished chairman of the Committee on Banking, Housing, and Urban Affairs and others are joining me today as original cosponsors of their bill. I look forward to prompt action on this legislation.●

By Mr. INOUYE (for himself, Mr. HATFIELD, Mr. LEVIN, Mr. D'AMATO, Mr. AKAKA, Mr. COCHRAN, Mr. DODD, Mr. GRASSLEY, Mr. HATCH, Mr. HEFLIN, Mr. HOLLINGS, Mr. KENNEDY, Ms. MIKULSKI, Mr. MOYNIHAN, Mr. ROBB, and Mr. SIMON):

S. 446. A bill to require the Secretary of the Treasury to mint coins in commemoration of the public opening of the Franklin Delano Roosevelt Memorial in Washington, DC; to the Committee on Banking, Housing, and Urban Affairs.

THE FRANKLIN DELANO ROOSEVELT COMMEMORATIVE COIN ACT

● Mr. INOUYE. Mr. President, today, I introduce the Franklin Delano Roosevelt Commemorative Coin Act. I am joined by Senator HATFIELD, Cochair of the FDR Memorial Commission, Senators LEVIN and D'AMATO, FDR Memorial Commissioners, and Senators AKAKA, COCHRAN, DODD, GRASSLEY, HATCH, HEFLIN, HOLLINGS, KENNEDY, MIKULSKI, MOYNIHAN, ROBB, and SIMON.

The Franklin Delano Roosevelt Commemorative Coin Act authorizes the Secretary of the Treasury to mint 500,000 half dollar silver coins bearing the likeness of our great leader, President Franklin Delano Roosevelt, in the year 1997, to celebrate the public opening of the Franklin Delano Roosevelt Memorial in Washington, DC.

A surcharge of $3 will be applied to each coin. Proceeds from the sale of the coin will be used to finance the construction of the memorial. In 1992, the Congress mandated the FDR Memorial Commission to raise $10 million in private funds to supplement the Federal appropriations for the memorial.

The American people are deeply indebted to Franklin Delano Roosevelt for his leadership in America's struggle for peace, well-being, and the assurance of human dignity. Personally, I will never forget the pride I felt in looking to President Roosevelt as my Commander in Chief as he led us in the worldwide struggle for freedom during World War II.

All Americans enjoy more secure lives and a higher standard of living because of this great President. The Civilian Conservation Corps helped restore America's forests and land; the National Rural Electric Cooperative gave farmers a decent life; the Federal Highway Program developed a national system upon which the automobile and the trucking industries depend; the Works Progress Administration built schools and hospitals throughout the country and every American who receives Social Security owes a debt of gratitude to President Roosevelt.

The commemorative coin will do more than honor one of our greatest Americans; it will also help ensure that an extraordinary era of our Nation's history will live on as a legacy for future generations. I want to assure my colleagues that this bill will not place any burden on the American taxpayer. The profits generated by the sale of this coin will cover all costs incurred by the Department of the Treasury.

I urge my colleagues to support this important legislation which will honor one of America's greatest Presidents by establishing a magnificent and historic national memorial in our Nation's Capital.

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. 446

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 "1997 Franklin Delano Roosevelt Commemorative Coin Act".

SEC. 2. FINDINGS.

The Congress finds that—

(1) the people of the United States feel a deep debt of gratitude to Franklin Delano Roosevelt for his leadership in America's struggle for peace, well-being, and human dignity;

(2) Franklin Delano Roosevelt served his country as the thirty-second President from 1932 until his death in 1945, and is the only United States President elected to 4 terms in office;

(3) Franklin Delano Roosevelt served the State of New York as Governor from 1928 through 1932;

(4) Franklin Delano Roosevelt served his country as the United States Assistant Secretary of the Navy from 1913 through 1920;

(5) Franklin Delano Roosevelt piloted the American people through the economic chaos of the Great Depression;

(6) Franklin Delano Roosevelt, as our commander in chief, led the American people through the turmoil of World War II;

(7) Franklin Delano Roosevelt established Social Security, thus providing all Americans with a more abundant and secure life;

(8) Franklin Delano Roosevelt was the author of "The Four Freedoms: Freedom of Speech, Freedom of Worship, Freedom from Want, and Freedom from Fear";

(9) Franklin Delano Roosevelt was the founder of the National Foundation for Infantile Paralysis, parent organization of the March of Dimes;

(10) Franklin Delano Roosevelt was the chief architect of the United Nations;

(11) after many years of planning, the Franklin Delano Roosevelt Memorial will soon join the memorials of Washington, Jefferson, and Lincoln as a tribute to another great American leader;

(12) the Franklin Delano Roosevelt Memorial will be a series of 4 large outdoor rooms encompassing over 7 acres, and will be situated between the Lincoln and Jefferson memorials in Washington, D.C.; and

(13) in 1997, the Nation will celebrate the public opening of this magnificent memorial, honoring one of our greatest Presidents.

SEC. 3. COIN SPECIFICATIONS.

(a) HALF DOLLAR SILVER COINS.—The Secretary of the Treasury (hereafter in this Act referred to as the "Secretary") shall mint and issue not more than 500,000 half dollar coins, each of which shall—

(1) weigh 12.50 grams;

(2) have a diameter of 30.61 millimeters; and

(3) contain 90 percent silver and 10 percent copper.

(b) LEGAL TENDER.—The coins minted under this Act shall be legal tender, as provided in section 5103 of title 31, United States Code.

(c) NUMISMATIC ITEMS.—For purposes of section 5134 of title 31, United States Code, all coins minted under this Act shall be considered to be numismatic items.

SEC. 4. SOURCES OF BULLION.

The Secretary shall obtain silver for minting coins under this Act only from stockpiles established under the Strategic and Critical Materials Stock Piling Act.

SEC. 5. DESIGN OF COINS.

(a) DESIGN REQUIREMENTS.—

(1) IN GENERAL.—The obverse side of each coin minted under this Act shall bear a likeness of Franklin Delano Roosevelt, the thirty-second President of the United States. The reverse side of each coin shall be emblematic of the Franklin Delano Roosevelt Memorial in Washington, D.C.

(2) DESIGNATION AND INSCRIPTIONS.—On each coin minted under this Act there shall be—

(A) a designation of the value of the coin;

(B) an inscription of the year "1997"; and

(C) inscriptions of the words "Liberty", "In God We Trust", "United States of America", and "E Pluribus Unum".

(b) SELECTION.—The design for the coins minted under this Act shall be—

(1) selected by the Secretary after consultation with the Franklin Delano Roosevelt Memorial Commission and the Commission of Fine Arts; and

(2) reviewed by the Citizens Commemorative Coin Advisory Committee.

(c) ADDITIONS AND ALTERATIONS.—No addition or alteration to the design selected in accordance with subsection (b) shall be made without the approval of the Franklin Delano Roosevelt Memorial Commission.

SEC. 6. ISSUANCE OF COINS.

(a) QUALITY AND MINT FACILITY.—The coins authorized under this Act may be issued in uncirculated and proof qualities and shall be struck at the United States Bullion Depository at West Point.

(b) PERIOD FOR ISSUANCE.—The Secretary may issue coins minted under this Act only during the period beginning on January 1, 1997, and ending on December 31, 1997.

SEC. 7. SALE OF COINS.

(a) SALE PRICE.—The coins issued under this Act shall be sold by the Secretary at a price equal to the sum of—

(1) the face value of the coins;

(2) the surcharge provided in subsection (d) with respect to such coins; and

(3) the cost of designing and issuing the coins (including labor, materials, dies, use of machinery, overhead expenses, marketing, and shipping).

(b) BULK SALES.—The Secretary shall make bulk sales of the coins issued under this Act at a reasonable discount.

(c) PREPAID ORDERS.—

(1) IN GENERAL.—The Secretary shall accept prepaid orders for the coins minted under this Act before the issuance of such coins.

(2) DISCOUNT.—Sale prices with respect to prepaid orders under paragraph (1) shall be at a reasonable discount.

(d) SURCHARGES.—All sales shall include a surcharge of $3 per coin.

SEC. 8. GENERAL WAIVER OF PROCUREMENT REGULATIONS.

(a) IN GENERAL.—Except as provided in subsection (b), no provision of law governing procurement or public contracts shall be applicable to the procurement of goods and services necessary for carrying out the provisions of this Act.

(b) EQUAL EMPLOYMENT OPPORTUNITY.—Subsection (a) shall not relieve any person entering into a contract under the authority of this Act from complying with any law relating to equal employment opportunity.

SEC. 9. DISTRIBUTION OF SURCHARGES.

(a) IN GENERAL.—All surcharges received by the Secretary from the sale of coins issued under this Act shall be promptly paid by the Secretary as follows:

(1) An amount equal to 50 percent of the total surcharges shall be paid to the National Park Foundation Restricted Account for the Franklin Delano Roosevelt Memorial.

(2) An amount equal to 50 percent of the total surcharges shall be paid to the National Park Service Restricted Construction Account for the Franklin Delano Roosevelt Memorial.

(b) AUDITS.—The Comptroller General of the United States shall have the right to examine such books, records, documents, and other data of the accounts referred to in subsection (a) as may be related to the expenditures of amounts paid under such subsection.

SEC. 10. FINANCIAL ASSURANCES.

(a) NO NET COST TO THE GOVERNMENT.—The Secretary shall take such actions as may be necessary to ensure that minting and issuing coins under this Act will not result in any net cost to the United States Government.

(b) PAYMENT FOR COINS.—A coin shall not be issued under this Act unless the Secretary has received—

(1) full payment for the coin;

(2) security satisfactory to the Secretary to indemnify the United States for full payment; or

(3) a guarantee of full payment satisfactory to the Secretary from a depository institution whose deposits are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration Board.●

By Mr. INHOFE (for himself and Mr. NICKLES):

S. 447. A bill to provide tax incentives to encourage production of oil and gas within the United States, and for other purposes; to the Committee on Finance.

THE DOMESTIC OIL AND GAS PRODUCTION TAX INCENTIVES ACT

● Mr. INHOFE. Mr. President, I introduce legislation that is designed to help the domestic oil and gas industry not only in my own State of Oklahoma, but also the multitude of energy producing States throughout the United States. We are all very much aware that a healthy and competitive oil and gas industry is critically important to the U.S. economy. The petroleum industry alone is burdened with the highest tax rates in corporate America. Changes fostered by this bill only level the playing field with businesses throughout the United States that are trying to attract capital.

Through tax incentives for new and existing marginal wells, small producers in Oklahoma, as well as throughout the United States, will be the primary benefactors of my legislation. Independents find more than half of all new oil and natural gas reserves, and they drill almost 85 percent of all domestic wells—both exploratory and development—onshore and offshore.

The U.S. oil and gas industry is one of the Nation's major economic assets and has long been recognized as a world leader in size, scope, and technology. As such a vital national industry, we cannot afford to continue down the road we have become accustomed to for so long. We need to focus our energies inward and try to help the industry restimulate its growth. As a nation we must face up to the threat posed by mounting U.S. dependency on foreign energy imports from such regions as the Middle East.●

By Mr. GRASSLEY (for himself, Mr. PRYOR and Mr. REID):

S. 448. A bill to amend sections 118 of the Internal Revenue Code of 1986 to provide for certain exceptions from rules for determining contributions in aid of construction, and for other purposes, to the Committee on Finance.

THE CONTRIBUTIONS ON AID OF CONSTRUCTION LEGISLATION

• Mr. GRASSLEY. Mr. President, today I am here to reintroduce revenue neutral legislation to reinstate the exclusion from gross income of contributions in aid of construction—known as CIAC—to a water or wastewater utility. Joining me as cosponsors are Senators PRYOR and REID. Senator REID has taken the lead on this issue for a number of years.

This legislation has passed as an amendment in the Senate on two occasions. It is my hope that this year we will finally be successful in passing this legislation and having the President sign it into law.

Utilities are capital-incentive industries. Historically, they have received the capital for the construction of a utility extension directly from new customers, either through the developer or small municipality. The customer contributes this property, or a cash equivalent, to the utility. In this manner, existing customers will not face rate increases every time the utility gains new customers.

Prior to enactment of the Tax Reform Act of 1986, CIAC were not included in the gross income of an investor-owned utility and therefore were not subject to Federal income tax. In addition, utilities could not take tax depreciation or investment tax credits on CIAC. The 1986 act repealed section 118(b) of the Internal Revenue Code and thus subjected CIAC to tax as gross income. As we all remember, the 1986 act had two basic premises as its core. One, the tax base would be broadened and rates would be lowered. Two, cuts in individual rates would be offset by increases in the corporate tax burden. Clearly the authors of the 1986 act intended to ensure that the burden of corporate taxes was spread to all industries including utilities.

The removal of the exclusion from gross income of CIAC was intended as a tax on utilities. In practice, the CIAC tax is not a tax on utilities, but a tax on utility customers, primarily on developers and home buyers. State utility regulatory bodies, referred to as PUC's, generally require utilities to pass tax costs onto their customers. This is done in one of two ways. The most common approach is to require the new customer to pay the cost of the tax. But this is not a simple dollar-for-dollar charge. In order for utility to be made whole, it must pay on the CIAC, plus a tax on the tax. The phenomenon is known as gross-up. Depending on the State, a gross-up can add as much as 70 percent to the customer's cost of the contributions. In other words, a contribution of water mains valued at $100,000 would cost a customer $170,000.

Alternatively, the PUC's may allow the utility to recover the tax cost from existing customers or over a period of time from the new ratepayers. Not only does this defeat the purpose of a contribution, it also means a rate increase. And with many water utilities seeking rate increases of as much as 25 percent in order to pay for Safe Drinking Water Act requirements, additional rate increases can lead to calls for condemnation.

Whichever method is chosen, utilities do not pay the tax, they pass it on. Passing the tax on has detrimental effects, not only on the utility's ability to bring in new business, but on the environment, and most significantly, on the price of new housing.

Any developer faced with a large gross-up will have to evaluate its effect on the bottom line. Depending on conditions in the local housing market, a developer will ultimately pass the cost of the CIAC and the gross-up on to the new home buyer. The National Association of Home Builders has estimated that the CIAC tax can increase the cost of new housing by as much as $2,000 a unit. This additional cost is enough to end the dream of home ownership for a young couple.

The CIAC tax also has some important environmental effects. New customers can avoid paying the CIAC tax by building their own independent water systems. This leads to a proliferation of systems that may not have the financial, technical, or managerial ability to comply with the rigorous requirements of the Safe Drinking Water Act. Such systems are referred to as nonviable. According to the EPA, in fiscal year 1990, more than 90 percent of the violations of the Safe Drinking Water Act were made by systems serving less than 3,300 individuals. By encouraging the proliferation of nonviable systems, the CIAC tax frustrates the environmental policy goal of consolidating these systems into already existing, professionally managed systems.

Mr. President, section 118(b) of the Internal Revenue Code, exempting CIAC from the gross income, should be restored. It is a tax on capital, not income. It is not a tax on utilities, it is a tax on their customers. The CIAC tax increases the price of new homes, leads to the development of environmentally unsound water and sewage facilities, and reduces the tax base for all levels of government.

Most important in my opinion, elimination of the CIAC tax will help home buyers, not by fueling real estate speculation, but by removing another barrier to the purchase of a new home. Anyone who has bought a house recently knows you don't just pay the price of the house. You pay closing costs, title costs, title insurance fees, attorney's fees, and points. And when you buy a house hooked up to privately owned utilities, you also pay the CIAC tax—as much as $2,000 per unit.

This legislation was most recently estimated to cost $106 million over 5 years. I have included a revenue offset in the bill as introduced that raises $140 million over the same period, thus netting $34 million for the Federal Government. The offset extends depreciation on new water utility plant from 20 to 25 years and switches from 150 percent declining balance to straight-line depreciation. This offset was suggested by the investor-owned water industry and is indivisible from the substance of the legislation which is the restoration of the exclusion of CIAC from gross income. The industry suggested it only for the purpose of repealing the CIAC tax, and that is its only intended use.

Mr. President, repeal of the tax on CIAC for water and wastewater utilities will have a noticeable effect on both housing prices and environmental policy. It is supported by the National Association of Water Companies, the National Association of Regulatory Utility Commissioners, and the National Association of Home Builders. I urge my colleagues to cosponsor this important legislation.

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. 448

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TREATMENT OF CONTRIBUTIONS IN AID OF CONSTRUCTION.

(a) TREATMENT OF CONTRIBUTIONS IN AID OF CONSTRUCTION.—

(1) IN GENERAL.—Section 118 of the Internal Revenue Code of 1986 (relating to contributions to the capital of a corporation) is amended—

(A) by redesignating subsection (c) as subsection (e), and

(B) by inserting after subsection (b) the following new subsections:

"(c) SPECIAL RULES FOR WATER AND SEWAGE DISPOSAL UTILITIES.—

"(1) GENERAL RULE.—For purposes of this section, the term 'contribution to the capital of the taxpayer' includes any amount of money or other property received from any person (whether or not a shareholder) by a regulated public utility which provides water or sewerage disposal service if—

"(A) such amount is a contribution in aid of construction,

"(B) in the case of contribution of property other than water or sewerage disposal facilities, such amount meets the requirements of the expenditure rule of paragraph (2), and

"(C) such amount (or any property acquired or constructed with such amount) is not included in the taxpayer's rate base for ratemaking purposes.

"(2) EXPENDITURE RULE.—An amount meets the requirements of this paragraph if—

"(A) an amount equal to such amount is expended for the acquisition or construction

of tangible property described in section 1231(b)—

"(i) which is the property for which the contribution was made or is of the same type as such property, and

"(ii) which is used predominantly in the trade or business of furnishing water or sewerage disposal services,

"(B) the expenditure referred to in subparagraph (A) occurs before the end of the second taxable year after the year in which such amount was received, and

"(C) accurate records are kept of the amounts contributed and expenditures made, the expenditures to which contributions are allocated, and the year in which the contributions and expenditures are received and made.

"(3) DEFINITIONS.—For purpose of this subsection—

"(A) CONTRIBUTION IN AID OF CONSTRUCTION.—The term 'contribution in aid of construction' shall be defined by regulations prescribed by the Secretary, except that such term shall not include amounts paid as service charges for starting or stopping services.

"(B) PREDOMINANTLY.—The term 'predominantly' means 80 percent or more.

"(C) REGULATED PUBLIC UTILITY.—The term 'regulated public utility' has the meaning given such term by section 7701(a)(33), except that such term shall not include any utility which is not required to provide water or sewerage disposal services to members of the general public in its service area.

"(4) DISALLOWANCE OF DEDUCTIONS AND INVESTMENT CREDIT; ADJUSTED BASIS.—Notwithstanding any other provision of this subtitle, no deduction or credit shall be allowed for, or by reason of, any expenditure which constitutes a contribution in aid of construction to which this subsection applies. The adjusted basis of any property acquired with contributions in aid of construction to which this subsection applies shall be zero.

"(d) STATUTE OF LIMITATIONS.—If the taxpayer for any taxable year treats an amount as a contribution to the capital of the taxpayer described in subsection (c), then—

"(1) the statutory period for the assessment of any deficiency attributable to any part of such amount shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of—

"(A) the amount of the expenditure referred to in subparagraph (A) of subsection (c)(2),

"(B) the taxpayer's intention not to make the expenditures referred to in such subparagraph, or

"(C) a failure to make such expenditure within the period described in subparagraph (B) of subsection (c)(2); and

"(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment."

(2) CONFORMING AMENDMENT.—Section 118(b) of such Code is amended by inserting "except as provided in subsection (c)," before "the term".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts received after the date of the enactment of this Act.

(b) RECOVERY METHOD AND PERIOD FOR WATER UTILITY PROPERTY.—

(1) REQUIREMENT TO USE STRAIGHT LINE METHOD.—Section 168(b)(3) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

"(F) Water utility property described in subsection (e)(5)."

(2) 25-YEAR RECOVERY PERIOD.—The table contained in section 168(c)(1) of such Code is amended by inserting the following item after the item relating to 20-year property:

"Water utility property .... 25 years".

(3) WATER UTILITY PROPERTY.—

(A) IN GENERAL.—Section 168(e) of such Code is amended by adding at the end the following new paragraph:

"(5) WATER UTILITY PROPERTY.—The term 'water utility property' means property—

"(A) which is an integral part of the gathering, treatment, or commercial distribution of water, and

"(B) which, without regard to this paragraph, would be 20-year property."

(B) CONFORMING AMENDMENT.—Subparagraph (F) of section 168(e)(3) of such Code is amended by adding at the end the following new sentence: "Such term does not include water utility property."

(4) ALTERNATIVE SYSTEM.—Clause (iv) of section 168(g)(2)(C) of such Code is amended by inserting ", water utility property," and "grading".

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to property placed in service after the date of the enactment of this Act, other than property placed in service pursuant to a binding contract in effect on such date and at all times thereafter before the property is placed in service.●

By Mr. SIMON (for himself and Ms. MOSELEY-BRAUN):

S. 449. A bill to establish the Midewin National Tallgrass Prairie in the State of Illinois, and for other purposes; to the Committee on Armed Services.

ILLINOIS LAND CONSERVATION ACT

● Mr. SIMON. Mr. President, I rise today to introduce a most unique piece of legislation—the Illinois Land Conservation Act. This bill is the result of a broad-based, bipartisan consensus involving Federal, State, county and municipal concerns. It is a model for the land reuse challenges faced by so many communities throughout the country who are impacted by military base closures. I believe this to be one of the most significant conservation and economic development efforts ever attempted.

The closing of the Joliet Army Ammunition Plant in northeastern Illinois has provided a once-in-a-lifetime opportunity to recapture and preserve the tallgrass prairie that once covered most of the Prairie State.

The Illinois Land Conservation Act will create the Midewin National Tallgrass Prairie. The term "Midewin" commemorates the grant medicine society of the Potawatoni Indian Tribe—the original inhabitants of this area of Illinois. This prairie will comprise 19,000 acres of land, which is home to 16 State endangered and threatened species, all within an easy drive of metropolitan Chicago.

A 910-acre tract adjacent to the Midewin Prairie will become our county's largest national veterans' cemetery. Under the auspices of the Department of Veterans Affairs, this long-awaited site will provide a dignified place of rest for the many veterans in this region who sacrificed so much for our country.

The remaining acreage will be developed as an industrial park and a county landfill by the local communities.

Mr. President, the impact of the Joliet Arsenal closing has been profound on the entire region—particularly the small communities. The municipalities surrounding the arsenal have sustained the military presence here for the last 50 years, with several generations of families involve in the important work of defending our freedom. The Illinois Land Conservation Act is our opportunity to provide a true peace dividend to those who have supported this vital facility over the years.

I hope all my colleagues will support this innovative effort that recaptures an important part of our past, and addresses our needs for the future.●

● Ms. MOSELEY-BRAUN. Mr. President, I am pleased to join the distinguished senior Senator from Illinois, Senator SIMON, in introducing the Illinois Land Conservation Act of 1995.

This bill transfers land from the former Joliet Army Ammunition Plant to the Forest Service in order to establish a national grasslands. This bill also turns over land to the Veterans Administration for a new national veterans cemetery, and converts a number of former munitions production areas at the arsenal to local purposes.

Illinois is known as the Prairie State. This name commemorates a younger Illinois, a region of rolling prairies, seas of butterflies, grazing wildlife, and pioneers seeking out new lands to settle. At one time, more than 43,000 square miles of prairie existed in Illinois.

Over the course of 175 years, however, development has crept over these open lands. Farms, highways, and cities have been built to such an extent that today, only 0.01 percent of original prairie is left. Little evidence remains of, in the words of Charles Chamberlain, the author of the Illinois State song, this "wilderness of prairies."

That is one reason why the bill we are introducing today is important, Mr. President—so important that it has attracted support from a broad, bipartisan array of Illinois groups, from industrialists to environmentalists, and from researchers to hunters.

The Illinois Land Conservation Act is more than just a bill to create a national veterans cemetery, although it will address critical needs long awaited by Chicago veterans. It is more than just a bill to create a conservation area, although it will establish the largest in northern Illinois.

The Illinois Land Conservation Act, once enacted, gives Illinois a rare opportunity to preserve one of the last remaining areas of natural prairie. It's a once-in-a-lifetime chance to set aside

such a large, undeveloped tract of property for environmental and recreational purposes. In a sense, this bill helps to protect a slice of ecological history, and in doing so, creates a legacy for future generations of Illinoisans to study and enjoy.

In April 1993, the U.S. Army, after announcing its intentions to close the Joliet Arsenal, approached former Illinois Congressman George Sangmeister to develop a concept plan for reutilization of the property. Congressman Sangmeister formed a commission of 24 local and Federal representatives, who, after several years of detailed planning, countless meetings, and extensive negotiations, carefully formulated and unanimously adopted a land reuse plan. The Illinois Land Conservation Act is the culmination of the commission's work.

At the heart of this bill is the creation of a 19,000-acre national grasslands, to be known as the Midewin National Tallgrass Prairie.

Located approximately 60 miles southwest of the Chicago metropolitan area, the grasslands will be a recreational treasure for city residents, accessible to millions for outdoor activities such as camping, horseback riding, hunting, hiking, and environmental education.

The grasslands designation also will help to protect and improve upon what already is considered an ecological wonderland. Hundreds of types of plants and animals are found here, including plants indigenous to the area for more than 10,000 years, and many threatened and endangered species. Many future projects are under consideration for the grasslands, such as the restoration of wetlands and the reintroduction of bison.

Another cornerstone of this bill is the establishment of a 1,000-acre national veterans cemetery. Identified as the leading location by the Veterans Administration, this cemetery, proposed for the center of the arsenal property, will be a landscape rich in streams, marshes, and hardwood forests—a magnificent and tranquil setting for veterans. When complete, the cemetery will honor over 92,000 Chicago veterans through the year 2030.

Mr. President, the Illinois Land Conservation Act is based upon a plan that has been carefully crafted by key representatives of the local community who have worked closely with Federal agencies and the State of Illinois. It deserves to move forward quickly.

This bill is an excellent opportunity to establish a monument to the fertile soils which cultivated the agricultural and commercial prosperity Illinois enjoys today.

It's an excellent opportunity to create the first and the largest tallgrass prairie ecosystem east of the Mississippi River.

And, most importantly, this bill is the last opportunity of our lifetimes to preserve a largely untouched, expansive tract of ecologically unique land in the State of Illinois. In the words of the Chicago Tribune, this is our chance to "save Joliet Arsenal land for the ages." I agree, and urge the quick approval of this bill.•

By Mr. NICKLES (for himself, Mr. INHOFE, and Mr. DOLE):

S. 451. A bill to encourage production of oil and gas within the United States by providing tax incentives and easing regulatory burdens, and for other purposes; to the Committee on Finance.

THE DOMESTIC OIL AND GAS PRODUCTION AND PRESERVATION ACT

• Mr. NICKLES. Mr. President, today I am introducing The Domestic Oil and Gas Production and Preservation Act along with Senators INHOFE and DOLE. A companion bill is also being introduced in the House by Congressman LUCAS and the rest of the Oklahoma delegation. We are introducing this bill today in an effort to help revive our domestic oil and gas industry which plays such a vital role in our national security. If our domestic industry is to survive domestically, then Congress needs to act now to provide incentives and regulatory reforms to encourage production in America.

Since the early 1980's oil and gas extraction employment has been cut in half. Employment in the oil and gas industry has declined by 500,000 since 1984. Imports of crude oil products have increased by 200,000 barrels a day over the last year and the import dependency ratio now exceeds 50 percent. In December 1994, crude oil production dropped to 5 million barrels per day in the lower 48 States which is the lowest level since 1946. We must take action now to save domestic production not only for the sake of the oil and gas industry but for the sake of the national security of this Nation.

I understand that today the administration released an investigative report conducted under section 232 of the Trade Expansion Act of 1962 on the threat to national security from the rising tide of oil imports. I have not yet seen this report but previous Commerce Department reports have found that oil imports threaten the national security and they were conducted when our foreign oil dependence was much lower. The question now is not whether oil imports threaten national security; everyone agrees that is the case. The question now is what are we going to do about it.

To date, the Clinton administration has done nothing to encourage domestic production. In fact, in 1993, crude oil reserves continued to decline by 788 million barrels. Natural gas reserves fell by 2,600 Bcf to 162,415 Bcf. I have been asking the Secretary of Energy for 3 years now, what she intends to do to help preserve the domestic oil and gas industry. In the President's 1996 budget there is nothing to aid this industry. That is why I am introducing this bill today.

The Domestic Oil and Gas Production and Preservation Act is intended to do just what its name implies—encourage oil and gas production and preserve and revitalize the domestic oil and gas industry. This bill would accomplish these goals in several ways. In title 1, we provide for tax incentives. One of the cornerstone pieces of this legislation is a tax credit to preserve marginal production and to encourage new drilling. This provision would make it more economical to keep a marginal well producing during times of low prices and would provide incentives to producers not to shut in their marginal wells due to economics resulting in a permanent loss of the remaining unproduced reserves.

This legislation also includes a tax credit for production from new wells that have been drilled after June 1, 1995. This provision is meant to encourage domestic exploration which has fallen dramatically in recent years. During the early 1980's the average rig count was around 2,929. In 1994 the rig count averaged 775. This is less than one-third the average during the boom years of the 1980's. If domestic production does not increase, our reliance on imported oil will only continue to grow.

In addition to the tax credit, this bill provides for several depletion reforms. There are provisions to repeal the net income limitation for computing percentage depletion, exclude marginal production from the current 1,000 barrels per day limitation, repeal the property allocation rule for computing depletion, and freeze the percentage depletion rate at current marginal levels.

Until 1976, percentage depletion was designed to operate as risk-weighted depreciation for mineral properties. Since then, the multiple limitations on the availability of percentage depletion as an effective capital cost recovery provision has diminished our proven reserves. The time has come to revise U.S. energy depletion policy. The circumstances that prevail in today's crude oil market are precisely the opposite of those that led to change to the depletion deduction in 1976. The world crude oil market is now glutted with overproduction from Kuwait and unsold Iraqi supplies are threatening another oil market crash. When prices decline, many wells are lost forever and many other wells cannot be drilled.

Percentage depletion should be reformed so that more U.S. production qualifies. Ensuring an adequate depletion allowance can reverse the falling U.S. energy resource base. These reforms will encourage new technology investments, provide economic stimulus to a major U.S. industry and create new, high-quality jobs.

In addition to the tax credit and the percentage depletion reforms, this legislation provides that geological and geophysical expenditures shall be treated as deductible expenses, it expands the existing enhanced oil recovery tax credit and makes it AMT creditable, it provides an election for optional 5-year write-off of intangible drilling costs, and it increases the amount of intangible drilling costs that can be expended without being treated as a preference item for AMT purposes. All these provisions will help encourage continued production from marginal wells, thus saving a valuable national resource from being lost.

Title II of this legislation calls for several regulatory reforms. It has provisions that address the enormous and unnecessary financial responsibility provisions of the Oil Pollution Act of 1990 [OPA '90]. This bill clarifies that the definition of "navigable waters" under OPA '90 only applies to true "offshore facilities," not facilities onshore. It also changes the amount of financial responsibility required under OPA '90 from $150 to $35 million with discretion given to the Secretary to establish a higher amount (but not higher than $150 million) taking into account factors relevant to risks posed by a facility.

This legislation also addresses two oil and gas royalty issues. First, it establishes a 6-year statute of limitations on actions commenced by the United States for recovery of royalties due under an oil and gas lease on Federal lands unless a lessee has made a false or fraudulent statement with the intent to evade the payment of royalties due. This provision is intended to give some finality to the royalty collection process and require the government to be prompt and timely in their pursuit of any underpayment of royalties. Second, it provides the Secretary discretion to lower royalties on oil and gas leases on Federal lands. This is intended to be used to help marginal wells, when prices are low, from being shut in as uneconomical.

In addition to the aforementioned regulatory reforms, this bill addresses two critical areas of reform, private property rights and risk assessment. Private property rights are protected by the fifth amendment to the U.S. Constitution. Unfortunately, the Federal bureaucracy has increasingly used environmental laws to trample on these rights. Two of the worst offenders are the Endangered Species Act and the wetlands permitting program established by section 404 of the Clean Water Act. This legislation incorporates the provisions of a separate bill that I have introduced for the last 3 years entitled the Property Owners Bill of Rights. The provisions of this bill require a landowner's written consent before Federal agents could enter private property, guarantee a landowner's access to information gathered about their property, guarantee a landowner's right to dispute that information's accuracy, guarantee a landowner's right to appeal decisions made under endangered species or wetlands law, and guarantee that a landowner be compensated if federal actions under the Endangered Species Act or wetlands permitting program devalue their property by 33 percent or more.

The risk assessment provisions of this bill requires Federal agencies to use sound scientific data when risk criteria and benefits are determined. It also requires the agencies to make public the scientific basis for each risk criteria and full disclosure of all assumptions and uncertainties. It also provides for a petition process to require an agency to review an existing regulation to ensure that benefits exceed the costs.

Finally, title III of this bill abolishes the existing prohibitions against the export of domestic crude oil production. This provision would also help encourage production in the lower 48 States.

Together, the provisions of this bill provide much needed incentives and regulatory relief to an industry that is vital to our national security. The sooner the administration and Congress acknowledge the critical importance of the domestic oil and gas industry and stop burdening this industry with high taxes and regulatory obstacles, the sooner we can take the necessary actions to preserve and revitalize this important sector of our economy.●

By Mr. MOYNIHAN (for himself and Mr. DASCHLE) (by request):

S. 452. A bill to amend the Internal Revenue Code of 1986 to provide tax relief for the middle class; to the Committee on Finance.

THE MIDDLE-CLASS BILL OF RIGHTS TAX RELIEF ACT OF 1995

Mr. MOYNIHAN. Mr. President, as ranking member of the Committee on Finance, I am today joining with the Democratic leader in introducing a bill, at the request of the administration, containing the statutory provisions that implement the middle-income tax cuts contained in the President's fiscal year 1996 budget submission. Secretary Rubin appeared before the Finance Committee last week to testify concerning these proposals.

By making statutory language available early in the legislative process, the administration has aided the process of Senate consideration of these provisions. This legislation also will serve to answer many of the questions that the public may have with respect to the President's tax proposals.

I want to thank the administration for providing this level of detail in so timely a fashion, and I look forward to working with them on these proposals in the coming months.

Mr. President, I ask unanimous consent that the text of the bill and additional material be printed in the RECORD.

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

S. 452

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) SHORT TITLE.—This Act may be cited as the "Middle-Class Bill of Rights Tax Relief Act of 1995".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—

Sec. 1. Short title; amendment of 1986 Code.

TITLE I—MIDDLE CLASS TAX RELIEF

Sec. 101. Credit for families with young children.

Sec. 102. Deduction for higher education expenses.

TITLE II—PROVISIONS RELATING TO INDIVIDUAL RETIREMENT PLANS

Subtitle A—Retirement Savings Incentives

PART I—IRA DEDUCTION

Sec. 201. Increase in income limitations.

Sec. 202. Inflation adjustment for deductible amount and income limitations.

Sec. 203. Coordination of IRA deduction limit with elective deferral limit.

PART II—NONDEDUCTIBLE TAX-FREE IRA'S

Sec. 211. Establishment of nondeductible tax-free individual retirement accounts.

Subtitle B—Penalty-Free Distributions

Sec. 221. Distributions from certain plans may be used without penalty to purchase first homes, to pay higher education or financially devastating medical expenses, or by the unemployed.

Sec. 222. Contributions must be held at least 5 years in certain cases.

TITLE I—MIDDLE CLASS TAX RELIEF

SEC. 101. CREDIT FOR FAMILIES WITH YOUNG CHILDREN.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits) is amended by inserting after section 22 the following new section:

"SEC. 23. FAMILIES WITH YOUNG CHILDREN.

"(a) ALLOWANCE OF CREDIT.—

"(1) IN GENERAL.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to $300 multiplied by the number of eligible children of the taxpayer for the taxable year.

"(2) INCREASE IN CREDIT.—In the case of taxable years beginning after December 31, 1998, paragraph (1) shall be applied by substituting '$500' for '$300'.

"(b) LIMITATIONS.—

"(1) PHASE-OUT OF CREDIT.—

"(A) IN GENERAL.—The amount of the credit allowed under subsection (a) shall be reduced (but not below zero) by the amount determined under subparagraph (B).

"(B) AMOUNT OF REDUCTION.—The amount determined under this subparagraph equals the amount which bears the same ratio to the credit (determined without regard to this subsection) as—

"(i) the excess of—

"(I) the taxpayer's adjusted gross income for such taxable year, over

"(II) $60,000, bears to

"(ii) $15,000.

Any amount determined under this subparagraph which is not a multiple of $10 shall be rounded to the next lowest $10.

"(C) ADJUSTED GROSS INCOME.—For purposes of this paragraph, adjusted gross income of any taxpayer shall be increased by any amount excluded from gross income under section 911, 931, or 933.

"(2) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed by subsection (a) for the taxable year (after the application of paragraph (1)) shall not exceed the excess (if any) of—

"(A) the taxpayer's regular tax liability for the taxable year reduced by the credits allowable against such tax under this subpart (other than this section) determined without regard to section 26, over

"(B) the sum of—

"(i) the taxpayer's tentative minimum tax for such taxable year, plus

"(ii) the credit allowed for the taxable year under section 32.

"(c) ELIGIBLE CHILD.—For purposes of this section, the term 'eligible child' means any child (as defined in section 151(c)(3)) of the taxpayer—

"(1) who has not attained age 13 as of the close of the calendar year in which the taxable year of the taxpayer begins,

"(2) who is a dependent of the taxpayer with respect to whom the taxpayer is allowed a deduction under section 151 for such taxable year, and

"(3) whose TIN is included on the taxpayer's return for such taxable year.

"(d) INFLATION ADJUSTMENTS.—In the case of a taxable year beginning in a calendar year after 1999—

"(1) IN GENERAL.—The $500 and $60,000 amounts contained in subsections (a)(2) and (b)(2) shall each be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 1998' for 'calendar year 1992' in subparagraph (B) thereof.

"(2) INCREASE IN PHASEOUT RANGE.—If the amount applicable under subsection (a) for any taxable year exceeds $500, subsection (b)(2)(B) shall be applied by substituting an amount equal to 30 times such applicable amount for '$15,000'.

"(3) ROUNDING.—If any amount as adjusted under paragraph (1) is not a multiple of $100, such amount shall be rounded to the next lowest multiple of $100.

"(e) SPECIAL RULES.—

"(1) AMOUNT OF CREDIT MAY BE DETERMINED UNDER TABLES.—The amount of the credit allowed by this section may be determined under tables prescribed by the Secretary.

"(2) CERTAIN OTHER RULES APPLY.—Rules similar to the rules of subsections (c)(1)(E) and (F), (d), and (e) of section 32 shall apply for purposes of this section."

(b) CLERICAL AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 22 the following new item:

"Sec. 23. Families with young children."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 102. DEDUCTION FOR HIGHER EDUCATION EXPENSES.

(a) DEDUCTION ALLOWED.— Part VII of subchapter B of chapter 1 (relating to additional itemized deductions for individuals) is amended by redesignating section 220 as section 221 and by inserting after section 219 the following new section:

"SEC. 220. HIGHER EDUCATION TUITION AND FEES.

"(a) ALLOWANCE OF DEDUCTION.—In the case of an individual, there shall be allowed as a deduction the amount of qualified higher education expenses paid by the taxpayer during the taxable year.

"(b) LIMITATIONS.—

"(1) DOLLAR LIMITATION.—

"(A) IN GENERAL.—The amount allowed as a deduction under subparagraph (a) for any taxable year shall not exceed $10,000.

"(B) PHASE-IN.—In the case of taxable years beginning in 1996, 1997, or 1998, '$5,000' shall be substituted for '$10,000' in subparagraph (A).

"(2) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

"(A) IN GENERAL.—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 determined under subparagraph (B).

"(B) AMOUNT OF REDUCTION.—The amount determined under this subparagraph equals the amount which bears the same ratio to the amount which would be so taken into account as—

"(i) the excess of—

"(I) the taxpayer's modified adjusted gross income for such taxable year, over

"(II) $70,000 ($100,000 in the case of a joint return), bears to

"(ii) $20,000.

"(C) 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.

For purposes of sections 86, 135, 219, and 469, adjusted gross income shall be determined without regard to the deduction allowed under this section.

"(D) INFLATION ADJUSTMENTS.—

"(i) IN GENERAL.—In the case of a taxable year beginning after 1999, the $70,000 and $100,000 amounts described in subparagraph (B) shall each be increased by an amount equal to—

"(I) such dollar amounts, multiplied by

"(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 1998' for 'calendar year 1992' in subparagraph (B) thereof.

"(ii) ROUNDING.—If any amount as adjusted under clause (i) is not a multiple of $5,000, such amount shall be rounded to the next lowest multiple of $5,000.

"(c) 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 charged by an educational institution and 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—

"(i) meets the requirements of section 484(a)(1) of the Higher Education Act of 1965 (20 U.S.C. 1091(a)(1)), as in effect on the date of the enactment of this section, and

"(ii)(I) is carrying at least one-half the normal full-time work load for the course of study the student is pursuing, as determined by the institution of higher education, or

"(II) is enrolled in a course which enables the student to improve the student's job skills or to acquire new job skills.

"(E) IDENTIFICATION REQUIREMENT.—No deduction shall be allowed under subsection (a) to a taxpayer with respect to an eligible student unless the taxpayer includes the name, age, and taxpayer identification number of such eligible student on the return of tax for the taxable year.

"(2) 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), as in effect on the date of the enactment of this section, and

"(B) is eligible to participate in programs under title IV of such Act.

"(d) SPECIAL RULES.—

"(1) NO DOUBLE BENEFIT.—

"(A) IN GENERAL.—No deduction shall be allowed under subsection (a) for qualified higher education expenses with respect to which a deduction is allowable to the taxpayer under any other provision of this chapter unless the taxpayer irrevocably waives his right to the deduction of such expenses under such other provision.

"(B) DEPENDENTS.—No deduction shall be allowed under subsection (a) to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

"(C) SAVINGS BOND EXCLUSION.—A deduction shall be allowed under subsection (a) 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) LIMITATION ON TAXABLE YEAR OF DEDUCTION.—

"(A) IN GENERAL.—A deduction shall be allowed under subsection (a) for any taxable year only to the extent the qualified higher education expenses are in connection with enrollment 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 if such expenses are in connection

with an academic term beginning during such taxable year or during the 1st 3 months of the next taxable year.

"(3) ADJUSTMENT FOR CERTAIN SCHOLARSHIPS AND VETERANS BENEFITS.—The amount of qualified higher education expenses otherwise taken into account under subsection (a) 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 enrollment 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 the taxpayer's spouse file a joint return for the taxable year.

"(5) NONRESIDENT ALIENS.—If the taxpayer is a nonresident alien individual for any portion of the taxable year, this section shall apply only if such individual is treated as a resident alien of the United States for purposes of this chapter by reason of an election under subsection (g) or (h) of section 6013.

"(6) 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) is amended by inserting after paragraph (15) the following new paragraph:

"(16) HIGHER EDUCATION TUITION AND FEES.—The deduction allowed by section 220."

(c) CONFORMING AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 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 DATE.—The amendments made by this section shall apply to payments made after December 31, 1995.

TITLE II—PROVISIONS RELATING TO INDIVIDUAL RETIREMENT PLANS

Subtitle A—Retirement Savings Incentives

PART I—IRA DEDUCTION

SEC. 201. INCREASE IN INCOME LIMITATIONS.

(a) IN GENERAL.—Subparagraph (B) of section 219(g)(3) is amended—

(1) by striking "$40,000" in clause (i) and inserting "$80,000", and

(2) by striking "$25,000" in clause (ii) and inserting "$50,000".

(b) PHASE-OUT OF LIMITATIONS.—Clause (ii) of section 219(g)(2)(A) is amended by striking "$10,000" and inserting "an amount equal to 10 times the dollar amount applicable for the taxable year under subsection (b)(1)(A)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 202. INFLATION ADJUSTMENT FOR DEDUCTIBLE AMOUNT AND INCOME LIMITATIONS.

(a) IN GENERAL.—Section 219 is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) COST-OF-LIVING ADJUSTMENTS.—

"(1) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 1996, each dollar amount to which this subsection applies shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 1995' for 'calendar year 1992' in subparagraph (B) thereof.

"(2) DOLLAR AMOUNTS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to—

"(A) the $2,000 amounts under subsection (b)(1)(A) and (c), and

"(B) the applicable dollar amounts under subsection (g)(3)(B).

"(3) ROUNDING RULES.—

"(A) DEDUCTION AMOUNTS.—If any amount referred to in paragraph (2)(A) as adjusted under paragraph (1) is not a multiple of $500, such amount shall be rounded to the next lowest multiple of $500.

"(B) APPLICABLE DOLLAR AMOUNTS.—If any amount referred to in paragraph (2)(B) as adjusted under paragraph (1) is not a multiple of $5,000, such amount shall be rounded to the next lowest multiple of $5,000."

(b) CONFORMING AMENDMENTS.—

(1) Clause (i) of section 219(c)(2)(A) is amended to read as follows:

"(i) the sum of $250 and the dollar amount in effect for the taxable year under subsection (b)(1)(A), or".

(2) Section 408(a)(1) is amended by striking "in excess of $2,000 on behalf of any individual" and inserting "on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A)".

(3) Section 408(b)(2)(B) is amended by striking "$2,000" and inserting "the dollar amount in effect under section 219(b)(1)(A)".

(4) Subparagraph (A) of section 408(d)(5) is amended by striking "$2,250" and inserting "the dollar amount in effect for the taxable year under section 219(c)(2)(A)(i)".

(5) Section 408(j) is amended by striking "$2,000".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 203. COORDINATION OF IRA DEDUCTION LIMIT WITH ELECTIVE DEFERRAL LIMIT.

(a) IN GENERAL.—Section 219(b) (relating to maximum amount of deduction) is amended by adding at the end the following new paragraph:

"(4) COORDINATION WITH ELECTIVE DEFERRAL LIMIT.—The amount determined under paragraph (1) or subsection (c)(2) with respect to any individual for any taxable year shall not exceed the excess (if any) of—

"(A) the limitation applicable for the taxable year under section 402(g)(1), over

"(B) the elective deferrals (as defined in section 402(g)(3)) of such individual for such taxable year."

(b) CONFORMING AMENDMENT.—Section 219(c) is amended by adding at the end the following new paragraph:

"(3) CROSS REFERENCE.—

"For reduction in paragraph (2) amount, see subsection (b)(4)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

PART II—NONDEDUCTIBLE TAX-FREE IRA'S

SEC. 211. ESTABLISHMENT OF NONDEDUCTIBLE TAX-FREE INDIVIDUAL RETIREMENT ACCOUNTS.

(a) IN GENERAL.—Subpart A of part I of subchapter D of chapter 1 (relating to pension, profit-sharing, stock bonus plans, etc.) is amended by inserting after section 408 the following new section:

"SEC. 408A. SPECIAL INDIVIDUAL RETIREMENT ACCOUNTS.

"(a) GENERAL RULE.—Except as provided in this chapter, a special individual retirement account shall be treated for purposes of this title in the same manner as an individual retirement plan.

"(b) SPECIAL INDIVIDUAL RETIREMENT ACCOUNT.—For purposes of this title, the term 'special individual retirement account' means an individual retirement plan which is designated at the time of establishment of the plan as a special individual retirement account.

"(c) TREATMENT OF CONTRIBUTIONS.—

"(1) NO DEDUCTION ALLOWED.—No deduction shall be allowed under section 219 for a contribution to a special individual retirement account.

"(2) CONTRIBUTION LIMIT.—The aggregate amount of contributions for any taxable year to all special individual retirement accounts maintained for the benefit of an individual shall not exceed the excess (if any) of—

"(A) the maximum amount allowable as a deduction under section 219 with respect to such individual for such taxable year, over

"(B) the amount so allowed.

"(3) SPECIAL RULES FOR QUALIFIED TRANSFERS.—

"(A) IN GENERAL.—No rollover contribution may be made to a special individual retirement account unless it is a qualified transfer.

"(B) LIMIT NOT TO APPLY.—The limitation under paragraph (2) shall not apply to a qualified transfer to a special individual retirement account.

"(d) TAX TREATMENT OF DISTRIBUTIONS.—

"(1) IN GENERAL.—Except as provided in this subsection, any amount paid or distributed out of a special individual retirement account shall not be included in the gross income of the distributee.

"(2) EXCEPTION FOR EARNINGS ON CONTRIBUTIONS HELD LESS THAN 5 YEARS.—

"(A) IN GENERAL.—Any amount distributed out of a special individual retirement account which consists of earnings allocable to contributions made to the account during the 5-year period ending on the day before such distribution shall be included in the gross income of the distributee for the taxable year in which the distribution occurs.

"(B) ORDERING RULE.—

"(i) FIRST-IN, FIRST-OUT RULE.—Distributions from a special individual retirement account shall be treated as having been made—

"(I) first from the earliest contribution (and earnings allocable thereto) remaining in the account at the time of the distribution, and

"(II) then from other contributions (and earnings allocable thereto) in the order in which made.

"(ii) ALLOCATIONS BETWEEN CONTRIBUTIONS AND EARNINGS.—Any portion of a distribution allocated to a contribution (and earnings allocable thereto) shall be treated as allocated first to the earnings and then to the contribution.

"(iii) ALLOCATION OF EARNINGS.—Earnings shall be allocated to a contribution in such

manner as the Secretary may by regulations prescribe.

"(iv) CONTRIBUTIONS IN SAME YEAR.—Except as provided in regulations, all contributions made during the same taxable year may be treated as 1 contribution for purposes of this subparagraph.

"(C) CROSS REFERENCE.—

"For additional tax for early withdrawal, see section 72(t).

"(3) QUALIFIED TRANSFER.—

"(A) IN GENERAL.—Paragraph (2) shall not apply to any distribution which is transferred in a qualified transfer to another special individual retirement account.

"(B) CONTRIBUTION PERIOD.—For purposes of paragraph (2), the special individual retirement account to which any contributions are transferred shall be treated as having held such contributions during any period such contributions were held (or are treated as held under this subparagraph) by the special individual retirement account from which transferred.

"(4) SPECIAL RULES RELATING TO CERTAIN TRANSFERS.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, in the case of a qualified transfer to a special individual retirement account from an individual retirement plan which is not a special individual retirement account—

"(i) there shall be included in gross income any amount which, but for the qualified transfer, would be includible in gross income, but

"(ii) section 72(t) shall not apply to such amount.

"(B) TIME FOR INCLUSION.—In the case of any qualified transfer which occurs before January 1, 1997, any amount includible in gross income under subparagraph (A) with respect to such contribution shall be includible ratably over the 4-taxable year period beginning in the taxable year in which the amount was paid or distributed out of the individual retirement plan.

"(e) QUALIFIED TRANSFER.—For purposes of this section

"(1) IN GENERAL.—The term 'qualified transfer' means a transfer to a special individual retirement account from another such account or from an individual retirement plan but only if such transfer meets the requirements of section 408(d)(3).

"(2) LIMITATION.—A transfer otherwise described in paragraph (1) shall not be treated as a qualified transfer if the taxpayer's adjusted gross income for the taxable year of the transfer exceeds the sum of—

"(A) the applicable dollar amount, plus

"(B) the dollar amount applicable for the taxable year under section 219(g)(2)(A)(ii).

This paragraph shall not apply to a transfer from a special individual retirement account to another special individual retirement account.

"(3) DEFINITIONS.—For purposes of this subsection, the terms 'adjusted gross income' and 'applicable dollar amount' have the meanings given such terms by section 219(g)(3), except subparagraph (A)(ii) thereof shall be applied without regard to the phrase 'or the deduction allowable under this section'."

(b) EARLY WITHDRAWAL PENALTY.—Section 72(t) is amended by adding at the end the following new paragraph:

"(6) RULES RELATING TO SPECIAL INDIVIDUAL RETIREMENT ACCOUNTS.—In the case of a special individual retirement account under section 408A—

"(A) this subsection shall only apply to distributions out of such account which consist of earnings allocable to contributions made to the account during the 5-year period ending on the day before such distribution, and

"(B) paragraph (2)(A)(i) shall not apply to any distribution described in subparagraph (A)."

(c) EXCESS CONTRIBUTIONS.—Section 4973(b) is amended by adding at the end the following new sentence: "For purposes of paragraphs (1)(B) and (2)(C), the amount allowable as a deduction under section 219 shall be computed without regard to section 408A."

(d) CONFORMING AMENDMENT.—The table of sections for subpart A of part I of subchapter D of chapter 1 is amended by inserting after the item relating to section 408 the following new item:

"Sec. 408A. Special individual retirement accounts."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

Subtitle B—Penalty-Free Distributions

SEC. 221. DISTRIBUTIONS FROM CERTAIN PLANS MAY BE USED WITHOUT PENALTY TO PURCHASE FIRST HOMES, TO PAY HIGHER EDUCATION OR FINANCIALLY DEVASTATING MEDICAL EXPENSES, OR BY THE UNEMPLOYED.

(a) IN GENERAL.—Paragraph (2) of section 72(t) (relating to exceptions to 10-percent additional tax on early distributions from qualified retirement plans) is amended by adding at the end the following new subparagraph:

"(D) DISTRIBUTIONS FROM CERTAIN PLANS FOR FIRST HOME PURCHASES OR EDUCATIONAL EXPENSES.—Distributions to an individual from an individual retirement plan—

"(i) which are qualified first-time homebuyer distributions (as defined in paragraph (7)); or

"(ii) to the extent such distributions do not exceed the qualified higher education expenses (as defined in paragraph (8)) of the taxpayer for the taxable year."

(b) FINANCIALLY DEVASTATING MEDICAL EXPENSES.—

(1) IN GENERAL.—Section 72(t)(3)(A) is amended by striking "(B),".

(2) CERTAIN LINEAL DESCENDANTS AND ANCESTORS TREATED AS DEPENDENTS AND LONG-TERM CARE SERVICES TREATED AS MEDICAL CARE.—Subparagraph (B) of section 72(t)(2) is amended by striking "medical care" and all that follows and inserting "medical care determined—

"(i) without regard to whether the employee itemizes deductions for such taxable year, and

"(ii) in the case of an individual retirement plan—

"(I) by treating such employee's dependents as including all children, grandchildren and ancestors of the employee or such employee's spouse and

"(II) by treating qualified long-term care services (as defined in paragraph (9)) as medical care for purposes of this subparagraph (B)."

(3) CONFORMING AMENDMENT.—Subparagraph (B) of section 72(t)(2) is amended by striking "or (C)" and inserting ", (C) or (D)".

(c) DEFINITIONS.—Section 72(t), as amended by this Act, is amended by adding at the end the following new paragraphs:

"(7) QUALIFIED FIRST-TIME HOMEBUYER DISTRIBUTIONS.—For purposes of paragraph (2)(D)(i)—

"(A) IN GENERAL.—The term 'qualified first-time homebuyer distribution' means any payment or distribution received by an individual to the extent such payment or distribution is used by the individual before the close of the 60th day after the day on which such payment or distribution is received to pay qualified acquisition costs with respect to a principal residence of a first-time homebuyer who is such individual or the spouse, child (as defined in section 151(c)(3)), or grandchild of such individual.

"(B) QUALIFIED ACQUISITION COSTS.—For purposes of this paragraph, the term 'qualified acquisition costs' means the costs of acquiring, constructing, or reconstructing a residence. Such term includes any usual or reasonable settlement, financing, or other closing costs.

"(C) FIRST-TIME HOMEBUYER; OTHER DEFINITIONS.—For purposes of this paragraph—

"(i) FIRST-TIME HOMEBUYER.—The term 'first-time homebuyer' means any individual if—

"(I) such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence during the 3-year period ending on the date of acquisition of the principal residence to which this paragraph applies, and

"(II) subsection (h) or (k) of section 1034 did not suspend the running of any period of time specified in section 1034 with respect to such individual on the day before the date the distribution is applied pursuant to subparagraph (A).

In the case of an individual described in section 143(i)(1)(C) for any year, an ownership interest shall not include any interest under a contract of deed described in such section. An individual who loses an ownership interest in a principal residence incident to a divorce or legal separation is deemed for purposes of this subparagraph to have had no ownership interest in such principal residence within the period referred to in subparagraph (A)(II).

"(ii) PRINCIPAL RESIDENCE.—The term 'principal residence' has the same meaning as when used in section 1034.

"(iii) DATE OF ACQUISITION.—The term 'date of acquisition' means the date—

"(I) on which a binding contract to acquire the principal residence to which subparagraph (A) applies is entered into, or

"(II) on which construction or reconstruction of such a principal residence is commenced.

"(D) SPECIAL RULE WHERE DELAY IN ACQUISITION.—If any distribution from any individual retirement plan fails to meet the requirements of subparagraph (A) solely by reason of a delay or cancellation of the purchase or construction of the residence, the amount of the distribution may be contributed to an individual retirement plan as provided in section 408(d)(3)(A)(i) (determined by substituting '120 days' for '60 days' in such section), except that—

"(i) section 408(d)(3)(B) shall not be applied to such contribution, and

"(ii) such amount shall not be taken into account in determining whether section 408(d)(3)(A)(i) applies to any other amount.

"(8) QUALIFIED HIGHER EDUCATION EXPENSES.—For purposes of paragraph (2)(D)(ii)—

"(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,

"(iii) a dependent of the taxpayer with respect to whom the taxpayer is allowed a deduction under section 151, or

"(iv) the taxpayer's child (as defined in section 151(c)(3)) or grandchild,

as an eligible student at an institution of higher education (as defined in paragraphs (1)(D) and (2) of section 220(c)).

"(B) EXCEPTIONS.—The term 'qualified higher education expenses' does not include expenses described in subparagraphs (B) and (C) of section 220(c)(1).

"(C) COORDINATION WITH SAVINGS BOND PROVISIONS.—The amount of qualified higher education expenses for any taxable year shall be reduced by any amount excludable from gross income under section 135.

"(9) QUALIFIED LONG-TERM CARE SERVICES.—For purposes of paragraph (2)(B)—

"(A) IN GENERAL.—The term 'qualified long-term care services' means necessary diagnostic, curing, mitigating, treating, preventive, therapeutic, and rehabilitative services, and maintenance and personal care services (whether performed in a residential or nonresidential setting) which—

"(i) are required by an individual during any period the individual is an incapacitated individual (as defined in subparagraph (B)),

"(ii) have as their primary purpose—

"(I) the provision of needed assistance with 1 or more activities of daily living (as defined in subparagraph (C)), or

"(II) protection from threats to health and safety due to severe cognitive impairment, and

"(iii) are provided pursuant to a continuing plan of care prescribed by a licensed professional (as defined in subparagraph (D)).

"(B) INCAPACITATED INDIVIDUAL.—The term 'incapacitated individual' means any individual who—

"(i) is unable to perform, without substantial assistance from another individual (including assistance involving cueing or substantial supervision), at least 2 activities of daily living as defined in subparagraph (C), or

"(ii) has severe cognitive impairment as defined by the Secretary in consultation with the Secretary of Health and Human Services.

Such term shall not include any individual otherwise meeting the requirements of the preceding sentence unless a licensed professional within the preceding 12-month period has certified that such individual meets such requirements.

"(C) ACTIVITIES OF DAILY LIVING.—Each of the following is an activity of daily living:

"(i) Eating.

"(ii) Toileting.

"(iii) Transferring.

"(iv) Bathing.

"(v) Dressing.

"(D) LICENSED PROFESSIONAL.—The term 'licensed professional' means—

"(i) a physician or registered professional nurse, or

"(ii) any other individual who meets such requirements as may be prescribed by the Secretary after consultation with the Secretary of Health and Human Services.

"(E) CERTAIN SERVICES NOT INCLUDED.—The term 'qualified long-term care services' shall not include any services provided to an individual—

"(i) by a relative (directly or through a partnership, corporation, or other entity) unless the relative is a licensed professional with respect to such services, or

"(ii) by a corporation or partnership which is related (within the meaning of section 267(b) or 707(b)) to the individual.

For purposes of this subparagraph, the term 'relative' means an individual bearing a relationship to the individual which is described in paragraphs (1) through (8) of section 152(a)."

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(d) PENALTY-FREE DISTRIBUTIONS FOR CERTAIN UNEMPLOYED INDIVIDUALS.—Paragraph (2) of section 72(t) is amended by adding at the end the following new subparagraph:

"(E) DISTRIBUTIONS TO UNEMPLOYED INDIVIDUALS.—A distribution from an individual retirement plan to an individual after separation from employment, if—

"(i) such individual has received unemployment compensation for 12 consecutive weeks under any Federal or State unemployment compensation law by reason of such separation, and

"(ii) such distributions are made during any taxable year during which such unemployment compensation is paid or the succeeding taxable year."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to payments and distributions after December 31, 1995.

SEC. 222. CONTRIBUTIONS MUST BE HELD AT LEAST 5 YEARS IN CERTAIN CASES.

(a) IN GENERAL.—Section 72(t), as amended by this Act, is amended by adding at the end the following new paragraph:

"(10) CERTAIN CONTRIBUTIONS MUST BE HELD 5 YEARS.—

"(A) IN GENERAL.—Paragraph (2)(A)(i) shall not apply to any amount distributed out of an individual retirement plan (other than a special individual retirement account) which is allocable to contributions made to the plan during the 5-year period ending on the date of such distribution (and earnings on such contributions).

"(B) ORDERING RULE.—For purposes of this paragraph, distributions shall be treated as having been made—

"(i) first from the earliest contribution (and earnings allocable thereto) remaining in the account at the time of the distribution, and

"(ii) then from other contributions (and earnings allocable thereto) in the order in which made.

Earnings shall be allocated to contributions in such manner as the Secretary may prescribe.

"(C) SPECIAL RULE FOR ROLLOVERS.—

"(i) PENSION PLANS.—Subparagraph (A) shall not apply to distributions out of an individual retirement plan which are allocable to rollover contributions to which section 402(c), 403(a)(4), or 403(b)(8) applied.

"(ii) CONTRIBUTION PERIOD.—For purposes of subparagraph (A), amounts shall be treated as having been held by a plan during any period such contributions were held (or are treated as held under this clause) by any individual retirement plan from which transferred.

"(D) SPECIAL ACCOUNTS.—For rules applicable to special individual retirement accounts under section 408A, see paragraph (8)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions (and earnings allocable thereto) which are made after December 31, 1995.

PRESIDENTIAL MESSAGE REGARDING THE MIDDLE-CLASS BILL OF RIGHTS

To the Congress of the United States:

I am pleased to transmit today for your immediate consideration and enactment the "Middle-Class Bill of Rights Tax Relief Act of 1995." I am also sending you an explanation of the revenue proposals of this legislation.

This bill is the next step in my Administration's continuing effort to raise living standards for working families and help restore the American Dream for all our people.

For 2 years, we have worked hard to strengthen our economy. We worked with the last Congress to enact legislation that will reduce the annual deficits of 1994–98 by more than $600 billion; we created nearly 6 million new jobs; we cut taxes for 15 million low-income families and gave tax relief to small businesses; we opened export markets through global and regional trade agreements; we invested in human and physical capital to increase productivity; and we reduced the Federal Government by more than 100,000 positions.

With that strong foundation in place, I am now proposing a Middle Class Bill of Rights. Despite our progress, too many Americans are still working harder for less. The Middle Class Bill of Rights will enable working Americans to raise their families and get the education and training they need to meet the demands of a new global economy. It will let middle-income families share in our economic prosperity today and help them build our economic prosperity tomorrow.

The "Middle-Class Bill of Rights Tax Relief Act of 1995" includes three of the four elements of my Middle Class Bill of Rights. First, it offers middle-income families a $500 tax credit for each child under 13. Second, it includes a tax deduction of up to $10,000 a year to help middle-income Americans pay for post-secondary education expenses and training expenses. Third, it lets more middle-income Americans make tax-deductible contributions to Individual Retirement Accounts and withdraw from them, penalty-free, for the costs of education and training, health care, first-time home-buying, long periods of unemployment, or the care of an ill parent.

The fourth element of my Middle Class Bill of Rights—not included in this legislation—is the GI Bill for America's Workers, which consolidates 70 Federal training programs and creates a more effective system for learning new skills and finding better jobs for adults and youth. Legislation for this proposal is being developed in cooperation with the Congress.

If enacted, the Middle Class Bill of Rights will help keep the American Dream alive for everyone willing to take responsibility for themselves, their families, and their futures. And it will not burden our children with more debt. In my fiscal 1996 budget, we have found enough savings not only to pay for this tax bill, but also to provide another $81 billion in deficit reduction between 1996 and 2000.

This legislation will restore fairness to our tax system, let middle-income families in our economic prosperity, encourage Americans to prepare for the future, and help ensure that the United States moves into the 21st Century still the strongest nation in the world.

I urge the Congress to take prompt and favorable action on this legislation.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *February 13, 1995.*

GENERAL EXPLANATION OF THE MIDDLE-CLASS BILL OF RIGHTS TAX RELIEF ACT OF 1995

TAX CREDIT FOR DEPENDENT CHILDREN

Current law

A tax exemption, in the form of a deduction, is allowed for each taxpayer and for each dependent of a taxpayer. A dependent includes a child of the taxpayer who is supported by the taxpayer and is under age 19 at the close of the calendar year or is a student under age 24. The deduction amount is $2,500 for tax year 1995. This amount is indexed annually for inflation.

In addition to an exemption for each child, three other tax benefits may accrue to taxpayers with dependent or otherwise qualifying children: the credit for child and dependent care expenses, the exclusion for employer-provided child and dependent care benefits, and the earned income tax credit (EITC).

The EITC is a refundable tax credit based on the earnings of the taxpayer. The EITC is restricted to lower-income taxpayers and is phased out when earnings exceed specified levels. Although the EITC is available for taxpayers without dependents or otherwise qualifying children, the credit rate and income range of the credit are far greater when the taxpayer has one or more qualifying children. In addition, the rate and income range are higher for taxpayers with two or more qualifying children than for taxpayers with only one qualifying child.

Reasons for change

Tax relief for middle-class families has been and continues to be an important goal of this Administration. In 1993, the Administration faced a projection of ever-increasing deficits. Bringing the deficit under control and providing tax relief for the working poor through an expansion of the EITC were the first priorities. Having achieved more favorable than projected results from the deficit reduction program introduced in 1993, the Administration can now turn to providing tax relief to middle-income families.

Tax relief to taxpayers with children is needed to adjust the relative tax burdens of smaller and larger families to reflect more accurately their relative abilities to pay taxes. Available resources should be targeted to those in greatest need and at greatest risk.

Proposal

A nonrefundable tax credit, which would be applied after the EITC, would be allowed for each dependent child under age 13. It would be phased in, at $300 per child for tax years 1996, 1997, and 1998, and $500 per child for 1999 and thereafter. The credit would not reduce any alternative minimum tax liability. The credit would be phased out for taxpayers with adjusted gross income between $60,000 and $75,000. Beginning in the year 2000, both the amount of the credit and the phase-out range would be indexed for the effects of inflation.

Taxpayers claiming the dependent child credit would be required to provide valid social security numbers for themselves, their spouses, and their children who qualify for the credit. The procedures that would apply for determining the validity of social security numbers under the EITC, discussed below, would apply for purposes of the dependent child credit.

REVENUE ESTIMATE

[In billions of dollars]

	Fiscal years—						Total
	1995	1996	1997	1998	1999	2000	
Tax credit for dependent children	0	−3.5	−6.8	−6.6	−8.3	−10.1	−35.4

EDUCATION AND JOB TRAINING TAX DEDUCTION

Current law

Taxpayers generally may not deduct the expenses of higher education and training. There are, however, special circumstances in which deductions for educational expenses are allowed, or in which the payment of educational expenses by others is excluded from income.

Educational expenses may be deductible, but only if the taxpayer itemizes, and only to the extent that the expenses, along with other miscellaneous itemized deductions, exceed two percent of adjusted gross income (AGI). A deduction for educational purposes is allowed only if the education maintains or improves a skill required in the individual's employment or other trade or business, or is required by the individual's employer, or by law or regulation for the individual to retain his or her current job.

The interest from qualified U.S. savings bonds is excluded from a taxpayer's gross income to the extent the interest is used to pay qualified educational expenses. To be qualified, the savings bonds must be purchased after December 31, 1989, by a person who has attained the age of 25. Qualified educational expenses consist of tuition and fees for enrollment of the taxpayer, the taxpayer's spouse, or the taxpayer's dependent at a public or non-profit institution of higher education, including two-year colleges and vocational schools.

Reasons for change

Deductions for educational expenses combine needed tax relief with preparation for new economic imperatives. The expenses of higher education place a significant burden on many middle-class families. Grants and subsidized loans are available to students from low- and moderate-income families; high-income families can afford the costs of higher education.

Well-educated workers are essential to an economy experiencing technological change and facing global competition. The Administration believes that reducing the after-tax cost of education for individuals and families encourages investment in education and training while lowering tax burdens for middle-income taxpayers.

Proposal

A taxpayer would be allowed to deduct qualified educational expenses paid during the taxable year for the education or training of the taxpayer, the taxpayer's spouse, or the taxpayer's dependent. The deduction would be allowed in determining AGI. Therefore, taxpayers could claim the deduction even if they do not itemize and even if they do not meet the two-percent AGI floor on itemized deductions.

Qualified educational expenses would be defined as tuition and fees charged by educational institutions that are directly related to an eligible student's course of study (e.g., registration fees, laboratory fees, and extra charges for particular courses). Charges and expenses associated with meals, lodging, student activities, athletics, health care, transportation, books and similar personal, living or family expenses would not be included. The expenses of education involving sports, games, or hobbies would not be qualified educational expenses unless the education is required as part of a degree program or related to the student's current profession.

Qualified educational expenses would be deductible in the year the expenses are paid, subject to the requirement that the education commences or continues during that year or during the first three months of the next year. Qualified educational expenses paid with the proceeds of a loan generally will be deductible (rather than repayment of the loan itself). Normal tax benefit rules would apply to refunds (and reimbursements through insurance) of previously deducted tuition and fees.

In 1996, 1997, and 1998, the maximum deduction would be $5,000. In 1999 and thereafter, this maximum would increase to $10,000. The deduction would be phased out ratably for taxpayers with modified AGI between $70,000 and $90,000 ($100,000 and $120,000 for joint returns). Modified AGI would include taxable Social Security benefits and amounts otherwise excluded with respect to income earned abroad (or income from Puerto Rico or U.S. possessions). Beginning in 2000, the income phase-out range would be indexed for inflation.

Any amount taken into account as a qualified educational expense would be reduced by educational assistance that is not required to be included in the gross income of either the student or the taxpayer claiming the deduction. Thus, qualified educational expenses would be reduced by scholarship or fellowship grants excludable from gross income under section 117 of the Internal Revenue Code (even if the grants are used to pay expenses other than qualified educational expenses) and any educational assistance received as veterans' benefits. However, no reduction would be required for a gift, bequest, devise or inheritance within the meaning of section 102(a).

An eligible student would be one who is enrolled or accepted for enrollment in a degree, certificate, or other program (including a program of study abroad approved for credit by the institution at which such student is enrolled) leading to a recognized educational credential at an eligible institution. The student must pursue a course of study on at least a half-time basis (or be taking a course to improve or acquire job skills), cannot be enrolled in an elementary or secondary school, and cannot be a nonresident alien. Educational institutions would determine what constitutes a half-time basis for individual programs.

"Eligible institution" is defined by reference to section 481 of the Higher Education Act. Such institutions must have entered into an agreement with the Department of Education to participate in the student loan program. This definition includes certain proprietary institutions.

This proposal would not affect deductions claimed under any other section of the Code, except that any amount deducted under another section of the Code could not also be deducted under this provision. An eligible student would not be eligible to claim a deduction under this provision if that student could be claimed as a dependent of another taxpayer.

REVENUE ESTIMATE

[In billions of dollars]

	Fiscal years—						
	1995	1996	1997	1998	1999	2000	Total
Education and job training tax deduction	0	−0.7	−4.7	−5.0	−5.8	−7.6	−23.7

EXPANDED INDIVIDUAL RETIREMENT ACCOUNTS

Current law

Under current law, an individual may make deductible contributions to an individual retirement account or individual retirement annuity (IRA) up to the lesser of $2,000 or compensation (wages and self-employment income). If the individual (or the individual's spouse) is an active participant in an employer-sponsored retirement plan, the $2,000 limit on deductible contributions is phased out for couples filing a joint return with adjusted gross income (AGI) between $40,000 and $50,000, and for single taxpayers with AGI between $25,000 and $35,000. To the extent that an individual is not eligible for deductible IRA contributions, he or she may make nondeductible IRA contributions (up to the contributions limit).

The earnings on IRA account balances are not included in income until they are withdrawn. Withdrawals from an IRA (other than withdrawals of nondeductible contributions) are includable in income, and must begin by age 70½. Amounts withdrawn before age 59½ are generally subject to an additional 10 percent penalty tax. The penalty tax does not apply to distributions upon the death or disability of the taxpayer or withdrawals in the form of substantially equal periodic payments over the life (or life expectancy) of the IRA owner or over the joint lives (or life expectancies) of the IRA owner and his or her beneficiary.

Reasons for change

The Nation's savings rate has declined dramatically since the 1970's. The Administration believes that increasing the savings rate is essential if the United States is to sustain a sufficient level of private investment into the next century. Without adequate investment, the continued healthy growth of the economy is at risk. The Administration is also concerned that many households are not saving enough to provide for long-term needs such as retirement and education.

The Administration believes that individuals should be encouraged to save, and that tax policies can provide a significant incentive. Under current law, however, savings incentives in the form of deductible IRAs are not available to all middle-income taxpayers. Furthermore, the present-law income thresholds for deductible IRAs and the maximum contribution amount are not indexed for inflation, so that fewer Americans are eligible to make a deductible IRA contribution each year, and the amount of the maximum contribution is declining in real terms over time. The Administration also believes that providing taxpayers with the option of making IRA contributions that are nondeductible but can be withdrawn tax free will provide an alternative savings vehicle that some middle-income taxpayers may find more suitable for their savings needs.

Individuals save for many purposes besides retirement. Broadening the tax incentives for non-retirement saving can be an important element in any proposal to increase the Nation's savings rate. Expanding the flexibility of IRAs to meet a wider variety of savings needs, such as first-time home purchases, higher education expenditures, unemployment and catastrophic medical and nursing home expenses, should prove to be more attractive to many taxpayers than accounts limited to retirement savings.

Proposal

Expand Deductible IRAs: Under the proposal the income thresholds and phase-out ranges for deductible IRAs would be doubled; therefore, eligibility would be phased out for couples filing joint returns with AGI between $80,000 and $100,000 and for single individuals with AGI between $50,000 and $70,000. The income thresholds and the present-law annual contribution limit of $2,000 would be indexed for inflation. As under current law, any individual who is not an active participant in an employer-sponsored plan and whose spouse is also not an active participant would be eligible for deductible IRAs regardless of income.

Under the proposal, the IRA contribution limit would be coordinated with the current law limits on elective deferrals under qualified cash or deferred arrangements (sec. 401(k) plans), tax-sheltered annuities (sec. 403(b) annuities), and similar plans. The proposal also would provide that the present-law rule permitting penalty-free IRA withdrawals after an individual reaches age 59½ does not apply in the case of amounts attributable to contributions made during the previous five years. This provision does not apply to amounts rolled over from tax-qualified plans or tax-sheltered annuities.

These provisions would be effective January 1, 1996.

Special IRAs: Each individual eligible for a traditional deductible IRA would have the option of contributing an amount up to the contribution limit to either a deductible IRA or to a new "Special IRA." Contributions to a Special IRA would not be deductible, but if the contributions remained in the account for at least five years, distributions of the contributions and earnings thereon would be tax-free. Withdrawals of earnings from Special IRAs during the five-year period after contribution would be subject to ordinary income tax. In addition, such withdrawals would be subject to the 10-percent penalty tax on early withdrawals unless used for one of the four purposes described below.

The proposal would permit individuals whose AGI for a taxable year did not exceed the upper end of the new income eligibility limits to convert balances in deductible IRAs into Special IRAs without being subject to the 10-percent tax on early withdrawals. The amount transferred from the deductible IRA to the Special IRA generally would be includable in the individual's income in the year of the transfer. However, if a transfer was made before January 1, 1997, the transferred amount included in the individual's income would be spread evenly over four taxable years.

The Special IRA provisions would be effective January 1, 1996.

Penalty-Free Distributions. Amounts could be withdrawn penalty-free from deductible IRAs and Special IRAs within the five-year period after contribution, if the taxpayer used the amounts to pay post-secondary education costs, to buy or build a first home, to cover living costs if unemployed, or to pay catastrophic medical expenses (including certain nursing home costs).

a. *Education expenses:*

Penalty-free withdrawals would be allowed to the extent the amount withdrawn is used to pay qualified higher education expenses of the taxpayer, the taxpayer's spouse, the taxpayer's dependent, or the taxpayer's child or grandchild (even if not a dependent). In general, a withdrawal for qualified higher education expenses would be subject to the same requirements as the deduction for qualified educational expenses (*e.g.*, the expenses are tuition and fees that are charged by educational institutions and are directly related to an eligible student's course of study).

b. *First-time home purchasers:*

Penalty-free withdrawals would be allowed to the extent the amount withdrawn is used to pay qualified acquisition, construction, or reconstruction costs with respect to a principal residence of a first-time home buyer who is the taxpayer, the taxpayer's spouse, or the taxpayer's child or grandchild. A first-time home buyer would be any individual (and if married, the individual's spouse) who (1) did not own an interest in a principal residence during the three years prior to the purchase of a home and (2) was not in an extended period for rolling over gain from the sale of a principal residence.

c. *Unemployment:*

Penalty-free withdrawals could be made by an individual after the individual is separated from employment if (1) the individual has received unemployment compensation for 12 consecutive weeks and (2) the withdrawal is made in the taxable year in which the unemployment compensation is received for the succeeding taxable year.

d. Medical care expenses and nursing home costs:

The proposal would extend to IRAs the present-law exception to the early withdrawal tax for distributions from tax-qualified plans and tax-sheltered annuities for certain medical care expenses (deductible medical expenses that are subject to a floor of 7.5 percent of AGI) and expand the exception for IRAs to allow withdrawal for medical care expenses of the taxpayer's child, grandchild, parent or grandparent, whether or not such person otherwise qualifies as the taxpayer's dependent.

In addition, for purposes of the exemption from the 10 percent tax on early withdrawals for distributions from IRAs, the definition of medical care would include expenses for qualified long-term care services for incapacitated individuals. Qualified long-term care services generally would be services that are required by an incapacitated individual, where the primary purpose of the services is to provide needed assistance with any activity of daily living or protection from threats to health and safety due to severe cognitive impairment. An incapacitated individual generally would be a person who is certified by a licensed professional within the preceding 12-month period as being unable to perform without substantial assistance at least two activities of daily living, or as having severe cognitive impairment.

These provisions would be effective January 1, 1996.

REVENUE ESTIMATE

[In billions of dollars]

	Fiscal years—						
	1995	1996	1997	1998	1999	2000	Total
Expanded individual retirement accounts ...	0	0.4	−0.3	−0.8	−1.0	−2.0	−3.8

Mr. DASCHLE. Mr. President, I am pleased to join my distinguished colleague from New York, the ranking member of the Finance Committee, in introducing the President's Middle-Class Bill of Rights, a modest package of measures that will make it easier for middle-income Americans to raise their children, educate themselves and/or their children, and save for retirement.

These proposals are in stark contrast to the tax cut proposals advanced by Republicans. The tax cuts in the Republican Contract With America would cost four times as much as the President's tax cuts over the next 10 years, with the overwhelming majority of the benefit going to those making more than $100,000.

According to a recent report prepared by the Joint Committee on Taxation, while the Republican tax cuts would cost $200 billion over the first 5 years, that cost would balloon to $704 billion over 10 years. The President's Middle-Class Bill of Rights would cost less than a quarter of that amount—$171 billion—over a 10-year period.

In other words, Republicans are proposing tax cuts that will benefit the middle class, while at the same time asking those same middle-income Americans to pay for tax cuts for high-income taxpayers that are three times as large. That doesn't sound like a fair deal to me.

While there are some similarities between the President's tax cuts and those contained in the Contract With America, the principal difference is that the contract includes tax cuts for high-income people and large corporations. And, as far as their impact on the budget and middle-income taxpayers is concerned, it is an exceedingly large difference.

Another way the President's tax cuts can be distinguished from Republican proposals is that the President would provide middle-income tax relief specifically for higher education and job training. Education and job training expenses are among the largest costs faced by middle-income families. Yet, education and job training are critical tools needed by middle-class Americans to build more quality of life for themselves and their children.

Mr. President, I understand that the Finance Committee already has held hearings on the President's proposal, and I look forward to reviewing the committee's report on the testimony presented at those hearings.

By Mr. MOYNIHAN (for himself and Mr. DASCHLE) (by request):

S. 453. A bill to amend the Internal Revenue Code of 1986 to modify the eligibility criteria for the earned income tax credit, to improve tax compliance by U.S. persons establishing or benefiting from foreign trusts, and for other purposes; to the Committee on Finance.

THE TAX COMPLIANCE ACT OF 1995

Mr. MOYNIHAN. Mr. President, as ranking member of the Committee on Finance, I am today joining with the Democratic leader in introducing a bill, at the request of the administration, containing the statutory provisions that implement the tax compliance proposals in the President's fiscal year 1996 budget submission.

By making statutory language available early in the legislative process, the administration has aided the process of Senate consideration of these provisions. This legislation also will serve to answer many of the questions that the public may have with respect to the President's tax proposals.

I want to thank the administration for providing this level of detail in so timely a fashion, and I look forward to working with them on these proposals in the coming months.

Mr. President, I ask unanimous consent that the text of the bill and additional material be printed in the RECORD.

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

S. 453

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) SHORT TITLE.—This Act may be cited as the "Tax Compliance Act of 1995".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—

Sec. 1. Short title; amendment of 1986 Code.

TITLE I—PROVISIONS RELATING TO THE EARNED INCOME CREDIT

Sec. 101. Earned income tax credit denied to individuals not authorized to be employed in the United States.

Sec. 102. Earned income tax credit denied to individuals with substantial unearned income.

TITLE II—PROVISIONS RELATING TO INTERNATIONAL TAXATION

Sec. 201. Revision of tax rules on expatriation.

Sec. 202. Improved information reporting on foreign trusts.

Sec. 203. Modification of rules relating to foreign trusts having one or more United States beneficiaries.

Sec. 204. Foreign persons not to be treated as owners under grantor trust rules.

Sec. 205. Gratuitous transfers by partnerships and foreign corporations.

Sec. 206. Information reporting regarding large foreign gifts.

Sec. 207. Modification of rules relating to foreign trusts which are not grantor trusts.

Sec. 208. Residence of estates and trusts.

TITLE III—ADDITIONAL EMPOWERMENT ZONES

Sec. 301. Additional empowerment zones.

TITLE I—PROVISIONS RELATING TO THE EARNED INCOME CREDIT

SEC. 101. EARNED INCOME TAX CREDIT DENIED TO INDIVIDUALS NOT AUTHORIZED TO BE EMPLOYED IN THE UNITED STATES.

(a) IN GENERAL.—Section 32(c)(1) (relating to individuals eligible to claim the earned income tax credit) is amended by adding at the end the following new subparagraph:

"(F) IDENTIFICATION NUMBER REQUIREMENT.—The term 'eligible individual' does not include any individual who does not include on the return of tax for the taxable year—

"(i) such individual's taxpayer identification number, and

"(ii) if the individual is married (within the meaning of section 7703), the taxpayer identification number of such individual's spouse."

(b) SPECIAL IDENTIFICATION NUMBER.—Section 32 is amended by adding at the end the following new subsection:

"(k) IDENTIFICATION NUMBERS.—Solely for purposes of subsections (c)(1)(F) and (c)(3)(D), a taxpayer identification number means a social security number issued to an individual by the Social Security Administration (other than a social security number issued pursuant to clause (II) (or that portion of clause (III) that relates to clause (II)) of section 205(c)(2)(B)(i) of the Social Security Act)."

(c) EXTENSION OF PROCEDURES APPLICABLE TO MATHEMATICAL OR CLERICAL ERRORS.—Section 6213(g)(2) (relating to the definition of mathematical or clerical errors) is amended by striking "and' at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting ", and", and by inserting after subparagraph (E) the following new subparagraph:

"(F) an omission of a correct taxpayer identification number required under section 23 (relating to credit for families with younger children) or section 32 (relating to the earned income tax credit) to be included on a return."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 102. EARNED INCOME TAX CREDIT DENIED TO INDIVIDUALS WITH SUBSTANTIAL UNEARNED INCOME.

(a) IN GENERAL.—Paragraph (1) of section 32(c) (relating to individuals eligible to claim the earned income tax credit) is amended by adding at the end the following new subparagraph:

"(G) EXCEPTION FOR INDIVIDUAL WITH SUBSTANTIAL INTEREST AND DIVIDEND INCOME.—The term 'eligible individual' shall not include any individual if the aggregate amount of interest and dividends includible in the gross income of the taxpayer for the taxable year exceeds $2,500."

(b) CONFORMING AMENDMENT.—

(1) Paragraph (2) of section 32(i) (relating to inflation adjustments) is amended to read as follows:

"(2) UNEARNED INCOME LIMITATION.—In the case of a taxable year beginning in a calendar year after 1996, the dollar amount contained in subsection (c)(1)(G) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 1995' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $50, such dollar amount shall be rounded to the nearest multiple of $50."

(2) Paragraph (1) of section 32(i) is amended by adding at the end the following new flush sentence:

"If any amount as adjusted under the preceding sentence is not a multiple of $10, such dollar amount shall be rounded to the nearest multiple of $10."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

TITLE II—PROVISIONS RELATING TO INTERNATIONAL TAXATION

SEC. 201. REVISION OF TAX RULES ON EXPATRIATION.

(a) IN GENERAL.—Subpart A of part II of subchapter N of chapter 1 is amended by inserting after section 877 the following new section:

"SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.

"(a) GENERAL RULES.—For purposes of this subtitle—

"(1) CITIZENS.—If any United States citizen relinquishes his citizenship during a taxable year, all property held by such citizen at the time immediately before such relinquishment shall be treated as sold at such time for its fair market value and any gain or loss shall be taken into account for such taxable year.

"(2) CERTAIN RESIDENTS.—If any long-term resident of the United States ceases to be subject to tax as a resident of the United States for any portion of any taxable year, all property held by such resident at the time of such cessation shall be treated as sold at such time for its fair market value and any gain or loss shall be taken into account for the taxable year which includes the date of such cessation.

"(b) EXCLUSION FOR CERTAIN GAIN.—The amount which would (but for this subsection) be includible in the gross income of any taxpayer by reason of subsection (a) shall be reduced (but not below zero) by $600,000.

"(c) PROPERTY TREATED AS HELD.—For purposes of this section, except as otherwise provided by the Secretary, an individual shall be treated as holding—

"(1) all property which would be includible in his gross estate under chapter 11 were such individual to die at the time the property is treated as sold,

"(2) any other interest in a trust which the individual is treated as holding under the rules of section 679(e) (determined by treating such section as applying to foreign and domestic trusts), and

"(3) any other interest in property specified by the Secretary as necessary or appropriate to carry out the purposes of this section.

"(d) EXCEPTIONS.—The following property shall not be treated as sold for purposes of this section:

"(1) UNITED STATES REAL PROPERTY INTERESTS.—Any United States real property interest (as defined in section 897(c)(1)), other than stock of a United States real property holding corporation which does not, on the date the individual relinquishes his citizenship or ceases to be subject to tax as a resident, meet the requirements of section 897(c)(2).

"(2) INTEREST IN CERTAIN RETIREMENT PLANS.—

"(A) IN GENERAL.—Any interest in a qualified retirement plan (as defined in section 4974(d)), other than any interest attributable to contributions which are in excess of any limitation or which violate any condition for tax-favored treatment.

"(B) FOREIGN PENSION PLANS.—

"(i) IN GENERAL.—Under regulations prescribed by the Secretary, interests in foreign pension plans or similar retirement arrangements or programs.

"(ii) LIMITATION.—The value of property which is treated as not sold by reason of this subparagraph shall not exceed $500,000.

"(e) DEFINITIONS.—For purposes of this section—

"(1) RELINQUISHMENT OF CITIZENSHIP.—A citizen shall be treated as relinquishing his United States citizenship on the date the United States Department of State issues to the individual a certificate of loss of nationality or on the date a court of the United States cancels a naturalized citizen's certificate of naturalization.

"(2) LONG-TERM RESIDENT.—

"(A) IN GENERAL.—The term 'long-term resident' means any individual (other than a citizen of the United States) who is a lawful permanent resident of the United States and, as a result of such status, has been subject to tax as a resident in at least 10 taxable years during the period of 15 taxable years ending with the taxable year during which the sale under subsection (a) is treated as occurring.

"(B) SPECIAL RULE.—For purposes of subparagraph (A), there shall not be taken into account—

"(i) any taxable year during which any prior sale is treated under subsection (a) as occurring, or

"(ii) any taxable year prior to the taxable year referred to in clause (i).

"(f) TERMINATION OF DEFERRALS, ETC.—On the date any property held by an individual is treated as sold under subsection (a)—

"(1) any period deferring recognition of income or gain shall terminate, and

"(2) any extension of time for payment of tax shall cease to apply and the unpaid portion of such tax shall be due and payable.

"(g) ELECTION BY EXPATRIATING RESIDENTS.—Solely for purposes of determining gain under subsection (a)—

"(1) IN GENERAL.—At the election of a resident not a citizen of the United States, property—

"(A) which was held by such resident on the date the individual first became a resident of the United States during the period of long-term residency to which the treatment under subsection (a) relates, and

"(B) which is treated as sold under subsection (a),

shall be treated as having a basis on such date of not less than the fair market value of such property on such date.

"(2) ELECTION.—Such an election shall apply to all property described in paragraph (1), and, once made, shall be irrevocable.

"(h) DEFERRAL OF TAX ON CLOSELY HELD BUSINESS INTERESTS.—The District Director may enter into an agreement with any individual which permits such individual to defer payment for not more than 5 years of any tax imposed by subsection (a) by reason of holding any interest in a closely held business (as defined in section 6166(b)) other than a United States real property interest described in subsection (d)(1).

"(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

"(j) CROSS REFERENCE.—

"For termination of United States citizenship for tax purposes, see section 7701(a)(47)."

(b) DEFINITION OF TERMINATION OF UNITED STATES CITIZENSHIP.—Section 7701(a) is amended by adding at the end the following new paragraph:

"(47) TERMINATION OF UNITED STATES CITIZENSHIP.—An individual shall not cease to be treated as a United States citizen before the date on which the individual's citizenship is treated as relinquished under section 877A(e)(1)."

(c) CONFORMING AMENDMENTS.—

(1) Section 877 is amended by adding at the end the following new subsection:

"(f) TERMINATION.—This section shall not apply to any individual who is subject to the provisions of section 877A."

(2) Paragraph (10) of section 7701(b) is amended by adding at the end the following new sentence: "This paragraph shall not apply to any individual who is subject to the provisions of section 877A."

(d) CLERICAL AMENDMENT.—The table of sections for subpart A of part II of subchapter N of chapter 1 is amended by inserting after the item relating to section 877 the following new item:

"Sec. 877A. Tax responsibilities of expatriation."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) United States citizens who relinquish (within the meaning of section 877A(e)(1) of the Internal Revenue Code of 1986, as added by this section) United States citizenship on or after February 6, 1995, and

(2) long-term residents (as defined in such section) who cease to be subject to tax as residents of the United States on or after such date.

SEC. 202. IMPROVED INFORMATION REPORTING ON FOREIGN TRUSTS.

(a) IN GENERAL.—Section 6048 (relating to returns as to certain foreign trusts) is amended to read as follows:

"SEC. 6048. INFORMATION WITH RESPECT TO CERTAIN FOREIGN TRUSTS.

"(a) NOTICE OF CERTAIN EVENTS.—

"(1) GENERAL RULE.—On or before the 90th day (or such later day as the Secretary may prescribe) after any reportable event, the responsible party shall—

"(A) notify each trustee of the trust of the requirements of subsection (b), and

"(B) provide written notice of such event to the Secretary in accordance with paragraph (2).

"(2) CONTENTS OF NOTICE.—The notice required by paragraph (1)(B) shall contain such information as the Secretary may prescribe, including—

"(A) the amount of money or other property (if any) transferred to the trust in connection with the reportable event,

"(B) the identity of the trust and of each trustee and beneficiary (or class of beneficiaries) of the trust, and

"(C) a statement that each trustee of the trust has been informed of the requirements of subsection (b).

"(3) REPORTABLE EVENT.—For purposes of this subsection, the term 'reportable event' means—

"(A) the creation of any foreign trust by a United States person,

"(B) the transfer of any money or property to a foreign trust by a United States person, including a transfer by reason of death,

"(C) a domestic trust becoming a foreign trust,

"(D) the death of a citizen or resident of the United States who is a grantor of a foreign trust, and

"(E) the residency starting date (within the meaning of section 7701(b)(2)(A)) of a grantor of a foreign trust subject to tax under section 679(a)(3).

Subparagraphs (A) and (B) shall not apply with respect to a trust described in section 404(a)(4) or 404A.

"(4) RESPONSIBLE PARTY.—For purposes of this subsection, the term 'responsible party' means—

"(A) the grantor in the case of a reportable event described in subparagraph (A) or (E) of paragraph (3),

"(B) the transferor in the case of a reportable event described in paragraph (3)(B) other than a transfer by reason of death,

"(C) the trustee of the domestic trust in the case of a reportable event described in paragraph (3)(C), and

"(D) the executor of the decedent's estate in the case of a transfer by reason of death.

"(b) TRUST REPORTING REQUIREMENTS.—If a foreign trust, at any time during a taxable year of such trust—

"(1) has a grantor who is a United States person and—

"(A) such grantor is treated as the owner of any portion of such trust under the rules of subpart E of part I of subchapter J of chapter 1, or

"(B) any portion of such trust would be included in the gross estate of such grantor if the grantor were to die at such time, or

"(2) directly or indirectly distributes, credits, or allocates money or property to any United States person (whether or not the trust has a grantor described in paragraph (1)),

then such trust shall meet the requirements of subsection (c) (relating to trust information and agent) and subsection (d) (relating to annual return).

"(c) CONTENTS OF SECTION 6048 STATEMENT.—

"(1) IN GENERAL.—The requirements of this subsection are met if the trust files with the Secretary a statement which contains such information as the Secretary may prescribe and which—

"(A) identifies a United States person who is the trust's limited agent to provide the Secretary with such information that reasonably should be available to the trust for purposes of applying sections 7602, 7603, and 7604 with respect to any request by the Secretary to examine trust records or produce testimony related to any transaction by the trust or with respect to any summons by the Secretary for such records or testimony, and

"(B) contains an agreement to comply with the requirements of subsection (d).

"(2) SPECIAL RULE.—A foreign trust which appoints an agent described in paragraph (1)(A) shall not be considered to have an office or a permanent establishment in the United States solely because of the activities of such agent pursuant to this section. For purposes of this section, the appearance of persons or production of records by reason of the creation of the agency shall not subject such persons or records to legal process for any purpose other than determining the correct treatment under this title of the activities and operations of the trust.

"(d) ANNUAL RETURNS AND STATEMENTS.—The requirements of this subsection are met if—

"(1) the trust makes a return for the taxable year which sets forth a full and complete accounting of all trust activities and operations for the taxable year, and contains such other information as the Secretary may prescribe; and

"(2) the trust furnishes such information as the Secretary may prescribe to each United States person—

"(A) who is treated as the owner of any portion of such trust under the rules of subpart E of part I of subchapter J of chapter 1,

"(B) to whom any item with respect to the taxable year is credited or allocated, or

"(C) who receives a distribution from such trust with respect to the taxable year.

"(e) TIME AND MANNER OF FILING INFORMATION.—Any notice, statement, or return required under this section shall be made at such time and in such manner as the Secretary shall prescribe.

"(f) MODIFICATION OF RETURN REQUIREMENTS.—The Secretary is authorized to suspend or modify any requirement of this section if the Secretary determines that the United States has no significant tax interest in obtaining the required information."

(b) PENALTIES.—Section 6677 (relating to failure to file information returns with respect to certain foreign trusts) is amended to read as follows:

"SEC. 6677. FAILURE TO FILE INFORMATION WITH RESPECT TO CERTAIN FOREIGN TRUSTS.

"(a) FAILURE TO REPORT CERTAIN EVENTS.—

"(1) IN GENERAL.—In the case of a reportable event described in any subparagraph of section 6048(a)(3) for which a responsible party does not file a written notice meeting the requirements of section 6048(a)(2) within the time specified in section 6048(a)(1), the responsible party shall pay a penalty of $10,000. If any failure described in the preceding sentence continues for more than 90 days after the day on which the Secretary mails notice of such failure to the responsible party, such party shall pay a penalty (in addition to the $10,000 amount) of $10,000 for each 30-day period (or fraction thereof) during which such failure continues after the expiration of such 90-day period.

"(2) 35-PERCENT PENALTY.—In the case of a reportable event described in subparagraph (A), (B), or (C) of section 6048(a)(3) (other than a transfer by reason of death), the aggregate amount of the penalties under paragraph (1) shall not be less than an amount equal to 35 percent of the gross value of the property involved in such event (determined as of the date of the event).

"(3) RESPONSIBLE PARTY.—For purposes of this subsection, the term 'responsible party' has the meaning given to such term by section 6048(a)(4).

"(b) FAILURE TO MAKE CERTAIN STATEMENTS AND RETURNS.—

"(1) IN GENERAL.—In the case of any failure to meet the requirements of section 6048(b), the appropriate tax treatment of any trust transactions or operations shall be determined by the Secretary in the Secretary's sole discretion from the Secretary's own knowledge or from such information as the Secretary may obtain through testimony or otherwise.

"(2) MONETARY PENALTY.—In the case of any failure to meet the requirements of section 6048(b) with respect to a trust described in such section by reason of paragraph (1) thereof, the grantor described in such paragraph (1) shall pay a penalty of $10,000 for each taxable year with respect to which the foreign trust fails to meet such requirements. If any failure described in the preceding sentence continues for more than 90 days after the day on which the Secretary mails notice of such failure to such grantor, such grantor shall pay a penalty (in addition to any other penalty) of $10,000 for each 30-day period (or fraction thereof) during which such failure continues after the expiration of such 90-day period.

"(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed by this section on any failure which is shown to be due to reasonable cause and not due to willful neglect. The fact that a foreign jurisdiction would impose a civil or criminal penalty on the taxpayer (or any other person) for disclosing the requested documentation is not reasonable cause.

"(d) DEFICIENCY PROCEDURES NOT TO APPLY.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply in respect of the assessment or collection of any penalty imposed by this section."

(c) CLERICAL AMENDMENTS.—

(1) The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by striking the item relating to section 6048 and inserting the following new item:

"Sec. 6048. Information with respect to certain foreign trusts."

(2) The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6677 and inserting the following new item:

"Sec. 6677. Failure to file information with respect to certain foreign trusts."

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply—

(A) to reportable events occurring on or after February 6, 1995, and

(B) to the extent such amendments require reporting for any taxable year under section 6048(b) of the Internal Revenue Code of 1986 (as added by this section), to taxable years beginning after the date of the enactment of this Act.

(2) NOTICES.—For purposes of section 6048(a) of such Code, the 90th day referred to therein shall in no event be treated as being earlier than the 90th day after the date of the enactment of this Act.

SEC. 203. MODIFICATION OF RULES RELATING TO FOREIGN TRUSTS HAVING ONE OR MORE UNITED STATES BENEFICIARIES.

(a) IN GENERAL.—Section 679 (relating to foreign trusts having one or more United States beneficiaries) is amended to read as follows:

"SEC. 679. FOREIGN TRUSTS HAVING ONE OR MORE UNITED STATES BENEFICIARIES.

"(a) TRANSFEROR TREATED AS OWNER.—

"(1) IN GENERAL.—A United States person who directly or indirectly transfers property to a foreign trust (other than a trust described in section 404(a)(4) or section 404A) shall be treated as the owner for his taxable year of the portion of such trust attributable to such property if for such year there is a United States beneficiary of such trust.

"(2) EXCEPTION.—

"(A) IN GENERAL.—Paragraph (1) shall not apply to any sale or exchange of property to a trust if—

"(i) the trust pays fair market value for such property, and

"(ii) all of the gain to the transferor is recognized at the time of transfer.

"(B) CERTAIN OBLIGATIONS NOT TAKEN INTO ACCOUNT.—For purposes of subparagraph (A), in determining whether the transferor received fair market value, there shall not be taken into account—

"(i) any obligation of—

"(I) the trust,

"(II) any grantor or beneficiary of the trust, or

"(III) any person who is related (within the meaning of section 643(i)(3)) to any grantor or beneficiary of the trust, and

"(ii) except as provided in regulations, any obligation which is guaranteed by a person described in clause (i).

"(C) TREATMENT OF DEEMED SALE ELECTION UNDER SECTION 1057.—For purposes of subparagraph (A), a transfer with respect to which an election under section 1057 is made shall not be treated as a sale or exchange.

"(3) SPECIAL RULES APPLICABLE TO FOREIGN GRANTOR WHO LATER BECOMES A UNITED STATES PERSON.—A nonresident alien individual who becomes a United States resident within 5 years after directly or indirectly transferring property to a foreign trust shall be treated for purposes of this section and section 6048 as having transferred such property, and any undistributed income (including all realized and unrealized gains) attributable thereto, to the foreign trust immediately after becoming a United States resident. For this purpose, a nonresident alien shall be treated as becoming a resident of the United States on the residency starting date (within the meaning of section 7701(b)(2)(A)).

"(b) BENEFICIARIES TREATED AS TRANSFERORS IN CERTAIN CASES.—For purposes of this section and section 6048, if—

"(1) a citizen or resident of the United States who is treated as the owner of any portion of a trust under subsection (a) dies,

"(2) property is transferred to a foreign trust by reason of the death of a citizen or resident of the United States, or

"(3) a domestic trust to which any United States person made a transfer becomes a foreign trust,

then, except as otherwise provided in regulations, the trust beneficiaries shall be treated as having transferred to such trust (as of the date of the applicable event under paragraph (1), (2), or (3)) their respective interests (as determined under subsection (e)) in the property involved.

"(c) TRUSTS ACQUIRING UNITED STATES BENEFICIARIES.—If—

"(1) subsection (a) applies to a trust for the transferor's taxable year, and

"(2) subsection (a) would have applied to the trust for the transferor's immediately preceding taxable year but for the fact that for such preceding taxable year there was no United States beneficiary for any portion of the trust,

then, for purposes of this subtitle, the transferor shall be treated as having received as an accumulation distribution taxable under subpart D an amount equal to the undistributed net income (as determined under section 665(a) as of the close of such immediately preceding taxable year) attributable to the portion of the trust referred to in subsection (a).

"(d) TRUSTS TREATED AS HAVING A UNITED STATES BENEFICIARY.—

"(1) IN GENERAL.—For purposes of this section, a trust shall be treated as having a United States beneficiary for the taxable year unless—

"(A) under the terms of the trust, no part of the income or corpus of the trust may be paid or accumulated during the taxable year to or for the benefit of a United States person, and

"(B) if the trust were terminated at any time during the taxable year, no part of the income or corpus of such trust could be paid to or for the benefit of a United States person.

To the extent provided by the Secretary, for purposes of this subsection, the term 'United States person' includes any person who was a United States person at any time during the existence of the trust.

"(2) ATTRIBUTION OF OWNERSHIP.—For purposes of paragraph (1), an amount shall be treated as paid or accumulated to or for the benefit of a United States person if such amount is paid to or accumulated for a foreign corporation, foreign partnership, or foreign trust or estate, and—

"(A) in the case of a foreign corporation, more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote is owned (within the meaning of section 958(a)) or is considered to be owned (within the meaning of section 958(b)) by United States shareholders (as defined in section 951(b)),

"(B) in the case of a foreign partnership, a United States person is a partner of such partnership, or

"(C) in the case of a foreign trust or estate, such trust or estate has a United States beneficiary (within the meaning of paragraph (1)).

"(e) DETERMINATION OF BENEFICIARIES' INTERESTS IN TRUST.—

"(1) GENERAL RULE.—For purposes of this section, a beneficiary's interest in a foreign trust shall be based upon all relevant facts and circumstances, including the terms of the trust instrument and any letter of wishes or similar document, historical patterns of trust distributions, and the existence of and functions performed by a trust protector or any similar advisor.

"(2) SPECIAL RULE.—In the case of beneficiaries whose interests in a trust cannot be determined under paragraph (1)—

"(A) the beneficiary having the closest degree of kinship to the grantor shall be treated as holding the remaining interests in the trust not determined under paragraph (1) to be held by any other beneficiary, and

"(B) if 2 or more beneficiaries have the same degree of kinship to the grantor, such remaining interests shall be treated as held equally by such beneficiaries.

"(3) CONSTRUCTIVE OWNERSHIP.—If a beneficiary of a foreign trust is a corporation, partnership, trust, or estate, the shareholders, partners, or beneficiaries shall be deemed to be the trust beneficiaries for purposes of this section.

"(4) TAXPAYER RETURN POSITION.—A taxpayer shall clearly indicate on its income tax return—

"(A) the methodology used to determine that taxpayer's trust interest under this section, and

"(B) if the taxpayer knows (or has reason to know) that any other beneficiary of such trust is using a different methodology to determine such beneficiary's trust interest under this section.

"(f) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years ending on or after February 6, 1995.xxxxx

(2) SECTION 679(a).—Paragraphs (2) and (3) of section 679(a) of the Internal Revenue Code of 1986 (as added by this section) shall apply to—

(A) any trust created on or after February 6, 1995, and

(B) the portion of any trust created before such date which is attributable to actual transfers of property to the trust on or after such date.

(3) SECTION 679(b).—

(A) IN GENERAL.—Paragraphs (1) and (2) of section 679(b) of such Code (as so added) shall apply to—

(i) any trust created on or after the date of the enactment of this Act, and

(ii) the portion of any trust created before such date which is attributable to actual transfers of property to the trust on or after such date.

(B) SECTION 679(b)(3).—Section 679(b)(3) of such Code (as so added) shall take effect on February 6, 1995, without regard to when the property was transferred to the trust.

SEC. 204. FOREIGN PERSONS NOT TO BE TREATED AS OWNERS UNDER GRANTOR TRUST RULES.

(a) IN GENERAL.—So much of section 672(f) (relating to special rule where grantor is foreign person) as precedes paragraph (2) is amended to read as follows:

"(f) SUBPART NOT TO RESULT IN FOREIGN OWNERSHIP.—

"(1) IN GENERAL.—Notwithstanding any other provision of this subpart, this subpart shall apply only to the extent such application results in an amount being included (directly or through 1 or more entities) in the gross income of a citizen or resident of the United States or a domestic corporation. The preceding sentence shall not apply to any portion of an investment trust if such trust is treated as a trust for purposes of this title and the grantor of such portion is the sole beneficiary of such portion."

(b) CREDIT FOR CERTAIN TAXES.—Paragraph (2) of section 665(d) is amended by adding at the end the following new sentence: "Under rules or regulations prescribed by the Secretary, in the case of any foreign trust of which the settlor or another person would be treated as owner of any portion of the trust under subpart E but for section 672(f), the term 'taxes imposed on the trust' includes the allocable amount of any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on the settlor or such other person in respect of trust income."

(c) DISTRIBUTIONS BY CERTAIN FOREIGN TRUSTS THROUGH NOMINEES.—

(1) Section 643 is amended by adding at the end the following new subsection:

"(h) DISTRIBUTIONS BY CERTAIN FOREIGN TRUSTS THROUGH NOMINEES.—For purposes of this part, any amount paid to a United States person which is derived directly or indirectly from a foreign trust of which the payor is not the grantor shall be deemed in the year of payment to have been directly paid by the foreign trust to such United States person."

(2) Section 665 is amended by striking subsection (c).

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

(e) TRANSITIONAL RULE.—If—

(1) by reason of the amendments made by this section, any person other than a United States person ceases to be treated as the owner of a portion of a domestic trust, and

(2) before January 1, 1996, such trust becomes a foreign trust, or the assets of such trust are transferred to a foreign trust,

no tax shall be imposed by section 1491 of the Internal Revenue Code of 1986 by reason of such trust becoming a foreign trust or the assets of such trust being transferred to a foreign trust.

SEC. 205. GRATUITOUS TRANSFERS BY PARTNERSHIPS AND FOREIGN CORPORATIONS.

(a) IN GENERAL.—Subchapter C of chapter 80 (relating to provisions affecting more than one subtitle) is amended by adding at the end the following new section:

"SEC. 7874. PURPORTED GIFTS BY PARTNERSHIPS AND FOREIGN CORPORATIONS.

"(a) IN GENERAL.—Any property (including money) that is purportedly a direct or indirect gift by a partnership or a foreign corporation to a person who is not a partner of the partnership or a shareholder of the corporation, respectively, may be recharacterized by the Secretary to prevent the avoidance of tax. The Secretary may not recharacterize gifts made for bona fide business or charitable purposes.

"(b) STATEMENTS ON RECIPIENT'S RETURN.—A taxpayer who receives a purported gift subject to subsection (a) shall attach a statement to his income tax return for the year of receipt that identifies the property received and describes fully the circumstances surrounding the purported gift.

"(c) EXEMPTION.—Subsection (a) shall not apply to purported gifts received by any person during any taxable year if the amount thereof is less than $2,500.

"(d) REGULATIONS.—The Secretary may prescribe such rules as may be necessary or appropriate to carry out the purposes of this section."

(b) CLERICAL AMENDMENT.—The table of sections for such subchapter C is amended by adding at the end the following new item:

"Sec. 7874. Purported gifts by partnerships and foreign corporations."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts received after the date of the enactment of this Act.

SEC. 206. INFORMATION REPORTING REGARDING LARGE FOREIGN GIFTS.

(a) IN GENERAL.—Subpart A of part III of subchapter A of chapter 61 is amended by inserting after section 6039E the following new section:

"SEC. 6039F. NOTICE OF LARGE GIFTS RECEIVED FROM FOREIGN PERSONS.

"(a) IN GENERAL.—If the value of the aggregate foreign gifts received by a United States person (other than an organization described in section 501(c) and exempt from tax under section 501(a)) during any taxable year exceeds $100,000, such United States person shall furnish (at such time and in such manner as the Secretary shall prescribe) such information as the Secretary may prescribe regarding each foreign gift received during such year.

"(b) FOREIGN GIFT.—For purposes of this section, the term 'foreign gift' means any amount received from a person other than a United States person which the recipient treats as a gift or bequest. Such term shall not include any qualified transfer (within the meaning of section 2503(e)(2)).

"(c) PENALTY FOR FAILURE TO FILE INFORMATION.—

"(1) IN GENERAL.—If a United States person fails to furnish the information required by subsection (a) with respect to any foreign gift within the time prescribed therefor (including extensions)—

"(A) the tax consequences of the receipt of such gift shall be determined by the Secretary in the Secretary's sole discretion from the Secretary's own knowledge or from such information as the Secretary may obtain through testimony or otherwise, and

"(B) such United States person shall pay (upon notice and demand by the Secretary and in the same manner as tax) an amount equal to 5 percent of the amount of such foreign gift for each month for which the failure continues (not to exceed 25 percent of such amount in the aggregate).

"(2) REASONABLE CAUSE EXCEPTION.— Paragraph (1) shall not apply to any failure to report a foreign gift if the United States person shows that the failure is due to reasonable cause and not due to willful neglect.

"(d) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.".

(b) CLERICAL AMENDMENT.—The table of sections for such subpart is amended by inserting after the item relating to section 6039E the following new item:

"Sec. 6039F. Notice of large gifts received from foreign persons."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts received after the date of the enactment of this Act in taxable years ending after such date.

SEC. 207. MODIFICATION OF RULES RELATING TO FOREIGN TRUSTS WHICH ARE NOT GRANTOR TRUSTS.

(a) MODIFICATION OF INTEREST CHARGE ON ACCUMULATION DISTRIBUTIONS.—Subsection (a) of section 668 (relating to interest charge on accumulation distributions from foreign trusts) is amended to read as follows:

"(a) GENERAL RULE.—For purposes of the tax determined under section 667(a)—

"(1) SUM OF INTEREST CHARGES FOR EACH THROWBACK YEAR.—The interest charge (determined under paragraph (2)) with respect to any distribution is the sum of the interest charges for each of the throwback years to which such distribution is allocated under section 666(a).

"(2) INTEREST CHARGE FOR YEAR.—Except as provided in paragraph (6), the interest charge for any throwback year on such year's allocable share of the partial tax computed under section 667(b) with respect to any distribution shall be determined for the period—

"(A) beginning on the due date for the throwback year, and

"(B) ending on the due date for the taxable year of the distribution,

by using the rates and method applicable under section 6621 for underpayments of tax for such period. For purposes of the preceding sentence, the term 'due date' means the date prescribed by law (determined without regard to extensions) for filing the return of the tax imposed by this chapter for the taxable year.

"(3) ALLOCABLE PARTIAL TAX.—For purposes of paragraph (2), a throwback year's allocable share of the partial tax is an amount equal to such partial tax multiplied by the fraction—

"(A) the numerator of which is the amount deemed by section 666(a) to be distributed on the last day of such throwback year, and

"(B) the denominator of which is the accumulation distribution taken into account under section 666(a).

"(4) THROWBACK YEAR.—For purposes of this subsection, the term 'throwback year' means any taxable year to which a distribution is allocated under section 666(a).

"(5) PERIODS OF NONRESIDENCE.—The period under paragraph (2) shall not include any portion thereof during which the beneficiary was not a citizen or resident of the United States.

"(6) THROWBACK YEARS BEFORE 1996.—In the case of any throwback year beginning before 1996—

"(A) interest for the portion of the period described in paragraph (2) which occurs before the first taxable year beginning after 1995 shall be determined by using an interest rate of 6 percent and no compounding, and

"(B) interest for the remaining portion of such period shall be determined as if the partial tax computed under section 667(b) for the throwback year were increased (as of the beginning of such first taxable year) by the amount of the interest determined under subparagraph (A)."

(b) RULE WHEN INFORMATION NOT AVAILABLE.—Subsection (d) of section 666 is amended by adding at the end the following: "In the case of a distribution from a foreign trust to which section 6048(b) applies, adequate records shall not be considered to be available for purposes of the preceding sentence unless such trust meets the requirements referred to in such section. If a taxpayer is not able to demonstrate when a trust was created, the Secretary may use any reasonable approximation based on available evidence."

(c) ABUSIVE TRANSACTIONS.—Section 643(a) is amended by inserting after paragraph (6) the following new paragraph:

"(7) ABUSIVE TRANSACTIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this part, including regulations to prevent avoidance of such purposes."

(d) TREATMENT OF USE OF TRUST PROPERTY.—Section 643 (relating to definitions applicable to subparts A, B, C, and D) is amended by adding at the end the following new subsection:

"(i) USE OF FOREIGN TRUST PROPERTY.—

"(1) GENERAL RULE.—For purposes of subparts B, C, and D, if, during a taxable year of a foreign trust a trust participant of such trust directly or indirectly uses any of the trust's property, the use value for such taxable year shall be treated as an amount paid to such participant (other than from income for the taxable year) within the meaning of sections 661(a)(2) and section 662(a)(2).

"(2) EXEMPTION.—Paragraph (1) shall not apply to any trust participant as to whom the aggregate use value during the taxable year does not exceed $2,500.

"(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) USE VALUE.—Except as provided in subparagraph (B), the term 'use value' means the fair market value of the use of property reduced by any amount paid for such use by the trust participant or by any person who is related to such participant.

"(B) SPECIAL RULE FOR CASH AND CASH EQUIVALENT.—A direct or indirect loan of cash, or cash equivalent, by a foreign trust shall be treated as a use of trust property by the borrower and the full amount of the loan principal shall be the use value.

"(C) USE BY RELATED PARTY.—

"(i) Use by a person who is related to a trust participant shall be treated as use by the participant.

"(ii) If property is used by any person who is a related person with respect to more than one trust participant, then the property shall be treated as used by the trust participant most closely related, by blood or otherwise, to such person.

"(D) PROPERTY INCLUDES CASH AND CASH EQUIVALENTS.—The term 'property' includes cash and cash equivalents.

"(E) TRUST PARTICIPANT.—The term 'trust participant' means each grantor and beneficiary of the trust.

"(F) RELATED PERSON.—A person is related to a trust participant if the relationship between such persons would result in a disallowance of losses under section 267(b) or 707(b). In applying section 267 for purposes of the preceding sentence—

"(i) section 267(e) shall be applied as if such person or the trust participant were a passthru entity,

"(ii) section 267(b) shall be applied by substituting 'at least 10 percent' for 'more than 50 percent' each place it appears, and

"(iii) in determining the family of an individual under section 267(c)(4), such section shall be treated as including the spouse (and former spouse) of such individual and of each other person who is treated under such section as being a member of the family of such individual or spouse.

"(G) SUBSEQUENT TRANSACTIONS REGARDING LOAN PRINCIPAL.—If any loan described in subparagraph (B) is taken into account under paragraph (1), any subsequent transaction between the trust and the original borrower regarding the principal of the loan (by way of complete or partial repayment, satisfaction, cancellation, discharge, or otherwise) shall be disregarded for purposes of this title."

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

(2) INTEREST CHARGE.—The amendment made by subsection (a) shall apply to interest for throwback years beginning before, on, or after the date of the enactment of this Act.

SEC. 208. RESIDENCE OF ESTATES AND TRUSTS.

(a) TREATMENT AS UNITED STATES PERSON.—Paragraph (30) of section 7701(a) is amended by striking subparagraph (D) and by inserting after subparagraph (C) the following:

"(D) any estate or trust if—

"(i) a court within the United States is able to exercise primary supervision over the administration of the estate or trust, and

"(ii) in the case of a trust, one or more United States fiduciaries have the authority to control all substantial decisions of the trust."

(b) CONFORMING AMENDMENT.—Paragraph (31) of section 7701(a) is amended to read as follows:

"(31) FOREIGN ESTATE OR TRUST.—The term 'foreign estate' or 'foreign trust' means any estate or trust other than an estate or trust described in section 7701(a)(30)(D)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply—

(1) to taxable years beginning after December 31, 1996, and

(2) at the election of the trustee of a trust, to taxable years beginning after the date of the enactment of this Act and on or before December 31, 1996.

Such an election, once made, shall be irrevocable.

TITLE III—ADDITIONAL EMPOWERMENT ZONES

SEC. 301. ADDITIONAL EMPOWERMENT ZONES.

(a) IN GENERAL.—Paragraph (2) of section 1391(b) (relating to designations of empowerment zones and enterprise communities) is amended—

(1) by striking "9" and inserting "11",

(2) by striking "6" and inserting "8", and

(3) by striking "750,000" and inserting "1,000,000".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

DEPARTMENT OF THE TREASURY,
Washington, DC, February 15, 1995.

Hon. DANIEL PATRICK MOYNIHAN,
Ranking Democratic Member, Committee on Finance, U.S. Senate, Washington, DC.

DEAR SENATOR MOYNIHAN: I am pleased to transmit the enclosed Tax Compliance Act of 1995 for your immediate consideration. The provisions contained in this bill, which were described in the budget submitted by the President to Congress February 6, 1995, include a number of compliance and related measures. Several proposals are aimed at curbing offshore tax abuses. One proposal would close a tax loophole that allows wealthy Americans to renounce their citizenship and avoid paying tax on appreciated assets. Another would tighten tax rules governing foreign trusts set up by U.S. taxpayers and foreigners. In addition, the earned income tax credit would be denied to undocumented workers and individuals whose interest and dividend income exceeds $2,500. Finally, the bill would authorize the designation of two additional urban empowerment zones.

An identical bill has been sent to Representative Gibbons of the House Ways and Means Committee, Senate Democratic Leader Daschle, and House Democratic Leader Gephardt. I urge Congress to give the attached bill prompt and favorable consideration.

The Office of Management and Budget advises that there is no objection to the presentation of this proposal to the Congress, and that its enactment would be in accord with the program of the President.

Sincerely,

ROBERT E. RUBIN,
Secretary of the Treasury.

GENERAL EXPLANATION OF THE TAX COMPLIANCE ACT OF 1995

EARNED INCOME TAX CREDIT COMPLIANCE PROPOSALS

Current law

To be eligible for the Earned Income Tax Credit (EITC), a taxpayer must reside in the United States for over six months. Nonresident aliens are not entitled to the EITC beginning in 1995. Other non-U.S. citizens are eligible for the EITC if, among other things, they meet a six-month residency requirement and do not file an income tax return as a non-resident alien.

To claim the higher EITC amounts available to taxpayers with qualifying children, those taxpayers are required to provide taxpayer identification numbers (TINs) for each qualifying child. Unless otherwise proscribed by regulation, social security numbers serve as TINs. Some taxpayers are unable to obtain social security numbers. Under section 205(c) of the Social Security Act, social security numbers are generally issued only to individuals who are citizens or who are authorized to work in the U.S. Undocumented workers may not be able to obtain social security numbers.

The IRS must follow deficiency procedures when investigating questionable EITC claims. First, contact letters are sent to the taxpayer. If the necessary information is not provided by the taxpayer, a statutory notice of deficiency is sent by certified mail, notifying the taxpayer that the adjustment will be assessed unless the taxpayer files a petition in Tax Court within 90 days. If a petition is not filed within that time and there is no other response to the statutory notice, the assessment is made and the EITC is denied.

Reasons for change

The Administration believes that the EITC should not be available to individuals who are not authorized to work in the United States. During the past year, the Administration and Congress have taken steps to improve the administration of the EITC. Further steps are desirable to ensure that only the intended beneficiaries receive the EITC.

Proposal

Only individuals who are authorized to work in the United States would be eligible for the EITC. Taxpayers claiming the EITC would be required to provide a valid social security number for themselves, their spouses, and qualifying children. Social security numbers would have to be valid for employment purposes in the United States. Thus, eligible individuals would include U.S. citizens and lawful permanent residents. Taxpayers residing in the United States illegally would not be eligible for the credit.

In addition, the IRS would be authorized to use the math-error procedures, which are simpler than deficiency procedures, to resolve questions about the validity of a social security number. Under this approach, the failure to provide a correct social security number would be treated as a math error. Taxpayers would have 60 days in which they could either provide a correct social security number or request that the IRS follow the current-law deficiency procedures. If a taxpayer failed to respond within this period, he or she would be required to refile with correct social security numbers in order to obtain the EITC.

These provisions would be effective for tax years beginning after December 31, 1995.

REVENUE ESTIMATE

[In billions of dollars][1]

	Fiscal year—						
	1995	1996	1997	1998	1999	2000	Total
EITC compliance proposals	0	0	0.4	0.5	0.5	0.5	1.9

[1] Includes reduction in outlays.

INTEREST AND DIVIDEND TEST FOR EARNED INCOME TAX CREDIT

Current law

To be eligible to receive the Earned Income Tax Credit (EITC), an individual must have earned income. To target the EITC to low-income workers, the amount of the credit to which a taxpayer is entitled decreases when the taxpayer's earned income (or, if greater, adjusted gross income (AGI)) exceeds certain thresholds. The earned income and AGI thresholds are indexed for inflation and are also adjusted to take into account qualifying children. In 1995, a taxpayer with two or more qualifying children will not be eligible for the EITC if his or her income exceeds $26,673. The income cut-offs decline to $24,396 for a taxpayer with one qualifying child and $9,230 for a taxpayer with no qualifying children.

Reason for change

Under current law a taxpayer may have relatively low earned income, and therefore may be eligible for the EITC, even though he or she has significant interest and dividend income. The EITC should be targeted to families with the greatest need. Most EITC recipients do not have significant resources and must rely on earnings to meet their day-to-day living expenses, but taxpayers with high levels of interest and dividend income can draw upon the resources that produce this income to meet family needs.

Proposal

Beginning in 1996, a taxpayer would not be entitled to the EITC if his or her aggregate interest and dividend income during a taxable year exceeds $2,500. This threshold would be indexed for inflation thereafter.

REVENUE ESTIMATE

[In billions of dollars] [1]

	Fiscal year—						
	1995	1996	1997	1998	1999	2000	Total
Interest and dividend test for earned income tax credit	0	*	0.3	0.3	0.4	0.4	1.4

[1] Includes reduction in outlays.
* Revenue gain of less than $50 million.

TAX RESPONSIBILITIES OF AMERICANS WHO RENOUNCE CITIZENSHIP

Current law

Under current law, worldwide gains realized by U.S. citizens and resident aliens are subject to U.S. tax. Existing rules recognize that the United States has a tax interest in preventing tax avoidance through renunciation of citizenship. These rules continue to tax former U.S. citizens on U.S. source income for ten years following renunciation of citizenship if one of the principal purposes of the renunciation was to avoid U.S. income tax. A similar rule applies to aliens who cease to be residents.

Reasons for change

Wealthy U.S. citizens and long-term residents sometimes abandon their U.S. citizenship or status as residents. Existing rules to prevent tax avoidance through expatriation have proven largely ineffective because departing taxpayers have found ways to restructure their activities to avoid those rules, and compliance with the rules is difficult to monitor. Consequently, existing measures need to be enhanced to ensure that gains generally accruing during the time a taxpayer was a citizen or long-term permanent resident will be subject to U.S. tax at the time the taxpayer abandons citizenship or residency.

Proposal

Existing rules would be expanded to provide that if a U.S. person expatriates on or after February 6, 1995, the person would be treated as having sold his or her assets at fair market value immediately prior to expatriation and gain or loss from such sale would be recognized and would be subject to U.S. income tax. A U.S. citizen would be considered to expatriate if the citizens renounces or abandons U.S. citizenship. A resident alien individual would be taxed under this proposal if the alien has been subject to U.S. tax as a lawful permanent resident of the United States in at least ten of the prior fifteen taxable years and then ceases to be subject to U.S. tax as a resident.

For this purpose, a taxpayer would be treated as owning those assets that would be included in the taxpayer's gross estate (determined as if the taxpayer's estate had been created on the date of expatriation) as well as, in certain cases, the taxpayer's interest in assets held in certain trusts (defined below in Section II of the foreign trust discussion). Exceptions to the tax on expatriation would be made for most U.S. real property interests (because they remain subject to U.S. taxing jurisdiction) and interests in qualified retirement plans. An expatriating individual also would be entitled to exclude $600,000 of gain as determined under the proposal.

The IRS may allow a taxpayer to defer payment of the tax on expatriation with respect to interests in closely-held businesses. In those cases, the taxpayer would be required to provide collateral satisfactory to the IRS. Payment of tax could not be deferred for more than five years, and an interest charge would be imposed on the deferred tax.

Solely for purposes of determining gain or loss subject to the tax on expatriation, a resident alien individual would be permitted to elect to determine basis using the fair market value (instead of historical cost) of assets owned on the date when U.S. residence first began. If made, this election would apply to all of a taxpayer's property.

This proposal would replace existing income tax rules with respect to expatriations on or after February 6, 1995. Existing rules that apply to taxes other than income taxes would continue to apply.

REVENUE ESTIMATE

[In billions of dollars]

	Fiscal year—						
	1995	1996	1997	1998	1999	2000	Total
Tax responsibilities of Americans who renounce citizenship	0.1	0.2	0.3	0.4	0.5	0.7	2.2

REVISE TAXATION OF INCOME FROM FOREIGN TRUSTS

U.S. tax rules applicable to foreign trusts have not been revised for nearly two decades. New rules are needed to accommodate changes in the use and incidence of foreign trusts and to limit the avoidance and evasion of U.S. taxes. The Administration proposals would reform the taxation of foreign trusts in five respects.

I. Information reporting and foreign trusts

Current law

Under current law, most foreign trusts established by U.S. persons are grantor trusts, the income of which is taxed to the grantor. U.S. persons who create or transfer property to foreign trusts are required to report transactions with the foreign trust to the IRS.

Reasons for change

The existing information reporting statute predates the significant expansion of the foreign grantor trust rules in 1976. In general, penalties for noncompliance with reporting requirements are minimal. U.S. grantors of foreign trusts often do not report the income earned by foreign trusts and often do not comply with required information reporting. These foreign trusts are frequently established in tax haven jurisdictions with stringent secrecy rules. Consequently, the IRS's attempts to verify income earned by foreign trusts are often unsuccessful. Existing penalties have not proven adequate to encourage some U.S. taxpayers to comply with existing rules.

Proposal

Notice of Transfer: Section 6048 would require U.S. persons transferring property to foreign trusts to notify the IRS. This notice would identify the trustee of the foreign trust, indicate the property transferred to the trust, and identify the trust beneficiaries.

If a transferor did not file the required notice, a penalty would be imposed equal to 35 percent of the gross value of the property transferred, valued as of the date of transfer. This penalty would not be less than $10,000, and could be further increased for continuing noncompliance.

Trustee Statements: Section 6048 would require trustees of any foreign trust with a U.S. grantor or a U.S. beneficiary to file two types of statements: a "Section 6048 Statement" and an annual information return. In the Section 6048 Statement, the trustee would be required to:

(1) appoint a U.S. agent (whether or not a trustee) who has the ability to provide any information that reasonably should be available to the trust in response to requests by the IRS; and

(2) agree to file an annual information return for the foreign trust.

The annual information return would be required to include a full accounting of trust activities, including separate schedules (K-1s) for income attributable to U.S. grantors or U.S. beneficiaries, as appropriate. The foreign trust would not be considered to have an office or permanent establishment in the United States merely because of the section 6048 activities of its U.S. agent.

There would be two consequences if the trustee of the foreign trust did not file a Section 6048 Statement or the required annual information return. First, the U.S. settlor of

a foreign trust would be subject to a $10,000 penalty for each failure to file a Section 6048 Statement or annual information return. This penalty would be increased for continuing noncompliance. Second, the IRS would be authorized to determine, in its discretion, the tax consequences of any trust transactions or operations to a U.S. grantor or U.S. beneficiary. Thus, for example, the IRS could impose a gift tax on property transferred to the foreign trust. In appropriate circumstances, the IRS could also impute taxable income to the U.S. settlor based on the value of assets transferred to or held in the foreign trust. A distribution to a U.S. beneficiary could be deemed to come from income accumulated in the year the trust was organized (or an alien beneficiary's first year of U.S. residence, if later). Although the trustee would have an incentive to file the trustee statements to avoid adverse U.S. tax consequences to U.S. grantors and U.S. beneficiaries, there would be no penalties directly imposed on a trustee for the failure to file those statements.

The Secretary would be authorized to waive any information reporting requirements when there was no significant U.S. tax interest in obtaining the information. Penalties would not be imposed if the taxpayer acted with reasonable cause and not willful neglect.

These proposals generally would be effective for trust taxable years beginning after the date of enactment.

II. Outbound foreign grantor trusts

Current law

Under section 679, a foreign trust established by a U.S. person for the benefit of U.S. persons generally is a "grantor trust", and the grantor is treated as owner of property transferred to the trust. There are, however, some transfers that are not covered by this general rule. First, transfers by reason of death are not subject to section 679. Second, sales of property to a foreign trust at fair market value are not subject to section 679. Third, if a foreign person transfers property to a foreign trust for the benefit of a U.S. person and then becomes a resident of the United States, section 679 does not apply to the transfer. Finally, current rules do not clearly address the tax consequences for a domestic trust that becomes a foreign trust.

Reasons for change

Tax planning to avoid or defer recognition of income from foreign trusts often utilizes the exceptions to section 679. For example, a foreign trust may be established by will upon the death of a U.S. person for the benefit of U.S. persons. Because the trust is not a grantor trust, the income of the trust is not subject to U.S. tax until distributed to a U.S. person, even though the trust was created by a U.S. person for the benefit of a U.S. person.

U.S. persons also sometimes attempt to avoid section 679 by selling property to a foreign trust in exchange for a note from the trust. Often, the U.S. transferor does not intend to collect on the note. In such a case, the purported seller of the assets should be treated as owning the assets transferred to the trust. (If there is no *bona fide* debt, these transactions are subject to challenge under current law, because the exchange would not be at fair market value.)

Prior to becoming residents of the United States, foreign persons often put their assets into irrevocable trusts in tax haven jurisdictions for the benefit of U.S. persons. As a result, the trust income escapes U.S. tax until distribution.

Further, as tax haven jurisdictions enact legislation to enable U.S. trusts to move to those jurisdictions, trust migrations are becoming more common. Taxpayers should not be able to achieve tax results through migration of a domestic trust that they could not achieve directly by creating a foreign trust.

Finally, the inadequacy of the existing attribution rules as they apply to discretionary beneficiaries encourages taxpayers to avoid the appropriate tax consequences of their transactions by disguising true economic ownership of assets through the use of foreign discretionary trusts.

Proposal

The Administration proposes several changes to section 679, described below.

Transfers at Death: Property transferred to a foreign trust at the death of a trust grantor (including property in a foreign grantor trust at the grantor's death) would be treated as having been transferred to the trust by the beneficiaries in accordance with their respective interests in the trust (described below) in a transaction in which no gain or loss would be recognized. U.S. beneficiaries therefore would become grantors for purposes of section 679. These proposals would be effective for assets transferred to foreign trusts after the date of enactment.

Sales to Foreign Trusts: The sale of property to a foreign trust by a U.S. person would be considered a transfer to a grantor trust under section 679 unless the trust pays the grantor full fair market value for the property without regard to any debt obligation received by the transferor issued by the trust, the grantor, a beneficiary, or a person related to the grantor or beneficiary or guaranteed by any such person. Exceptions would be provided for legitimate commercial transactions, such as credit extended by unrelated persons. A transferor would not be treated as receiving fair market value for property transferred in a deemed sale (pursuant to an election under section 1057 or otherwise). These proposals would be effective for assets transferred to foreign trusts on or after February 6, 1995.

Pre-immigration Trusts: If a foreign person transfers property to a foreign trust and becomes a U.S. person within five years of the transfer, the trust would be considered a grantor trust under section 679 with respect to such transferred assets if the trust has U.S. beneficiaries after the grantor becomes a U.S. person. This proposal would be effective for assets transferred to foreign trusts on or after February 6, 1995.

Outbound Trust Migrations: For purposes of section 679, if a domestic trust becomes a foreign trust, the trust assets would be deemed to have been transferred to the trust by the beneficiaries in accordance with their respective interests in the trust (defined below) in a transaction in which no gain or loss is recognized. Thus, any U.S. beneficiaries would be considered to be grantors of their respective interests in the foreign trust for purposes of section 679. However, if the IRS determines that the domestic trust was established pursuant to a plan to retransfer assets to a foreign trust, the IRS would be permitted to treat the U.S. settlor of the domestic trust as grantor of the foreign trust for purposes of section 679. The proposal would be effective for assets transferred to foreign trusts on or after February 6, 1995.

Determination of Respective Interests: For purposes of presenting abusive transactions designed to avoid section 679 and the tax on expatriation, a beneficiary's respective interest in a trust would be based on all relevant facts and circumstances, including the terms of the trust instrument. Other relevant factors may include letters of wishes or similar documents, patterns of historical trust distributions, and the existence of and functions performed by a trust protector or any similar advisor. If the respective interests of beneficiaries in a discretionary trust cannot otherwise be determined, those beneficiaries with the closest degree of family affiliation to the settlor could be presumed to have equal proportionate interests in the trust.

The proposed would apply the attribution rules of discretionary beneficiaries only to the abusive situations under section 679 described above and to the tax on expatriation of U.S. citizens and residents, but would not directly apply the attribution rules for other purposes (e.g., to determine if a discretionary beneficiary is a U.S. shareholder of a controlled foreign corporation that is owned by the trust). The determination of respective interests for purposes of the tax on expatriation by U.S. citizens and residents would be effective for expatriations occurring on or after February 6, 1995.

III. Inbound foreign grantor trusts

Current law

The United States disregards certain "grantor" trusts for income tax purposes. This treatment is designed to prevent abuses arising from attempts to shift income to beneficiaries who are likely to be paying taxes at lower rates than the grantor of the trust. Consequently, under existing anti-abuse rules, the grantor of such a trust is taxed as if he owned the trust assets directly. Trusts generally are considered grantor trusts if (1 the grantor has a reversionary interest in trust income or corpus, (2) the grantor or a nonadverse party holds certain powers over the beneficial enjoyment of trust income or corpus, (3) certain administrative powers are exercisable for the grantor's benefit (e.g., the grantor can reacquire trust assets by substituting assets of equivalent value), (4) the grantor or a nonadverse party has the power to revest trust assets in the grantor, or (5) trust income may be paid or accumulated for the benefit of the grantor or the grantor's spouse in the discretion of the grantor or a nonadverse party. A person other than the grantor is treated as owning trust assets if that person has the power to withdraw trust income or corpus.

The IRS has issued a revenue ruling in which a foreign person funded a foreign grantor trust for U.S. beneficiaries. The ruling holds that since the foreign person is treated as the owner of the grantor trust, a U.S. beneficiary is not taxable on trust distributions.

Reasons for change

Existing law inappropriately permits foreign taxpayers to affirmatively use the domestic anti-abuse rules concerning grantor trusts. Although current law treats a foreign grantor as the owner of the trust assets, the foreign grantor generally is not subject to U.S. tax on income of the trust. These rules therefore permit U.S. beneficiaries, who enjoy the benefits of residing in the United States, to avoid U.S. tax on trust income. U.S. beneficiaries should be appropriately taxed in the United States.

Proposal

Under the proposal, a person would be treated as owning trust assets under the grantor trust rules only if that person is a U.S. citizen, U.S. resident, or domestic corporation. The IRS may prescribe rules for applying the grantor trust rules to settlors that are partnerships, trusts, and estates to

the extent that the beneficial interests in such entities are owned by U.S. citizens, U.S. residents, or domestic corporations. A U.S. person receiving distributions of trust income as result of this provision would be allowed to claim a foreign tax credit for foreign taxes paid on trust income by the trust or the foreign grantor.

Several related provisions are proposed to enforce these rules. First, enhanced authority would be granted to the IRS to prevent the use of nominees to evade these rules. For this purpose, a bona fide settlor of a trust with power to withdraw income or corpus from the trust would normally not be considered a nominee. Second, new rules would harmonize the treatment of purported gifts by corporations and partnerships with the new foreign grantor trust rules. Third, U.S. persons would be required to report the receipt of what they claim to be large gifts from foreign persons in order to allow the IRS to verify that such purported gifts are not, in fact, disguised income to the U.S. recipients.

If a trust that is a grantor trust under current law becomes a nongrantor trust pursuant to this rule, the trust would be treated as if it were resettled on the date the trust becomes a nongrantor trust. Neither the grantor nor the trust would recognize gain or loss. If a resettled domestic trust that has a foreign grantor became a foreign trust before December 31, 1995, the section 1491 excise tax on outbound transfers of assets would not be applied to the transfer by the domestic trust to the new foreign trust. Otherwise, this proposal would be effective on the date of enactment of this provision. These rules would not apply to normal security arrangements involving a trustee (including the use of indenture trustees and similar arrangements).

IV. Foreign nongrantor trusts

Current law

Accumulation distributions: U.S. beneficiaries of foreign trusts are subject to a nondeductible interest charge on distributions of accumulated income earned by the trust in earlier taxable years. The charge is based on the length of time the tax was deferred by deferring distributions of accumulated income. Under existing law, the interest charge is equal to six percent simple interest per year multiplied by the tax imposed on the distribution. If adequate records are not available to determine the portion of a distribution that is accumulated income, the distribution is deemed to be an accumulation distribution from the year the trust was organized.

Constructive Distributions: The tax consequences of the use of trust assets by beneficiaries is ambiguous under current law. Taxpayers may assert that a beneficiary's use of assets owned by a trust does not constitute a distribution to the beneficiary.

Reasons for change

Accumulation distributions: Interest paid by U.S. beneficiaries of foreign trusts should reflect market rates of interest.

Constructive distributions: If a corporation makes corporate assets available for a shareholder's personal use (e.g., a corporate apartment made available rent-free to a shareholder), the fair market value of the use of that property is treated as a constructive distribution. Further, if a controlled foreign corporation makes a loan to a U.S. person, the loan is treated as a deemed distribution by the foreign corporation to its U.S. shareholders. The use of foreign trust assets by trust beneficiaries should give rise to tax consequences that are similar to those associated with the use of corporate shareholders.

Proposal

Accumulation distributions: For periods of accumulation after December 31, 1995, the rate of interest charged on accumulation distributions would correspond to the interest rate taxpayers pay on underpayment of tax. If a trust does not provide information required under section 6048, the distribution would be deemed to be from income accumulated in the year the trust was organized (or an alien beneficiary's first year of U.S. residence, if later). If a taxpayer is not able to demonstrate when the trust was created, the IRS may use any approximation based on available evidence.

Taxpayers have used a variety of methods (e.g., tiered trusts, divisions of trusts, mergers of trusts, and similar transactions with corporations) to convert a distribution of accumulated income into a distribution of current income or corpus. The proposal would authorize the IRS to recharacterize such transactions, effective for transactions or arrangements entered into after the date of enactment. Transactions that may be entered into to avoid the interest charge on accumulation distributions (e.g., excessive "compensation" paid to trust beneficiaries who are directors of corporations owned by the foreign trust) may be subject to recharacterization.

The proposal also clarifies existing law by providing that if an alien beneficiary of a foreign trust becomes a U.S. resident and thereafter receives an accumulation distribution, no interest would be charged for periods of accumulation that predate U.S. residency.

Constructive distributions: If a beneficiary uses assets of a foreign trust, the value of that use would be a constructive distribution to the beneficiary. Thus, if a foreign trust made a residence available for use by a beneficiary (or a related person), the difference between the fair rental value of the residence and any rent actually paid would be treated as a constructive distribution to that beneficiary. If a foreign trust purported to loan cash (or cash equivalents) to a U.S. beneficiary, the loan would be treated as a constructive distribution by the foreign trust to the U.S. beneficiary. These provisions would not apply if constructive distributions did not exceed $2,500 during a taxable year. The provisions would be effective for taxable years of a trust that begin after the date of enactment.

V. Residence of trusts

Current law

Under current law, a "foreign estate or trust" is an estate or trust the "income of which, from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States, is not includable in gross income under subtitle A" of the Internal Revenue Code. This definition does not provide criteria for determining when an estate or trust is foreign.

Court cases and rulings indicate that the residence of an estate or trust depends on various factors, such as the location of the assets, the country under whose laws the estate or trust is created, the residence of the fiduciary, the nationality of the decedent or settlor, the nationality of the beneficiaries, and the location of the administration of the trust or estate. *See e.g., B.W. Jones Trust v. Comm'r*, 46 B.T.A. 531 (1942), *aff'd*, 132 F.2d 914 (4th Cir. 1943).

Reasons for change

Present rules provide insufficient guidance for determining the residence of estates and trusts. Because the tax treatment of an estate, trust, settlor, or beneficiary may depend on whether the estate or trust is foreign or domestic, it is important to have an objective definition of the residence of an estate or trust. Reducing the number of factors used in determining the residence of estates or trusts for tax purposes would increase the flexibility of settlors and trust administrators to decide where to locate and in what assets to invest. For example, if the location of the administration of the trust were no longer a relevant criterion, settlors of foreign trusts would be able to choose whether to administer the trusts in the United States or abroad based on non-tax considerations.

Proposal

An estate or trust would be considered a domestic estate or trust if two factors were present: (1) a court within the United States is able to exercise primary supervision over the administration of the estate or trust; and (2) a U.S. fiduciary (alone or in concert with other U.S. fiduciaries) has the authority to control all major decisions of the estate or trust. A foreign estate or trust would be any estate or trust that is not domestic.

The first factor would be fulfilled only if a U.S. court had authority over the entire estate or trust, and not if it merely had jurisdiction over certain assets or a particular beneficiary. Normally, the first factor would be satisfied if the trust instrument is governed by the laws of a U.S. state. One way to satisfy this factor is to register the estate or trust in a state pursuant to a state law which is substantially similar to Article VII of the Uniform Probate Code as published by the American Law Institute. The second factor would normally be satisfied if a majority of the fiduciaries are U.S. persons and a foreign fiduciary (including a "protector" or similar trust advisor) may not veto important decisions of the U.S. fiduciaries. In applying this factor, the IRS would allow an estate or trust a reasonable period of time to adjust for inadvertent changes in fiduciaries (*e.g.*, a U.S. trustee dies or abruptly resigns where a trust has two U.S. fiduciaries and one foreign fiduciary).

The new rules defining domestic estates and trusts would be effective for taxable years of an estate or trust that begin after December 31, 1996. The delayed effective date is intended to allow estates and trusts a period of time to modify their governing instruments or to change fiduciaries. Moreover, taxpayers would be allowed to elect to apply these rules to taxable years of an estate or trust beginning after the date of enactment.

REVENUE ESTIMATE

[In billions of dollars]

	Fiscal year—						
	1995	1996	1997	1998	1999	2000	Total
Revise taxation of income from foreign trusts (sections I–V)	0.1	0.3	0.5	0.5	0.5	0.6	2.4

INCREASE IN NUMBER OF EMPOWERMENT ZONES

Current law

The Omnibus Budget Reconciliation Act of 1993 (OBRA '93) authorized a federal demonstration project in which nine empowerment zones and 95 enterprise communities would be designated in a competitive application process. Of the nine empowerment zones, six were to be located in urban areas and three were to be located in rural areas. State and local governments jointly nominated distressed areas and proposed strategic plans to stimulate economic and social revitalization. By the June 30, 1994 application deadline, over 500 communities had submitted applications.

On December 21, 1994, the Secretaries of the Department of Housing and Urban Development and the Department of Agriculture designated the empowerment zones and enterprise communities authorized by Congress in OBRA '93.

Among other benefits, businesses located in empowerment zones are eligible for three federal tax incentives: an employment and training credit; an additional $20,000 per year of section 179 expensing; and a new category of tax-exempt private activity bonds. Businesses located in enterprise communities are eligible for the new category of tax-exempt bonds. OBRA '93 also provided that federal grants would be made to designated areas.

Reasons for change

Because of the vast number of distressed urban areas and the need to revitalize these areas, the Administration believes that the number of authorized empowerment zones should be expanded, subject to budgetary constraints. Extending the tax incentives to economically distressed areas will help stimulate revitalization of these areas.

Proposal

The proposal would authorize the designation of two additional urban empowerment zones and would be effective on the date of enactment. No additional federal grants would be authorized. The sole effect of the proposal would be to extend the empowerment zone tax incentives to two additional areas.

REVENUE ESTIMATE

[In billions of dollars]

	Fiscal Year—						
	1995	1996	1997	1998	1999	2000	Total
Increase in number of empowerment zones	−0.1	−0.1	−0.1	−0.1	−0.1	−0.1	−0.7

By Mr. McCONNELL (for himself, Mr. LIEBERMAN, and Mrs. KASSEBAUM):

S. 454. A bill to reform the health care liability system and improve health care quality through the establishment of quality assurance programs, and for other purposes; to the Committee on Labor and Human Resources.

THE HEALTH CARE LIABILITY REFORM AND QUALITY ASSURANCE ACT OF 1995

• Mr. McCONNELL. Mr. President, I am pleased to introduce the Health Care Liability Reform and Quality Assurance Act of 1995. Last year, Congress spent many days and weeks considering a dramatic overhaul of the finest health care system in the world. But the vast majority of Americans concluded we didn't need to reinvent our medical system. So, Congress, with good reason, laid aside health care and vowed to come back this year and make some needed incremental changes to the health care system.

Health care liability is one issue on which there was bipartisan consensus about the need to make some significant change. This bill which I am introducing today with the co-sponsorship and assistance of Senators LIEBERMAN and KASSEBAUM represents this bipartisan effort.

The purpose of our bill is to promote patient safety, compensate those who suffer injuries fully and fairly, without enriching lawyers and bureaucrats, make health care more accessible, gain some cost containment in health care, strengthen the doctor-patient relationship and encourage medical innovation. Our present system, unfortunately, does none of the above.

First of all, patients don't get compensated. The Rand Corp. has reported that only 43 cents of every dollar spent in the liability system goes to the injured party. That means lawyers, experts, and court fees eat up 57 percent of all dollars spent in the liability system.

Second, the prohibitive cost of liability insurance means some doctors won't provide care to those in our society who need it most. Half a million rural women can't get an obstetrician to deliver their babies. Because of high malpractice premiums, African-American doctors are avoiding the practice of medicine in high-risk areas—generally urban areas, making it more difficult for minority communities to get necessary care.

Third, companies that invent new products are discouraged under the current system from putting them on the market. Medical device manufacturers are finding it more difficult to get raw materials to produce life saving devices because of the risk of lawsuits.

Fourth, doctors are less likely to explore risky treatment because of the proliferation of lawsuits. A doctor has a better than 1 in 3 chance of being sued during his practice years. And the likelihood of suit has nothing to do with whether the doctor was negligent. GAO reports that almost 60 percent of all suits are dismissed without a verdict or even a settlement.

So, something is very wrong with our liability system and our bill will help solve the problem. It contains many of the provisions that were considered, on a bipartisan basis, in the Finance Committee last year, during the health care debate. I have included a summary of the bill's provisions and I ask that the full text of the bill be printed in the RECORD.

Mr. President, I am hopeful that health care liability will get full consideration and action in this Congress. There will be at least two opportunities—when we consider some targeted health care reform and when we consider legal reform. It is very important that we tackle this issue and I look forward to prompt action.

Mr. President, I ask unanimous consent that the text of the bill and additional material be printed in the RECORD.

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

S. 454

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 "Health Care Liability Reform and Quality Assurance Act of 1995".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title; table of contents.

TITLE I—HEALTH CARE LIABILITY REFORM

Subtitle A—Liability Reform

Sec. 101. Findings and purpose.
Sec. 102. Definitions.
Sec. 103. Applicability.
Sec. 104. Statute of limitations.
Sec. 105. Reform of punitive damages.
Sec. 106. Periodic payments.

Sec. 107. Scope of liability.
Sec. 108. Mandatory offsets for damages paid by a collateral source.
Sec. 109. Treatment of attorneys' fees and other costs.
Sec. 110. Obstetric cases.
Sec. 111. State-based alternative dispute resolution mechanisms.
Sec. 112. Requirement of certificate of merit.

Subtitle B—Biomaterials Access Assurance

Sec. 121. Short title.
Sec. 122. Findings.
Sec. 123. Definitions.
Sec. 124. General requirements; applicability; preemption.
Sec. 125. Liability of biomaterials suppliers.
Sec. 126. Procedures for dismissal of civil actions against biomaterials suppliers.

Subtitle C—Applicability

Sec. 131. Applicability.

TITLE II—PROTECTION OF THE HEALTH AND SAFETY OF PATIENTS

Sec. 201. Health care quality assurance program.
Sec. 202. Risk management programs.
Sec. 203. National practitioner data bank.

TITLE III—SEVERABILITY

Sec. 301. Severability.

TITLE I—HEALTH CARE LIABILITY REFORM

Subtitle A—Liability Reform

SEC. 101. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) EFFECT ON HEALTH CARE ACCESS AND COSTS.—That the civil justice system of the United States is a costly and inefficient mechanism for resolving claims of health care liability and compensating injured patients and that the problems associated with the current system are having an adverse impact on the availability of, and access to, health care services and the cost of health care in this country.

(2) EFFECT ON INTERSTATE COMMERCE.—That the health care and insurance industries are industries affecting interstate commerce and the health care liability litigation systems existing throughout the United States affect interstate commerce by contributing to the high cost of health care and premiums for health care liability insurance purchased by participants in the health care system.

(3) EFFECT ON FEDERAL SPENDING.—That the health care liability litigation systems existing throughout the United States have a significant effect on the amount, distribution, and use of Federal funds because of—

(A) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

(B) the large number of individuals who benefit because of the exclusion from Federal taxes of the amounts spent to provide them with health insurance benefits; and

(C) the large number of health care providers who provide items or services for which the Federal Government makes payments.

(b) PURPOSE.—It is the purpose of this Act to implement reasonable, comprehensive, and effective health care liability reform that is designed to—

(1) ensure that individuals with meritorious health care injury claims receive fair and adequate compensation, including reasonable non-economic damages;

(2) improve the availability of health care service in cases in which health care liability actions have been shown to be a factor in the decreased availability of services; and

(3) improve the fairness and cost-effectiveness of our current health care liability system to resolve disputes over, and provide compensation for, health care liability by reducing uncertainty and unpredictability in the amount of compensation provided to injured individuals.

SEC. 102. DEFINITIONS.

As used in this subtitle:

(1) CLAIMANT.—The term "claimant" means any person who commences a health care liability action, and any person on whose behalf such an action is commenced, including the decedent in the case of an action brought through or on behalf of an estate.

(2) CLEAR AND CONVINCING EVIDENCE.—The term "clear and convincing evidence" is that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, except that such measure or degree of proof is more than that required under preponderance of the evidence, but less than that required for proof beyond a reasonable doubt.

(3) HEALTH CARE LIABILITY ACTION.—The term "health care liability action" means a civil action in a State or Federal court—

(A) against a health care provider, health care professional, or other defendant joined in the action (regardless of the theory of liability on which the action is based) in which the claimant alleges injury related to the provision of, or the failure to provide, health care services; or

(B) against a health care payor, a health maintenance organization, insurance company, or any other individual, organization, or entity that provides payment for health care benefits in which the claimant alleges that injury was caused by the payment for, or the failure to make payment for, health care benefits, except to the extent such actions are subject to the Employee Retirement Income Security Act of 1974.

(4) HEALTH CARE PROFESSIONAL.—The term "health care professional" means any individual who provides health care services in a State and who is required by Federal or State laws or regulations to be licensed, registered or certified to provide such services or who is certified to provide health care services pursuant to a program of education, training and examination by an accredited institution, professional board, or professional organization.

(5) HEALTH CARE PROVIDER.—The term "health care provider" means any organization or institution that is engaged in the delivery of health care items or services in a State and that is required by Federal or State laws or regulations to be licensed, registered or certified to engage in the delivery of such items or services.

(6) HEALTH CARE SERVICES.—The term "health care services" means any services provided by a health care professional or health care provider, or any individual working under the supervision of a health care professional, that relate to the diagnosis, prevention, or treatment of any disease or impairment, or the assessment of the health of human beings.

(7) INJURY.—The term "injury" means any illness, disease, or other harm that is the subject of a health care liability action.

(8) NONECONOMIC LOSSES.—The term "noneconomic losses" means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of consortium, and other nonpecuniary losses incurred by an individual with respect to which a health care liability action is brought.

(9) PUNITIVE DAMAGES.—The term "punitive damages" means damages awarded, for the purpose of punishment or deterrence, and not for compensatory purposes, against a health care provider, health care organization, or other defendant in a health care liability action. Punitive damages are neither economic nor noneconomic damages.

(10) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

SEC. 103. APPLICABILITY.

(a) IN GENERAL.—Except as provided in subsection (c), this subtitle shall apply with respect to any health care liability action brought in any Federal or State court, except that this section shall not apply to an action for damages arising from a vaccine-related injury or death to the extent that title XXI of the Public Health Service Act applies to the action.

(b) PREEMPTION.—The provisions of this subtitle shall preempt any State law to the extent such law is inconsistent with the limitations contained in such provisions. The provisions of this subtitle shall not preempt any State law that—

(1) provides for defenses in addition to those contained in this subtitle, places greater limitations on the amount of attorneys' fees that can be collected, or otherwise imposes greater restrictions on non-economic or punitive damages than those provided in this subtitle;

(2) permits State officials to commence health care liability actions as a representative of an individual; or

(3) permits provider-based dispute resolution.

(c) EFFECT ON SOVEREIGN IMMUNITY AND CHOICE OF LAW OR VENUE.—Nothing in this subtitle shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any provision of law;

(2) waive or affect any defense of sovereign immunity asserted by the United States;

(3) affect the applicability of any provision of the Foreign Sovereign Immunities Act of 1976;

(4) preempt State choice-of-law rules with respect to actions brought by a foreign nation or a citizen of a foreign nation; or

(5) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss an action of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum.

(d) FEDERAL COURT JURISDICTION NOT ESTABLISHED ON FEDERAL QUESTION GROUNDS.—Nothing in this subtitle shall be construed to establish any jurisdiction in the district courts of the United States over health care liability actions on the basis of sections 1331 or 1337 of title 28, United States Code.

SEC. 104. STATUTE OF LIMITATIONS.

A health care liability action that is subject to this Act may not be initiated unless a complaint with respect to such action is filed within the 2-year period beginning on the date on which the claimant discovered or, in the exercise of reasonable care, should have discovered the harm and its cause, except that such an action relating to a claimant under legal disability may be filed within 2 years after the date on which the disability ceases. If the commencement of a health care liability action is stayed or enjoined, the running of the statute of limitations under this section shall be suspended for the period of the stay or injunction.

SEC. 105. REFORM OF PUNITIVE DAMAGES.

(a) LIMITATION.—With respect to a health care liability action, an award for punitive damages may only be made, if otherwise permitted by applicable law, if it is proven by clear and convincing evidence that the defendant—

(1) intended to injure the claimant for a reason unrelated to the provision of health care services;

(2) understood the claimant was substantially certain to suffer unnecessary injury, and in providing or failing to provide health care services, the defendant deliberately failed to avoid such injury; or

(3) acted with a conscious disregard of a substantial and unjustifiable risk of unnecessary injury which the defendant failed to avoid in a manner which constitutes a gross deviation from the normal standard of conduct in such circumstances.

(b) PUNITIVE DAMAGES NOT PERMITTED.—Notwithstanding the provisions of subsection (a), punitive damages may not be awarded against a defendant with respect to any health care liability action if no judgment for compensatory damages, including nominal damages (under $500), is rendered against the defendant.

(c) REQUIREMENTS FOR PLEADING OF PUNITIVE DAMAGES.—

(1) IN GENERAL.—No demand for punitive damages shall be included in a health care liability action as initially filed.

(2) AMENDED PLEADING.—A court may allow a claimant to file an amended complaint or pleading for punitive damages in a health care liability action if—

(A) the claimant submits a motion to amend the complaint or pleading within the earlier of—

(i) 2 years after the complaint or initial pleading is filed, or

(ii) 9 months before the date the matter is first set for trial; and

(B) after a finding by a court upon review of supporting and opposing affidavits or after a hearing, that after weighing the evidence the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages.

(d) SEPARATE PROCEEDING.—

(1) IN GENERAL.—At the request of any defendant in a health care liability action, the trier of fact shall consider in a separate proceeding—

(A) whether punitive damages are to be awarded and the amount of such award, or

(B) the amount of punitive damages following a determination of punitive liability.

(2) ONLY RELEVANT EVIDENCE ADMISSIBLE.—If a defendant requests a separate proceeding under paragraph (1), evidence relevant only to the claim of punitive damages in a health care liability action, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(e) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—In determining the amount of punitive damages in a health care liability action, the trier of fact shall consider only the following:

(1) The severity of the harm caused by the conduct of the defendant.

(2) The duration of the conduct or any concealment of it by the defendant.

(3) The profitability of the conduct of the defendant.

(4) The number of products sold or medical procedures rendered for compensation, as the case may be, by the defendant of the kind causing the harm complained of by the claimant.

(5) Awards of punitive or exemplary damages to persons similarly situated to the claimant, when offered by the defendant.

(6) Prospective awards of compensatory damages to persons similarly situated to the claimant.

(7) Any criminal penalties imposed on the defendant as a result of the conduct complained of by the claimant, when offered by the defendant.

(8) The amount of any civil fines assessed against the defendant as a result of the conduct complained of by the claimant, when offered by the defendant.

(f) LIMITATION AMOUNT.—The amount of damages that may be awarded as punitive damages in any health care liability action shall not exceed 3 times the amount awarded to the claimant for the economic injury on which such claim is based, or $250,000, whichever is greater. This subsection shall be applied by the court and shall not be disclosed to the jury.

(g) RESTRICTIONS PERMITTED.—Nothing in this section shall be construed to imply a right to seek punitive damages where none exists under Federal or State law.

SEC. 106. PERIODIC PAYMENTS.

With respect to a health care liability action, no person may be required to pay more than $100,000 for future damages in a single payment of a damages award, but a person shall be permitted to make such payments of the award on a periodic basis. The periods for such payments shall be determined by the adjudicating body, based upon projections of future losses and shall be reduced to present value. The adjudicating body may waive the requirements of this section if such body determines that such a waiver is in the interests of justice.

SEC. 107. SCOPE OF LIABILITY.

(a) IN GENERAL.—With respect to punitive and noneconomic damages, the liability of each defendant in a health care liability action shall be several only and may not be joint. Such a defendant shall be liable only for the amount of punitive or noneconomic damages allocated to the defendant in direct proportion to such defendant's percentage of fault or responsibility for the injury suffered by the claimant.

(b) DETERMINATION OF PERCENTAGE OF LIABILITY.—The trier of fact in a health care liability action shall determine the extent of each defendant's fault or responsibility for injury suffered by the claimant, and shall assign a percentage of responsibility for such injury to each such defendant.

(c) PROHIBITION ON VICARIOUS LIABILITY.—A defendant in a health care liability action may not be held vicariously liable for the direct actions or omissions of other individuals.

SEC. 108. MANDATORY OFFSETS FOR DAMAGES PAID BY A COLLATERAL SOURCE.

(a) IN GENERAL.—With respect to a health care liability action, the total amount of damages received by an individual under such action shall be reduced, in accordance with subsection (b), by any other payment that has been, or will be, made to an individual to compensate such individual for the injury that was the subject of such action.

(b) AMOUNT OF REDUCTION.—The amount by which an award of damages to an individual for an injury shall be reduced under subsection (a) shall be—

(1) the total amount of any payments (other than such award) that have been made or that will be made to such individual to pay costs of or compensate such individual for the injury that was the subject of the action; minus

(2) the amount paid by such individual (or by the spouse, parent, or legal guardian of such individual) to secure the payments described in paragraph (1).

(c) PRETRIAL DETERMINATION OF AMOUNTS FROM COLLATERAL SERVICES.—The reductions requires under subsection (b)(2) shall be determined by the court in a pretrial proceeding. At such proceeding—

(1) no evidence shall be admitted as to the amount of any charge, payments, or damage for which a claimant—

(A) has received payment from a collateral source or the obligation for which has been assured by a third party; or

(B) is, or with reasonable certainty, will be eligible to receive payment from a collateral source of the obligation which will, with reasonable certainty be assumed by a third party; and

(2) the jury, if any, shall be advised that—

(A) except for damages as to which the court permits the introduction of evidence, the claimant's medical expenses and lost income have been or will be paid by a collateral source or third party; and

(B) the claimant shall receive no award for any damages that have been or will be paid by a collateral source or third party.

SEC. 109. TREATMENT OF ATTORNEYS' FEES AND OTHER COSTS.

(a) LIMITATION ON AMOUNT OF CONTINGENCY FEES.—

(1) IN GENERAL.—An attorney who represents, on a contingency fee basis, a claimant in a health care liability action may not charge, demand, receive, or collect for services rendered in connection with such action in excess of the following amount recovered by judgment or settlement under such action:

(A) 33⅓ percent of the first $150,000 (or portion thereof) recovered, based on after-tax recovery, plus

(B) 25 percent of any amount in excess of $150,000 recovered, based on after-tax recovery.

(2) CALCULATION OF PERIODIC PAYMENTS.—In the event that a judgment or settlement includes periodic or future payments of damages, the amount recovered for purposes of computing the limitation on the contingency fee under paragraph (1) shall be based on the cost of the annuity or trust established to make the payments. In any case in which an annuity or trust is not established to make such payments, such amount shall be based on the present value of the payments.

(b) CONTINGENCY FEE DEFINED.—As used in this section, the term "contingency fee" means any fee for professional legal services which is, in whole or in part, contingent upon the recovery of any amount of damages, whether through judgment or settlement.

SEC. 110. OBSTETRIC CASES.

With respect to a health care liability action relating to services provided during labor or the delivery of a baby, if the health care professional against whom the action is brought did not previously treat the pregnant woman for the pregnancy, the trier of fact may not find that the defendant committed malpractice and may not assess damages against the health care professional unless the malpractice is proven by clear and convincing evidence.

SEC. 111. STATE-BASED ALTERNATIVE DISPUTE RESOLUTION MECHANISMS.

(a) APPLICATION TO HEALTH CARE LIABILITY CLAIMS UNDER HEALTH PLANS.—Prior to or immediately following the commencement of any health care liability action, the parties shall participate in the alternative dispute

resolution system administered by the State under subsection (b). Such participation shall be in lieu of any other provision of Federal or State law applicable to the parties prior to the commencement of the health care liability action.

(b) ADOPTION OF MECHANISM BY STATE.—Each State shall—

(1) maintain or adopt at least one of the alternative dispute resolution methods satisfying the requirements specified under subsection (c) and (d) for the resolution of health care liability claims arising from the provision of (or failure to provide) health care services to individuals enrolled in a health plans; and

(2) clearly disclose to enrollees in health plans (and potential enrollees) the availability and procedures for consumer grievances, including a description of the alternative dispute resolution method or methods adopted under this subsection.

(c) SPECIFICATION OF PERMISSIBLE ALTERNATIVE DISPUTE RESOLUTION METHODS.—

(1) IN GENERAL.—The Attorney General, in consultation with the Secretary and the Administrative Conference of the United States, shall, by regulation, develop alternative dispute resolution methods for the use by States in resolving health care liability claims under subsection (a). Such methods shall include at least the following:

(A) ARBITRATION.—The use of arbitration, a nonjury adversarial dispute resolution process which may, subject to subsection (d), result in a final decision as to facts, law, liability or damages. The parties may elect binding arbitration.

(B) MEDIATION.—The use of mediation, a settlement process coordinated by a neutral third party without the ultimate rendering of a formal opinion as to factual or legal findings.

(C) EARLY NEUTRAL EVALUATION.—The use of early neutral evaluation, in which the parties make a presentation to a neutral attorney or other neutral evaluator for an assessment of the merits, to encourage settlement. If the parties do not settle as a result of assessment and proceed to trial, the neutral evaluator's opinion shall be kept confidential.

(D) EARLY OFFER AND RECOVERY MECHANISM.—

(i) IN GENERAL.—The use of early offer and recovery mechanisms under which a health care provider, health care organization, or any other alleged responsible defendant may offer to compensate a claimant for his or her reasonable economic damages, including future economic damages, less amounts available from collateral sources.

(ii) BINDING ARBITRATION.—If, after an offer is made under clause (i), the claimant alleges that payment of economic damages under the offer has not been reasonably made, or the participants in the offer dispute their relative contributions to the payments to be made to the claimant, such disputes shall be resolved through binding arbitration in accordance with applicable rules and procedures established by the State involved.

(2) STANDARDS FOR ESTABLISHING METHODS.—In developing alternative dispute resolution methods under paragraph (1), the Attorney General shall assure that the methods promote the resolution of health care liability claims in a manner that—

(A) is affordable for the parties involved;

(B) provides for timely resolution of claims;

(C) provides for the consistent and fair resolution of claims; and

(D) provides for reasonably convenient access to dispute resolution for individuals enrolled in plans.

(3) WAIVER AUTHORITY.—Upon application of a State, the Attorney General, in consultation with the Secretary, may grant the State the authority to fulfill the requirement of subsection (b) by adopting a mechanism other than a mechanism established by the Attorney General pursuant to this subsection, except that such mechanism must meet the standards set forth in paragraph (2).

(d) FURTHER REDRESS.—Except with respect to the claimant-requested binding arbitration method set forth in subsection (c)(1)(A), a claimant who is dissatisfied with the determination reached as a result of an alternative dispute resolution method applied under this section may, after the final resolution of the claimant's claim under the method, initiate or resume a cause of action to seek damages or other redress with respect to the claim to the extent otherwise permitted under State law. State law shall govern the admissibility of results of any alternative dispute resolution procedure and all statements, offers, and other communications made during such procedures, at any subsequent trial. An individual who indicates or resumes a health care liability action shall only prevail if such individual proves each element of the action beyond a reasonable doubt, including proving that the defendant was grossly negligent or intentionally caused injury.

SEC. 112. REQUIREMENT OF CERTIFICATE OF MERIT.

(a) REQUIRING SUBMISSION WITH COMPLAINT.—Except as provided in subsection (b) and subject to the penalties of subsection (d), no health care liability action may be brought by any individual unless, at the time the individual commences such action, the individual or the individual's attorney submits an affidavit declaring that—

(1) the individual (or the individual's attorney) has consulted and reviewed the facts of the claim with a qualified specialist (as defined in subsection (c));

(2) the individual or the individual's attorney has obtained a written report by a qualified specialist that clearly identifies the individual and that includes the specialist's determination that, based upon a review of the available medical record and other relevant material, a reasonable medical interpretation of the facts supports a finding that the claim against the defendant is meritorious and based on good cause; and

(3) on the basis of the qualified specialist's review and consultation, the individual, and if represented, the individual's attorney, have concluded that the claim is meritorious and based on good cause.

(b) EXTENSION IN CERTAIN INSTANCES.—

(1) IN GENERAL.—Subject to paragraph (2), subsection (a) shall not apply with respect to an individual who brings a health care liability action without submitting an affidavit described in such subsection if—

(A) despite good faith efforts, the individual is unable to obtain the written report before the expiration of the applicable statute of limitations;

(B) despite good faith efforts, at the time the individual commences the action, the individual has been unable to obtain medical records or other information necessary, pursuant to any applicable law, to prepare the written report requested; or

(C) the court of competent jurisdiction determines that the affidavit requirement shall be extended upon a showing of good cause.

(2) DEADLINE FOR SUBMISSION WHERE EXTENSION APPLIES.—In the case of an individual who brings an action to which paragraph (1) applies, the action shall be dismissed unless the individual submits the affidavit described in subsection (a) not later than—

(A) in the case of an action to which subparagraph (A) of paragraph (1) applies, 90 days after commencing the action; or

(B) in the case of an action to which subparagraph (B) of paragraph (1) applies, 90 days after obtaining the information described in such subparagraph or when good cause for an extension no longer exists.

(c) QUALIFIED SPECIALIST DEFINED.—

(1) IN GENERAL.—As used in subsection (a), the term "qualified specialist" means, with respect to a health care liability action, a health care professional who has expertise in the same or substantially similar area of practice to that involved in the action.

(2) EVIDENCE OF EXPERTISE.—For purposes of paragraph (1), evidence of required expertise may include evidence that the individual—

(A) practices (or has practiced) or teaches (or has taught) in the same or substantially similar area of health care or medicine to that involved in the action; or

(B) is otherwise qualified by experience or demonstrated competence in the relevant practice area.

(d) SANCTIONS FOR SUBMITTING FALSE AFFIDAVIT.—Upon the motion of any party or on its own initiative, the court in a health care liability action may impose a sanction on a party, the party's attorney, or both, for—

(1) any knowingly false statement made in an affidavit described in subsection (a);

(2) making any false representations in order to obtain a qualified specialist's report; or

(3) failing to have the qualified specialist's written report in his or her custody and control;

and may require that the sanctioned party reimburse the other party to the action for costs and reasonable attorney's fees.

Subtitle B—Biomaterials Access Assurance

SEC. 121. SHORT TITLE.

This subtitle may be cited as the "Biomaterials Access Assurance Act of 1995".

SEC. 122. FINDINGS.

Congress finds that—

(1) each year millions of citizens of the United States depend on the availability of lifesaving or life-enhancing medical devices, many of which are permanently implantable within the human body;

(2) a continued supply of raw materials and component parts is necessary for the invention, development, improvement, and maintenance of the supply of the devices;

(3) most of the medical devices are made with raw materials and component parts that—

(A) are not designed or manufactured specifically for use in medical devices; and

(B) come in contact with internal human tissue;

(4) the raw materials and component parts also are used in a variety of nonmedical products;

(5) because small quantities of the raw materials and component parts are used for medical devices, sales of raw materials and component parts for medical devices constitute an extremely small portion of the overall market for the raw materials and medical devices;

(6) under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), manufacturers of medical devices are required to demonstrate that the medical devices are safe

and effective, including demonstrating that the products are properly designed and have adequate warnings or instructions;

(7) notwithstanding the fact that raw materials and component parts suppliers do not design, produce, or test a final medical device, the suppliers have been the subject of actions alleging inadequate—

(A) design and testing of medical devices manufactured with materials or parts supplied by the suppliers; or

(B) warnings related to the use of such medical devices;

(8) even though suppliers of raw materials and component parts have very rarely been held liable in such actions, such suppliers have ceased supplying certain raw materials and component parts for use in medical devices because the costs associated with litigation in order to ensure a favorable judgment for the suppliers far exceeds the total potential sales revenues from sales by such suppliers to the medical device industry;

(9) unless alternate sources of supply can be found, the unavailability of raw materials and component parts for medical devices will lead to unavailability of lifesaving and life-enhancing medical devices;

(10) because other suppliers of the raw materials and component parts in foreign nations are refusing to sell raw materials or component parts for use in manufacturing certain medical devices in the United States, the prospects for development of new sources of supply for the full range of threatened raw materials and component parts for medical devices are remote;

(11) it is unlikely that the small market for such raw materials and component parts in the United States could support the large investment needed to develop new suppliers of such raw materials and component parts;

(12) attempts to develop such new suppliers would raise the cost of medical devices;

(13) courts that have considered the duties of the suppliers of the raw materials and component parts have generally found that the suppliers do not have a duty—

(A) to evaluate the safety and efficacy of the use of a raw material or component part in a medical device; and

(B) to warn consumers concerning the safety and effectiveness of a medical device;

(14) attempts to impose the duties referred to in subparagraphs (A) and (B) of paragraph (13) on suppliers of the raw materials and component parts would cause more harm than good by driving the suppliers to cease supplying manufacturers of medical devices; and

(15) in order to safeguard the availability of a wide variety of lifesaving and life-enhancing medical devices, immediate action is needed—

(A) to clarify the permissible bases of liability for suppliers of raw materials and component parts for medical devices; and

(B) to provide expeditious procedures to dispose of unwarranted suits against the suppliers in such manner as to minimize litigation costs.

SEC. 123. DEFINITIONS.

As used in this subtitle:

(1) BIOMATERIALS SUPPLIER.—

(A) IN GENERAL.—The term "biomaterials supplier" means an entity that directly or indirectly supplies a component part or raw material for use in the manufacture of an implant.

(B) PERSONS INCLUDED.—Such term includes any person who—

(i) has submitted master files to the Secretary for purposes of premarket approval of a medical device; or

(ii) licenses a biomaterials supplier to produce component parts or raw materials.

(2) CLAIMANT.—

(A) IN GENERAL.—The term "claimant" means any person who brings a civil action, or on whose behalf a civil action is brought, arising from harm allegedly caused directly or indirectly by an implant, including a person other than the individual into whose body, or in contact with whose blood or tissue, the implant is placed, who claims to have suffered harm as a result of the implant.

(B) ACTION BROUGHT ON BEHALF OF AN ESTATE.—With respect to an action brought on behalf or through the estate of an individual into whose body, or in contact with whose blood or tissue the implant is placed, such term includes the decedent that is the subject of the action.

(C) ACTION BROUGHT ON BEHALF OF A MINOR.—With respect to an action brought on behalf or through a minor, such term includes the parent or guardian of the minor.

(D) EXCLUSIONS.—Such term does not include—

(i) a provider of professional services, in any case in which—

(I) the sale or use of an implant is incidental to the transaction; and

(II) the essence of the transaction is the furnishing of judgment, skill, or services; or

(ii) a manufacturer, seller, or biomaterials supplier.

(3) COMPONENT PART.—

(A) IN GENERAL.—The term "component part" means a manufactured piece of an implant.

(B) CERTAIN COMPONENTS.—Such term includes a manufactured piece of an implant that—

(i) has significant nonimplant applications; and

(ii) alone, has no implant value or purpose, but when combined with other component parts and materials, constitutes an implant.

(4) HARM.—

(A) IN GENERAL.—The term "harm" means—

(i) any injury to or damage suffered by an individual;

(ii) any illness, disease, or death of that individual resulting from that injury or damage; and

(iii) any loss to that individual or any other individual resulting from that injury or damage.

(B) EXCLUSION.—The term does not include any commercial loss or loss of or damage to an implant.

(5) IMPLANT.—The term "implant" means—

(A) a medical device that is intended by the manufacturer of the device—

(i) to be placed into a surgically or naturally formed or existing cavity of the body for a period of at least 30 days; or

(ii) to remain in contact with bodily fluids or internal human tissue through a surgically produced opening for a period of less than 30 days; and

(B) suture materials used in implant procedures.

(6) MANUFACTURER.—The term "manufacturer" means any person who, with respect to an implant—

(A) is engaged in the manufacture, preparation, propagation, compounding, or processing (as defined in section 510(a)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(a)(1)) of the implant; and

(B) is required—

(i) to register with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) to include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section.

(7) MEDICAL DEVICE.—The term "medical device" means a device, as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)).

(8) QUALIFIED SPECIALIST.—With respect to an action, the term "qualified specialist" means a person who is qualified by knowledge, skill, experience, training, or education in the specialty area that is the subject of the action.

(9) RAW MATERIAL.—The term "raw material" means a substance or product that—

(A) has a generic use; and

(B) may be used in an application other than an implant.

(10) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

(11) SELLER.—

(A) IN GENERAL.—The term "seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, packages, labels, or otherwise places an implant in the stream of commerce.

(B) EXCLUSIONS.—The term does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services, in any case in which the sale or use of an implant is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who acts in only a financial capacity with respect to the sale of an implant.

SEC. 124. GENERAL REQUIREMENTS; APPLICABILITY; PREEMPTION.

(a) GENERAL REQUIREMENTS.—

(1) IN GENERAL.—In any civil action covered by this subtitle, a biomaterials supplier may raise any defense set forth in section 125.

(2) PROCEDURES.—Notwithstanding any other provision of law, the Federal or State court in which a civil action covered by this subtitle is pending shall, in connection with a motion for dismissal or judgment based on a defense described in paragraph (1), use the procedures set forth in section 126.

(b) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), notwithstanding any other provision of law, this subtitle applies to any civil action brought by a claimant, whether in a Federal or State court, against a manufacturer, seller, or biomaterials supplier, on the basis of any legal theory, for harm allegedly caused by an implant.

(2) EXCLUSION.—A civil action brought by a purchaser of a medical device for use in providing professional services against a manufacturer, seller, or biomaterials supplier for loss or damage to an implant or for commercial loss to the purchaser—

(A) shall not be considered an action that is subject to this subtitle; and

(B) shall be governed by applicable commercial or contract law.

(c) SCOPE OF PREEMPTION.—

(1) IN GENERAL.—This subtitle supersedes any State law regarding recovery for harm caused by an implant and any rule of procedure applicable to a civil action to recover damages for such harm only to the extent that this subtitle establishes a rule of law applicable to the recovery of such damages.

(2) APPLICABILITY OF OTHER LAWS.—Any issue that arises under this subtitle and that is not governed by a rule of law applicable to

the recovery of damages described in paragraph (1) shall be governed by applicable Federal or State law.

(d) STATUTORY CONSTRUCTION.—Nothing in this subtitle may be construed—

(1) to affect any defense available to a defendant under any other provisions of Federal or State law in an action alleging harm caused by an implant; or

(2) to create a cause of action or Federal court jurisdiction pursuant to section 1331 or 1337 of title 28, United States Code, that otherwise would not exist under applicable Federal or State law.

SEC. 125. LIABILITY OF BIOMATERIALS SUPPLIERS.

(a) IN GENERAL.—

(1) EXCLUSION FROM LIABILITY.—Except as provided in paragraph (2), a biomaterials supplier shall not be liable for harm to a claimant caused by an implant.

(2) LIABILITY.—A biomaterials supplier that—

(A) is a manufacturer may be liable for harm to a claimant described in subsection (b);

(B) is a seller may be liable for harm to a claimant described in subsection (c); and

(C) furnishes raw materials or component parts that fail to meet applicable contractual requirements or specifications may be liable for a harm to a claimant described in subsection (d).

(b) LIABILITY AS MANUFACTURER.—

(1) IN GENERAL.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant if the biomaterials supplier is the manufacturer of the implant.

(2) GROUNDS FOR LIABILITY.—The biomaterials supplier may be considered the manufacturer of the implant that allegedly caused harm to a claimant only if the biomaterials supplier—

(A)(i) has registered with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) included the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section; or

(B) is the subject of a declaration issued by the Secretary pursuant to paragraph (3) that states that the supplier, with respect to the implant that allegedly caused harm to the claimant, was required to—

(i) register with the Secretary under section 510 of such Act (21 U.S.C. 360), and the regulations issued under such section, but failed to do so; or

(ii) include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section, but failed to do so.

(3) ADMINISTRATIVE PROCEDURES.—

(A) IN GENERAL.—The Secretary may issue a declaration described in paragraph (2)(B) on the motion of the Secretary or on petition by any person, after providing—

(i) notice to the affected persons; and

(ii) an opportunity for an informal hearing.

(B) DOCKETING AND FINAL DECISION.—Immediately upon receipt of a petition filed pursuant to this paragraph, the Secretary shall docket the petition. Not later than 180 days after the petition is filed, the Secretary shall issue a final decision on the petition.

(C) APPLICABILITY OF STATUTE OF LIMITATIONS.—Any applicable statute of limitations shall toll during the period during which a claimant has filed a petition with the Secretary under this paragraph.

(c) LIABILITY AS SELLER.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable as a seller for harm to a claimant caused by an implant if the biomaterials supplier—

(1) held title to the implant that allegedly caused harm to the claimant as a result of purchasing the implant after—

(A) the manufacture of the implant; and

(B) the entrance of the implant in the stream of commerce; and

(2) subsequently resold the implant.

(d) LIABILITY FOR VIOLATING CONTRACTUAL REQUIREMENTS OR SPECIFICATIONS.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant, if the claimant in an action shows, by a preponderance of the evidence, that—

(1) the raw materials or component parts delivered by the biomaterials supplier either—

(A) did not constitute the product described in the contract between the biomaterials supplier and the person who contracted for delivery of the product; or

(B) failed to meet any specifications that were—

(i) provided to the biomaterials supplier and not expressly repudiated by the biomaterials supplier prior to acceptance of delivery of the raw materials or component parts;

(ii)(I) published by the biomaterials supplier;

(II) provided to the manufacturer by the biomaterials supplier; or

(III) contained in a master file that was submitted by the biomaterials supplier to the Secretary and that is currently maintained by the biomaterials supplier for purposes of premarket approval of medical devices; or

(iii)(I) included in the submissions for purposes of premarket approval or review by the Secretary under section 510, 513, 515, or 520 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360, 360c, 360e, or 360j); and

(II) have received clearance from the Secretary,

if such specifications were provided by the manufacturer to the biomaterials supplier and were not expressly repudiated by the biomaterials supplier prior to the acceptance by the manufacturer of delivery of the raw materials or component parts; and

(2) such conduct was an actual and proximate cause of the harm to the claimant.

SEC. 126. PROCEDURES FOR DISMISSAL OF CIVIL ACTIONS AGAINST BIOMATERIALS SUPPLIERS.

(a) MOTION TO DISMISS.—In any action that is subject to this subtitle, a biomaterials supplier who is a defendant in such action may, at any time during which a motion to dismiss may be filed under an applicable law, move to dismiss the action on the grounds that—

(1) the defendant is a biomaterials supplier; and

(2)(A) the defendant should not, for the purposes of—

(i) section 125(b), be considered to be a manufacturer of the implant that is subject to such section; or

(ii) section 125(c), be considered to be a seller of the implant that allegedly caused harm to the claimant; or

(B)(i) the claimant has failed to establish, pursuant to section 125(d), that the supplier furnished raw materials or component parts in violation of contractual requirements or specifications; or

(ii) the claimant has failed to comply with the procedural requirements of subsection (b).

(b) PROCEDURAL REQUIREMENTS.—

(1) IN GENERAL.—The procedural requirements described in paragraphs (2) and (3) shall apply to any action by a claimant against a biomaterials supplier that is subject to this subtitle.

(2) MANUFACTURER OF IMPLANT SHALL BE NAMED A PARTY.—The claimant shall be required to name the manufacturer of the implant as a party to the action, unless—

(A) the manufacturer is subject to service of process solely in a jurisdiction in which the biomaterials supplier is not domiciled or subject to a service of process; or

(B) an action against the manufacturer is barred by applicable law.

(3) AFFIDAVIT.—At the time the claimant brings an action against a biomaterials supplier the claimant shall be required to submit an affidavit that—

(A) declares that the claimant has consulted and reviewed the facts of the action with a qualified specialist, whose qualifications the claimant shall disclose;

(B) includes a written determination by a qualified specialist that the raw materials or component parts actually used in the manufacture of the implant of the claimant were raw materials or component parts described in section 125(d)(1), together with a statement of the basis for such a determination;

(C) includes a written determination by a qualified specialist that, after a review of the medical record and other relevant material, the raw material or component part supplied by the biomaterials supplier and actually used in the manufacture of the implant was a cause of the harm alleged by claimant, together with a statement of the basis for the determination; and

(D) states that, on the basis of review and consultation of the qualified specialist, the claimant (or the attorney of the claimant) has concluded that there is a reasonable and meritorious cause for the filing of the action against the biomaterials supplier.

(c) PROCEEDING ON MOTION TO DISMISS.—The following rules shall apply to any proceeding on a motion to dismiss filed under this section:

(1) AFFIDAVITS RELATING TO LISTING AND DECLARATIONS.—

(A) IN GENERAL.—The defendant in the action may submit an affidavit demonstrating that defendant has not included the implant on a list, if any, filed with the Secretary pursuant to section 510(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(j)).

(B) RESPONSE TO MOTION TO DISMISS.—In response to the motion to dismiss, the claimant may submit an affidavit demonstrating that—

(i) the Secretary has, with respect to the defendant and the implant that allegedly caused harm to the claimant, issued a declaration pursuant to section 125(b)(2)(B); or

(ii) the defendant who filed the motion to dismiss is a seller of the implant who is liable under section 125(c).

(2) EFFECT OF MOTION TO DISMISS ON DISCOVERY.—

(A) IN GENERAL.—If a defendant files a motion to dismiss under paragraph (1) or (3) of subsection (a), no discovery shall be permitted in connection to the action that is the subject of the motion, other than discovery necessary to determine a motion to dismiss for lack of jurisdiction, until such time as the court rules on the motion to dismiss

in accordance with the affidavits submitted by the parties in accordance with this section.

(B) DISCOVERY.—If a defendant files a motion to dismiss under subsection (a)(2) on the grounds that the biomaterials supplier did not furnish raw materials or component parts in violation of contractual requirements or specifications, the court may permit discovery, as ordered by the court. The discovery conducted pursuant to this subparagraph shall be limited to issues that are directly relevant to—

(i) the pending motion to dismiss; or

(ii) the jurisdiction of the court.

(3) AFFIDAVITS RELATING STATUS OF DEFENDANT.—

(A) IN GENERAL.—Except as provided in clauses (i) and (ii) of subparagraph (B), the court shall consider a defendant to be a biomaterials supplier who is not subject to an action for harm to a claimant caused by an implant, other than an action relating to liability for a violation of contractual requirements or specifications described in subsection (d).

(B) RESPONSES TO MOTION TO DISMISS.—The court shall grant a motion to dismiss any action that asserts liability of the defendant under subsection (b) or (c) of section 125 on the grounds that the defendant is not a manufacturer subject to such subsection 125(b) or seller subject to subsection 125(c), unless the claimant submits a valid affidavit that demonstrates that—

(i) with respect to a motion to dismiss contending the defendant is not a manufacturer, the defendant meets the applicable requirements for liability as a manufacturer under section 125(b); or

(ii) with respect to a motion to dismiss contending that the defendant is not a seller, the defendant meets the applicable requirements for liability as a seller under section 125(c).

(4) BASIS OF RULING ON MOTION TO DISMISS.—

(A) IN GENERAL.—The court shall rule on a motion to dismiss filed under subsection (a) solely on the basis of the pleadings of the parties made pursuant to this section and any affidavits submitted by the parties pursuant to this section.

(B) MOTION FOR SUMMARY JUDGMENT.—Notwithstanding any other provision of law, if the court determines that the pleadings and affidavits made by parties pursuant to this section raise genuine issues as concerning material facts with respect to a motion concerning contractual requirements and specifications, the court may deem the motion to dismiss to be a motion for summary judgment made pursuant to subsection (d).

(d) SUMMARY JUDGMENT.—

(1) IN GENERAL.—

(A) BASIS FOR ENTRY OF JUDGMENT.—A biomaterials supplier shall be entitled to entry of judgment without trial if the court finds there is no genuine issue as concerning any material fact for each applicable element set forth in paragraphs (1) and (2) of section 125(d).

(B) ISSUES OF MATERIAL FACT.—With respect to a finding made under subparagraph (A), the court shall consider a genuine issue of material fact to exist only if the evidence submitted by claimant would be sufficient to allow a reasonable jury to reach a verdict for the claimant if the jury found the evidence to be credible.

(2) DISCOVERY MADE PRIOR TO A RULING ON A MOTION FOR SUMMARY JUDGMENT.—If, under applicable rules, the court permits discovery prior to a ruling on a motion for summary judgment made pursuant to this subsection, such discovery shall be limited solely to establishing whether a genuine issue of material fact exists.

(3) DISCOVERY WITH RESPECT TO A BIOMATERIALS SUPPLIER.—A biomaterials supplier shall be subject to discovery in connection with a motion seeking dismissal or summary judgment on the basis of the inapplicability of section 125(d) or the failure to establish the applicable elements of section 125(d) solely to the extent permitted by the applicable Federal or State rules for discovery against nonparties.

(e) STAY PENDING PETITION FOR DECLARATION.—If a claimant has filed a petition for a declaration pursuant to section 125(b) with respect to a defendant, and the Secretary has not issued a final decision on the petition, the court shall stay all proceedings with respect to that defendant until such time as the Secretary has issued a final decision on the petition.

(f) MANUFACTURER CONDUCT OF PROCEEDING.—The manufacturer of an implant that is the subject of an action covered under this subtitle shall be permitted to file and conduct a proceeding on any motion for summary judgment or dismissal filed by a biomaterials supplier who is a defendant under this section if the manufacturer and any other defendant in such action enter into a valid and applicable contractual agreement under which the manufacturer agrees to bear the cost of such proceeding or to conduct such proceeding.

(g) ATTORNEY FEES.—The court shall require the claimant to compensate the biomaterials supplier (or a manufacturer appearing in lieu of a supplier pursuant to subsection (f)) for attorney fees and costs, if—

(1) the claimant named or joined the biomaterials supplier; and

(2) the court found the claim against the biomaterials supplier to be without merit and frivolous.

Subtitle C—Applicability

SEC. 131. APPLICABILITY.

This title shall apply to all civil actions covered under this title that are commenced on or after the date of enactment of this Act, including any such action with respect to which the harm asserted in the action or the conduct that caused the harm occurred before the date of enactment of this Act.

TITLE II—PROTECTION OF THE HEALTH AND SAFETY OF PATIENTS

SEC. 201. HEALTH CARE QUALITY ASSURANCE PROGRAM.

(a) FUND.—Each State shall establish a health care quality assurance program, to be approved by the Secretary, and a fund consisting of such amounts as are transferred to the fund under subsection (b).

(b) TRANSFER OF AMOUNTS.—Each State shall require that 50 percent of all awards of punitive damages resulting from all health care liability actions in that State be transferred to the fund established under subsection (a) in the State.

(c) OBLIGATIONS FROM FUND.—The chief executive officer of a State shall obligate such sums as are available in the fund established in that State under subsection (a) to—

(1) license and certify health care professionals in the State;

(2) implement health care quality assurance programs; and

(3) carry out programs to reduce malpractice-related costs for health care providers volunteering to provide health care services in medically underserved areas.

SEC. 202. RISK MANAGEMENT PROGRAMS.

(a) REQUIREMENTS FOR PROVIDERS.—Each State shall require each health care professional and health care provider providing services in the State to participate in a risk management program to prevent and provide early warning of practices which may result in injuries to patients or which otherwise may endanger patient safety.

(b) REQUIREMENTS FOR INSURERS.—Each State shall require each entity which provides health care professional or provider liability insurance to health care professionals and health care providers in the State to—

(1) establish risk management programs based on data available to such entity or sanction programs of risk management for health care professionals and health care providers provided by other entities; and

(2) require each such professional or provider, as a condition of maintaining insurance, to participate in one program described in paragraph (1) at least once in each 3-year period.

SEC. 203. NATIONAL PRACTITIONER DATA BANK.

Section 427 of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11137) is amended—

(1) by redesignating subsections (b) through (d) as subsections (c) through (e), respectively;

(2) by inserting after subsection (a), the following new subsection:

"(b) DISCLOSURE OF INFORMATION.—The Secretary shall promulgate regulations providing for the disclosure of information reported to the Secretary under sections 422 and 423, upon request, to any individual."; and

(3) in subsection (c) (as so redesignated)—

(A) in the first sentence of paragraph (1), by striking "under this part" and inserting "under section 421"; and

(B) in paragraph (3), by striking "subsection (a)" and inserting "subsections (a) and (b)".

TITLE III—SEVERABILITY

SEC. 301. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SUMMARY OF MCCONNELL-LIEBERMAN-KASSEBAUM HEALTH CARE LIABILITY REFORM AND QUALITY ASSURANCE ACT OF 1995

TITLE I—LIABILITY REFORM

Subtitle A—Health Care Liability Reform

1. Scope:

a. Applies to any action, filed in federal or state court, against a health care provider, professional, payor, hmo, insurance company or any other defendant (except vaccine-related injuries);

b. Preempts state law to the extent it is inconsistent with the provisions herein; no preemption for state laws which:

(1) provide additional defenses;

(2) greater limitations on attorneys' fees;

(3) greater restrictions on punitive or noneconomic damages;

(4) permit state officials to institute action;

(5) permit provider-based dispute resolution.

c. Does not create federal jurisdiction for health care liability actions.

2. Uniform Statute of Limitations:

Two years from the date injury discovered or should have been discovered, except that any person under a legal disability may file within two years after the disability ceases.

3. Limit on Punitive Damages:

a. Awarded if proved by clear and convincing evidence defendant:

(1) intended to injure;

(2) understood claimant was substantially certain to suffer unnecessary injury and deliberately failed to avoid injury; or

(3) acted with conscious disregard of substantial and unjustifiable risk which defendant failed to avoid in a way which constitutes a gross deviation from the normal standard of conduct.

b. No punitive damages where compensatory damages of less than $500 are awarded.

c. Punitive damages may not be pleaded in original complaint. A complaint may be amended within, the earlier of, 2 years of original complaint or 9 months before the case is set for trial, and after court finds substantial probability that claimant will prevail on the claim for punitive damages.

d. At the defendant's request, punitive damages must be considered in a separate proceeding and, if so requested, no evidence relevant to the claim for punitive damages may be admitted in the proceedings for compensatory damages.

e. In determining the amount, court must consider only:

(1) severity of harm;

(2) duration of defendant's conduct and any concealment;

(3) profitability of defendant's conduct;

(4) number of products sold/procedures rendered which caused similar harm;

(5) similar awards of punitive damages in similar circumstances;

(6) prospective awards of compensatory damages to similarly situated persons;

(7) criminal penalties imposed on defendant;

(8) civil fines imposed.

f. No award may exceed the greater of 3 times the amount of economic damages or $250,000.

4. Periodic Payment of Damages:

No more than $100,000 may be required to be paid in one single payment. The court will determine the schedule for payments, based on projection of future losses and reduced to present value. This requirement may be waived, in the interests of justice.

5. Several, not Joint, Liability:

Defendant liable only for the amount of non-economic and punitive damages allocated to defendant's direct proportion of fault or responsibility. The trier of fact determines percentage of responsibility of each defendant. No vicarious liability for direct acts or omissions.

6. Collateral Source:

Total damages must be reduced by payments from other sources made, or to be made, to compensate individual for injury that is the subject of the health care liability action. The offset is reduced by any amount paid by the injured party (or family member) to secure the payment. The reductions must be determined by the judge in a pretrial proceeding.

7. Attorneys' Fees:

Limits attorney contingent fees to 33⅓% of the first $150,000 and 25% of any amount in excess of $150,000.

8. Obstetric Cases:

No malpractice award against a health care professional relating to delivery of a baby, if the health care professional did not previously treat the woman during the pregnancy, unless malpractice proved by clear and convincing evidence.

9. State Based Alternative Dispute Resolution:

a. Prior to the filing, or immediately following the filing of the action, the parties must participate in a state administered alternative dispute resolution system.

b. The Attorney General will develop ADR methods for use by the states, including arbitration, mediation, early neutral evaluation, early offer and recovery. The parties may elect binding arbitration.

c. ADR must promote resolution of health care liability claims in an affordable, timely, fair and convenient manner. States may be granted waivers if they have programs that meet these standards.

d. Any party dissatisfied (except where binding arbitration selected) may continue the action in court and may prevail only if each element of the case is proved beyond a reasonable doubt, including that the defendant was grossly negligent or intentionally caused injury. State law governs the admission of ADR proceedings.

10. Certificate of Merit:

Requires that, prior to bringing a lawsuit, an individual (or his or her attorney) to submit an affidavit declaring that the individual reviewed the facts with a qualified specialist and that the specialist has concluded the claim is meritorious. A qualified specialist means a health care professional with expertise (the specialist practices or teaches or has experience or demonstrated competence) in the same or substantially similar area of practice as that involved in the case. A court may impose sanctions for the submission of a false affidavit.

Subtitle B—Biomaterial Access Assurance

1. Summary:

The Biomaterial Access Assurance Act would allow suppliers of the raw material (biomaterial) used to make medical implants, to obtain dismissal, without extensive discovery or other legal costs, in certain tort suits in which plaintiffs allege harm from a finished medical implant.

The Act would not affect the ability of plaintiffs to sue manufacturers or sellers of medical implants. It would allow raw materials suppliers, however, to be dismissed from lawsuits if the generic raw material used in the medical device met contract specifications, and if the biomaterial supplier cannot be classified as either a manufacturer or seller of the medical implant.

2. Scope:

a. Establishes that any biomaterial supplier may seek its dismissal from a civil action within the parameters of the Subtitle.

b. Applies to any civil action brought by a claimant in Federal or State court against a manufacturer, seller, or biomaterial supplier, on the basis of any legal theory, for harm allegedly caused by an implant.

c. Preempts State law to the extent the bill establishes a rule of law.

3. Grounds for Dismissal:

a. Requires dismissal of a biomaterial supplier unless the claimant establishes that the supplier:

(1) was itself the manufacturer of the implant;

(2) was itself the seller of the implant; or

(3) furnished raw materials that failed to met applicable contractual requirements or specifications.

b. A supplier may be deemed to be a manufacturer only if the supplier registered as such with the FDA pursuant to medical device requirements or if the HHS Secretary issues a declaration that the supplier should have registered as such. Establishes a procedure for the Secretary to issue such a declaration.

c. A supplier may be deemed to be a seller if the supplier itself resold the implant after it had been manufactured and had entered the stream of commerce.

d. With respect to contractual requirements, a supplier may be liable for harm only if the claimant shows that the biomaterial were not the actual product for which the parties contracted or the biomaterial failed to meet certain specifications and that failure was the cause of the injury. The relevant specifications are those:

(1) provided to the supplier by the manufacturer,

(2) provided by the manufacturer (either published, given to the manufacturer, or included in an FDA master file), or

(3) included in manufacturer submissions that had received clearance from the FDA.

4. Procedures for Dismissal:

a. A supplier named as a defendant or joined as a co-defendant may file a motion to dismiss based on the defenses set forth above.

b. A plaintiff must sue a manufacturer directly whenever jurisdiction over the manufacturer is available. A plaintiff must submit an expert's affidavit certifying that the biomaterial were actually used and were the cause of the alleged harm and that the case has merit.

c. Specific rules are established for the handling of a motion to dismiss, including discovery limitations, summary judgment procedures, and staying the proceedings.

d. The manufacturer, not the supplier, may conduct the proceeding on the motion if an appropriate contractual indemnification agreement exists. The possibility of frivolous claims against a supplier is reduced by permitting the court to require the plaintiff to pay attorney fees if the plaintiff succeeds in making the supplier a defendant, but ultimately is found to have a meritless claim.

5. Effective Date: The bill will apply to civil actions commenced on or after the date of enactment.

TITLE II—PROTECTION OF PATIENT HEALTH AND SAFETY

1. Quality Assurance:

Requires each State to establish a health care quality assurance program and fund, approved by the Secretary of HHS. Allocates 50% of all punitive damage awards to be transferred to the fund for the purpose of licensing and certifying health care professionals, implementing programs, including programs to reduce malpractice costs for volunteers serving underserved areas.

2. Risk Management Programs:

Professionals and providers must participate in risk management program to prevent and provide early warning of practices which may result in injuries. Insurers must establish risk management programs and require participation, once every 3 years, as a condition of maintaining insurance.

3. National Practitioner Data Bank:

Requires that information on the discipline of health care practitioners, including suspension or revocation of licenses or hospital privileges, be accessible to the public.•

• Mr. LIEBERMAN. Mr. President, I am pleased to join Senators MCCONNELL and KASSEBAUM today in introducing the Liability Reform and Quality Assurance Act of 1995. I thank Senator MCCONNELL for his leadership on the bill.

Mr. President, our present system for compensating patients who have been injured by medical malpractice is ineffective, inefficient, and in many respects, unfair. The system promotes

the overuse of medical tests and procedures, and diverts too much money away from victims. The Rand Corp. has estimated that injured patients receive only 43 percent of spending on medical malpractice and medical product litigation. And victims often receive their awards after many years of delay.

Our medical malpractice system is a stealth contributor to the high cost of health care. The American Medical Association reports that in the 1980's liability insurance premiums grew faster that other physician practice expenses. The cost of liability insurance has been estimated at $9 billion in 1992.

So called defensive medicine costs are an even greater concern. The Office of Technology Assessment has found that as many as 8 percent of diagnostic procedures are ordered primarily because of doctors' concerns about liability. These defensive practices present a hidden but significant burden on our health care system. The health care consulting firm, Lewin-VHI, has estimated that physician and hospital charges for defensive medicine were as high as $25 billion in 1991.

Taxpayers and health care consumers bear the financial burden of these excessive costs. Liability insurance and defensive medicine premiums drive up the cost of Medicare and Medicaid and of private health care premiums. Further, in some specialties, such as obstetrics, where malpractice premiums have skyrocketed, malpractice liability may be reducing access to quality health care. The American College of Obstetricians and Gynecologists report that malpractice costs for ob/gyns increased 350 percent between 1982 and 1988, and that by 1988, 41 percent of those ob/gyns surveyed indicated that they had made changes in their practice patterns, such as ceasing to serve high-risk patients, because of malpractice concerns.

The bill we're introducing today will begin to address these inefficiencies and perverse effects of our malpractice system by directing a greater portion of malpractice awards to victims, by discouraging frivolous lawsuits, and by enhancing quality assurance programs. Key provisions of this malpractice reform bill include:

Establishing a uniform statute of limitations, 2 years from the date the injury was discovered.

Allowing periodic payments for awards greater than $100,000.

Applying several, not joint and several liability for noneconomic and punitive damages.

Limiting attorneys' contingency fees to 33⅓ of the $150,000 of an award and 25 percent of any amount above $150,000.

Establishing a clear and convincing evidence standard for doctors delivering a baby who had not previously treated the pregnant women.

Requiring States to establish mandatory alternative dispute resolution.

Strengthening the standard for awarding punitive damages and establish State health care quality assurance programs funded with 50 percent of punitive damage awards.

Requiring providers and insurers to participate in risk management programs every 3 years to better detect and prevent practices which may result in patient injury.

Increasing consumer access to the National Practitioner Data Bank which contains information on disciplinary actions against health care providers.

The bill also incorporates legislation I introduced earlier this year with Senator MCCONNELL and others, S. 303, the Biomaterials Access Assurance Act of 1995. That bill seeks to ensure that raw materials continue to be available for use in life-saving medical devices. It allows suppliers of raw materials or biomaterials used to make medical implants to obtain dismissal, with minimal legal costs, from certain tort suits in which plaintiffs allege harm from a finished medical product containing the biomaterial.

Many of the reform ideas in the legislation we are introducing today were proposed or cosponsored by Democrats and Republicans in the last Congress as part of comprehensive health care reform bills. A number of these ideas were embraced last year by a group of us participating in the bipartisan Senate mainstream coalition. But we had little chance to debate these issues in the last Congress. I am optimistic that we will have the opportunity in this Congress to pass a bipartisan medical malpractice reform bill. I encourage my colleagues to consider this legislation and join Senator MCCONNELL, Senator KASSEBAUM, and me as we seek to improve our medical malpractice system.●

By Mr. KEMPTHORNE (for himself and Mr. CRAIG):

S. 455. A bill entitled the "Consultation Clarification Act"; to the Committee on Environment and Public Works.

CONSULTATION CLARIFICATION ACT

Mr. KEMPTHORNE. Mr. President, today I am introducing a bill to amend the Endangered Species Act. I am introducing a bill critical to the people of this country who are held hostage by the inappropriate implementation of a provision of the Endangered Species Act.

One abuse in particular has caused me to rise today with an urgent need to make a clarification to the Endangered Species Act.

Late last month a Federal judge issued an injunction to protect an endangered strain of salmon. This action resulted in the shutting down of all mining, logging, and grazing in six Idaho national forests. It didn't cover just the activities that would affect the salmon, it included all activities on lands that represent 30 percent of the land in the State of Idaho. And worse, it adversely affected people's lives and jobs in half of the States.

Mr. President, this is the area of the State of Idaho where people's jobs are needlessly at risk because of the vagaries of the courts and Federal agencies. The court imposed a 5-day injunction on all activities on the national forests covering 30 percent of the area of the State of Idaho and jeopardizing the jobs of nearly 5,000 workers, workers on projects that have been in continuous operation that the Forest Service has determined will not jeopardize the endangered salmon runs. And adding uncertainty to another 5,000 workers whose jobs are influenced by the project work.

Mr. President, 2,500 people rallied in Challis, ID, January 21 to let their Government know that they are frustrated that no one is considering their plight. They are facing loss of jobs, not having money for food and clothing, and the uncertainties of having to move from their homes. I got a letter from Russell Ebberts who is an eighth grader in Challis, ID. He's facing having to move if his Dad loses his job. And Danny Fisher and Karena Turpin were planning on getting married in June. Their wedding and future plans have been shattered. And as long as there is a threat of a recurrence of that injunction, they must continue to be worried.

The current injunction, when it was in effect, affected mainly mining operations, but future injunctions, when they come will affect grazing, timber harvest including salvage, and other activities. We have estimated that if the injunction is put in place again in March, it will cost $65,000 per day in the loss of folks' wages across Idaho. That is intolerable.

The insanity of this injunction was that many of the projects that would be shut down had already been the subject of consultation under the Endangered Species Act and had been determined to not harm the salmon.

Let me repeat that important point, Mr. President. These are projects that had already been the subject of consultation, and had been found to have no effect on the salmon. Nonetheless, just because these projects were contained within a national forest management plan, and the plan had not yet been consulted upon for the salmon, the projects were subject to immediate cessation.

Why, you ask, had the plan not been made subject to consultation? That is the irony of this judge's order. The plans in the six national forests had been consulted upon, in addition to the projects within the plans. The problem was that the salmon was listed under the Endangered Species Act after the forest plans had been consulted upon.

Well, Mr. President, the injunction was temporarily lifted, until March 15. Hopefully this will be enough time for the National Marine Fisheries Service to complete consultation on the forest plans. But, if anything goes wrong, the injunction may be imposed again. As the year progresses, more and more people's jobs will be at risk. These uncertainties in folks' lives are not necessary.

The legislation my colleague from Idaho and I are sponsoring does only one thing, it clarifies that it has never been the intent of Congress to give the regulatory agencies two opportunities to consult on the same project. It was never the intent to cause a project that has already been approved under the Endangered Species Act to come to a halt while the plan of which it is a part goes through a second review.

Since the enactment of the Endangered Species Act, Congress has enacted laws requiring agencies to do broad plans for their activities. These agencies are required by Federal law to have different levels of planning—a broad scale long term plan and then site specific plans.

Court decisions like this one have begun to force an interpretation that there must be consultation on both levels of planning and that both these plans and the resulting projects may be held up if the consultation on both has not been completed.

This is double jeopardy. We cannot afford to allow our Federal Government to waste taxpayers dollars in essentially looking at the same project twice. We can no longer throw out years of planning and community involvement on these plans every time a new species is listed. The laws and regulations for both the Forest Service and the BLM allow for these kinds of updates—they are called amendments and require the kinds of public involvement that put people back into the management of their public lands.

Mr. President, it is time that Congress is clear about what we intended for the consultation process. My bill amends section 7 of the Endangered Species Act to clarify that when a consultation has been completed on a project, the project does not need to stop while consultation is done on the overriding plan.

This is a necessary clarification of the intent of Congress on this issue. Its intent is to avoid unnecessary multiple consultations on a project. We envision that it will help with existing situations in Oregon, Idaho, New Mexico, and California and it will prevent many other States from getting in the same situation that we are currently facing in Idaho.

Mr. President, I want to make it clear that we are not intending to reform the Endangered Species Act with this bill. That reform effort is one that I feel needs careful consideration, constructive debate, and substantive suggestions over the months ahead. We are planning hearings on this broader reform bill and are looking to submit a comprehensive reauthorization bill in the fall.

Mr. President, my bill will fix a small, but critical part of the frustrations caused by liberal interpretations of the Endangered Species Act. And, it will head off potential catastrophes in the short run that will bog down the kind of innovative discussions that are needed to bring forth the best possible bill reauthorizing the Endangered Species Act, to benefit the species truly at risk and to help, not hinder the American people.

By Mr. BRADLEY (for himself, Mr. DODD, Mr. ROCKEFELLER, Mr. CHAFEE, Mrs. FEINSTEIN, Ms. SNOWE, Mr. LIEBERMAN, Mr. DORGAN, and Mr. KENNEDY):

S. 456. A bill to improve and strengthen the child support collection system, and for other purposes; to the Committee on Finance.

THE INTERSTATE CHILD SUPPORT RESPONSIBILITY ACT

• Mr. BRADLEY. Mr. President, the crucible of American society is the family. Today the family faces stresses and injuries that we have never seen before in this country. Almost every child is affected by these pressures: the 40 percent of children who go home to an empty house every afternoon because both parents work as well as the 27 percent of children who live with only one parent. Our efforts as a nation must address these stresses by seeking to recouple sexual behavior and childbearing with family responsibility. That responsibility involves giving time, love, care, and attention, but it also includes food, clothing, and medical care. We should send a clear message, above all to young men: If you father a child, whether or not you are married to the mother of that child, be prepared to set aside one-sixth or more of your earnings every year for 18 years to help that child grow up healthy, educated, and responsible.

That's the principle of child support. Today, Mr. President, I rise to introduce a bill that will reinforce that principle by repairing all the holes in the tattered, State-based system of child support enforcement. That system has not worked well. It left $5.1 billion in court-ordered child support uncollected last year. It succeeds in establishing paternity for less than 40 percent of out-of-wedlock births. Still, the complex Federal-State system succeeds in collecting $3.98 for every dollar spent on enforcement. We face a choice. We can throw out the State system and replace it with a Federal bureaucracy, which might be more cumbersome but would be as hard to run away from as the IRS. Or, we can try to repair the State system, help States work together better, require some uniformity, and help the States by creating national databases of child support orders and new hires. That is the path that I and a number of my colleagues of both parties have chosen in developing the bill we introduce today.

About 17.6 million children live with just one parent. There are almost 10 million women who are raising children on their own. Almost one-third of them live below the poverty level. Less than 60 percent have child support orders. Only half of those who have child support orders receive the full amount due.

Mothers who do not receive child support do all they can to remain off of welfare. By definition, almost every family receiving Aid to Families with Dependent Children should be receiving child support, except in cases where one parent is deceased or in the small number of two-parent families participating in the AFDC–UP program. When we talk about welfare, we have to recognize that for every woman who is raising children, receiving welfare and not working, there is a father who is not raising the children and who may or may not be working. Either way, he is exploiting welfare as much or more than the mother who is receiving welfare. Tougher child support enforcement has resulted in collections for 873,000 families on welfare in 1993, and much of that money went back to the taxpayers to make up for welfare payments already made.

If this Congress undertakes a serious effort at welfare reform, child support enforcement along the lines we propose today must be a part of it. I am very pleased that my colleagues in the House of Representatives, especially Congresswomen MARGE ROUKEMA and NANCY JOHNSON, were able to persuade the leadership of the Ways and Means Committee to expand the Contract With America's welfare reform bill to include comprehensive child support reform. But as I said last year, if welfare reform continues to be delayed by controversy, we must not allow child support to be delayed along with it. There is consensus on child support, and there are also three times as many mothers due child support who are not eligible for welfare as are. They should not have to wait until we fix the welfare system before they receive the support due them.

The link to welfare makes child support a valid concern of the Federal Government, but it is also a Federal concern because one-third of all child support cases are interstate cases, which means that the parents live in different States. These cases are the most difficult to resolve. By moving from State to State and changing jobs, parents can systematically avoid paying child support, or even being located so that their wages can be withheld, for

about a year at a time. These deliberate evasions occur against a backdrop of inconsistent State laws, inadequate staff and computer resources, and a continually growing caseload due to the tremendous rise in out-of-wedlock births.

Expanded paternity establishment is key to improving interstate child support enforcement. Every year more than 1 million children are born to unmarried women, about one-fourth of all births that year. About 57 percent of black children, 23 percent of Hispanic children, and 17 percent of white children born in 1990 were born to unwed mothers. In 1990, 68 percent of all births to women between the ages of 15 to 19 were out of wedlock.

Out-of-wedlock births need not automatically consign a mother and children to poverty. They can be handled like a divorce; support can be ordered and enforced. But in about one-quarter of the cases, the State cannot even get started, because they cannot obtain any information about the father.

Many of the paternity establishment provisions of my earlier bill were passed in the 1993 budget package, which required States to establish hospital-based paternity establishment programs. These programs are now up and running, and are demonstrating a significant increase in the number of child support cases in which the father can be identified, so that support can be ordered and the other enforcement mechanisms can kick in. About 85 percent of fathers are in touch with the child and mother at, or soon after, the birth. Many fathers visit their children in the hospital or birthing center. Programs that target these fathers and provide opportunities for them to acknowledge paternity can do a lot to cut down on the number of children for whom paternity has not been established.

For the situations where the father was not targeted at the hospital, this bill contains provisions which would make it easier for paternity to be established by courts or administrative agencies. It makes it less difficult to locate out-of-State fathers by expanding the locate information and services available to custodial parents and child support professionals. It mandates changes in evidence standards which remove many of the obstacles that now exist to paternity establishment across State lines. It provides State child support agencies for the first time with a Federal incentive to work on establishing paternity, not just collecting child support that has already been ordered.

Even when parentage is established, custodial parents always seem to be one step behind noncustodial parents. If a noncustodial parent gets a job in another State, child support officials do not usually learn about the job change until the next quarter in which the employer has to report payroll information. By the time child support officials in the custodial parent's State learn the information, the noncustodial parent has often moved to another job. A year can pass. This scenario is played out over and over in interstate cases.

This bill requires information on every new hire to be filed in a national database, which States can regularly search for the names or Social Security numbers of parents who owe support to children in their States.

To eliminate the problems associated with establishing a support order across State lines, my bill requires the States to expand their long-arm statutes to reach more out-of-State noncustodial parents. It requires States to recognize and enforce child support orders from other States, and it also requires all States to adopt the Uniform Interstate Family Support Act, adopted by the National Conference of Commissioners on Uniform State Laws, verbatim so that inconsistencies between the States in case processing and enforcement can be eliminated.

Even where a support order has been established, custodial parents still have problems collecting money, especially in interstate cases. In response, this bill requires the States to take tougher measures against parents who do not pay their child support. It requires them to pass laws making it possible for delinquent parents to lose their professional and occupational licenses, hitting them in a sense at their livelihood. It requires the States to hold off issuing driver's licenses to delinquent parents. It calls for the expanded use of credit reporting—it is interesting that a noncustodial parent can be delinquent on a car loan and that fact can be reported on a credit report, but the fact that he or she is delinquent on child support might not be reported. In addition, this bill requires the States to intercept lottery winnings, money judgments, and other income of noncustodial parents who owe child support. This bill also requires the States to make it easier to freeze the bank accounts of delinquent parents, and requires the States to make it a State crime to willfully fail to pay child support.

Finally, this bill responds to staffing the training issues which have plagued child support professionals for decades. In a GAO report I and the other congressional members of the commission requested, it was reported that the average caseload per child support case worker is 1,000 cases. Can you imagine, Mr. President, 1,000 cases? This bill requires the Department of Health and Human Services to conduct staffing studies in every State and report such findings to this body and the States. It also requires the Office of Child Support Enforcement to make training assistance available to State child support agencies.

Mr. President, this bill represents a consensus, an overdue consensus, about the kinds of repairs that are needed in the child support system. It began with the recommendations of the U.S. Commission on Interstate Child Support Enforcement, of which I was a member. I put those recommendations forward as legislation in 1992, as did my colleagues on the commission, Representatives MARGE ROUKEMA and BARBARA KENNELLY. Last year, the administration took those central recommendations and added some detail about the national databases of child support orders and new hires. Late last year and early this year, the House Caucus on Women's Issues took up the subject, and earlier this month introduced a bill modeled on the administration's and my earlier bill. The bill we introduce today is intended to be the Senate companion to H.R. 785, the Johnson bill in the House, with only minor differences.

I ask unanimous consent that the text of the bill and a summary be inserted in the RECORD.

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

S. 456

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Interstate Child Support Responsibility Act of 1995".

(b) REFERENCE TO SOCIAL SECURITY ACT.—Except as otherwise specifically provided, wherever in this Act an amendment is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to that section or other provision of the Social Security Act.

(c) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; reference; table of contents.

TITLE I—IMPROVEMENTS TO THE CHILD SUPPORT COLLECTION SYSTEM

Subtitle A—Eligibility and Other Matters Concerning Title IV-D Program Clients

Sec. 101. State obligation to provide paternity establishment and child support enforcement services.
Sec. 102. Distribution of payments.
Sec. 103. Rights to notification and hearings.
Sec. 104. Privacy safeguards.

Subtitle B—Program Administration and Funding

Sec. 111. Federal matching payments.
Sec. 112. Performance-based incentives and penalties.
Sec. 113. Federal and State reviews and audits.
Sec. 114. Required reporting procedures.
Sec. 115. Automated data processing requirements.
Sec. 116. Director of CSE program; staffing study.
Sec. 117. Funding for secretarial assistance to State programs.
Sec. 118. Data collection and reports by the Secretary.

Subtitle C—Locate and Case Tracking
Sec. 121. Central State and case registry.
Sec. 122. Centralized collection and disbursement of support payments.
Sec. 123. Amendments concerning income withholding.
Sec. 124. Locator information from interstate networks.
Sec. 125. Expanded Federal parent locator service.
Sec. 126. Use of social security numbers.
Subtitle D—Streamlining and Uniformity of Procedures
Sec. 131. Adoption of uniform State laws.
Sec. 132. Improvements to full faith and credit for child support orders.
Sec. 133. State laws providing expedited procedures.
Subtitle E—Paternity Establishment
Sec. 141. State laws concerning paternity establishment.
Sec. 142. Outreach for voluntary paternity establishment.
Subtitle F—Establishment and Modification of Support Orders
Sec. 151. National Child Support Guidelines Commission.
Sec. 152. Simplified process for review and adjustment of child support orders.
Subtitle G—Enforcement of Support Orders
Sec. 161. Federal income tax refund offset.
Sec. 162. Internal Revenue Service collection of arrearages.
Sec. 163. Authority to collect support from Federal employees.
Sec. 164. Enforcement of child support obligations of members of the Armed Forces.
Sec. 165. Motor vehicle liens.
Sec. 166. Voiding of fraudulent transfers.
Sec. 167. State law authorizing suspension of licenses.
Sec. 168. Reporting arrearages to credit bureaus.
Sec. 169. Extended statute of limitation for collection of arrearages.
Sec. 170. Charges for arrearages.
Sec. 171. Denial of passports for nonpayment of child support.
Sec. 172. International child support enforcement.
Subtitle H—Medical Support
Sec. 181. Technical correction to ERISA definition of medical child support order.
Subtitle I—Access and Visitation Programs
Sec. 191. Grants to States for access and visitation programs.
TITLE II—EFFECT OF ENACTMENT
Sec. 201. Effective dates.
Sec. 202. Severability.

TITLE I—IMPROVEMENTS TO THE CHILD SUPPORT COLLECTION SYSTEM

Subtitle A—Eligibility and Other Matters Concerning Title IV-D Program Clients

SEC. 101. STATE OBLIGATION TO PROVIDE PATERNITY ESTABLISHMENT AND CHILD SUPPORT ENFORCEMENT SERVICES.

(a) STATE LAW REQUIREMENTS.—Section 466(a) (42 U.S.C. 666(a)) is amended by adding at the end the following new paragraph:

"(12) Procedures under which—

"(A) every child support order established or modified in the State on or after October 1, 1998, is recorded in the central case registry established in accordance with section 454A(e); and

"(B) child support payments are collected through the centralized collections unit established in accordance with section 454B—

"(i) on and after October 1, 1998, under each order subject to wage withholding under section 466(b); and

"(ii) on and after October 1, 1999, under each other order required to be recorded in such central case registry under this paragraph or section 454A(e), if requested by either party subject to such order.".

(b) STATE PLAN REQUIREMENTS.—Section 454 (42 U.S.C. 654) is amended—

(1) by striking paragraph (4) and inserting the following new paragraph:

"(4) provide that such State will undertake—

"(A) to provide appropriate services under this part to—

"(i) each child with respect to whom an assignment is effective under section 402(a)(26), 471(a)(17), or 1912 (except in cases in which the State agency determines, in accordance with paragraph (25), that it is against the best interests of the child to do so); and

"(ii) each child not described in clause (i)—

"(I) with respect to whom an individual applies for such services; or

"(II) on and after October 1, 1998, with respect to whom a support order is recorded in the central State case registry established under section 454A, if application is made for services under this part.";

(2) in paragraph (6)—

(A) by striking "(6) provide that" and all that follows through subparagraph (A) and inserting the following:

"(6) provide that—

"(A) services under the State plan shall be made available to nonresidents on the same terms as to residents;";

(B) in subparagraph (B)—

(i) by inserting "on individuals not receiving assistance under part A" after "such services shall be imposed"; and

(ii) by inserting "but no fees or costs shall be imposed on any absent or custodial parent or other individual for inclusion in the central State registry maintained pursuant to section 454A(e)";

(C) in each of subparagraphs (B), (C), (D), and (E), by indenting such subparagraph and aligning its left margin with the left margin of subparagraph (A); and

(D) in each of subparagraphs (B), (C), and (D), by striking the final comma and inserting a semicolon.

(c) CONFORMING AMENDMENTS.—

(1) PATERNITY ESTABLISHMENT PERCENTAGE.—Section 452(g)(2)(A) (42 U.S.C. 652(g)(2)(A)) is amended by striking "454(6)" each place it appears and inserting "454(4)(A)(ii)".

(2) STATE PLAN.—Section 454(23) (42 U.S.C. 654(23)) is amended, effective October 1, 1998, by striking "information as to any application fees for such services and".

(3) PROCEDURES TO IMPROVE ENFORCEMENT.—Section 466(a)(3)(B) (42 U.S.C. 666(a)(3)(B)) is amended by striking "in the case of overdue support which a State has agreed to collect under section 454(6)" and inserting "in any other case".

(4) DEFINITION OF OVERDUE SUPPORT.—Section 466(e) (42 U.S.C. 666(e)) is amended by striking "or (6)".

SEC. 102. DISTRIBUTION OF PAYMENTS.

(a) DISTRIBUTIONS THROUGH STATE CHILD SUPPORT ENFORCEMENT AGENCY TO FORMER ASSISTANCE RECIPIENTS.—Section 454(5) (42 U.S.C. 654(5)) is amended—

(1) in subparagraph (A)—

(A) by inserting "except as otherwise specifically provided in section 464 or 466(a)(3)," after "is effective,"; and

(B) by striking "except that" and all that follows through the semicolon; and

(2) in subparagraph (B), by striking ", except" and all that follows through "medical assistance".

(b) DISTRIBUTION TO A FAMILY CURRENTLY RECEIVING AFDC.—Section 457 (42 U.S.C. 657) is amended—

(1) by striking subsection (a) and redesignating subsection (b) as subsection (a);

(2) in subsection (a), as redesignated—

(A) in the matter preceding paragraph (2), to read as follows:

"(a) IN THE CASE OF A FAMILY RECEIVING AFDC.—Amounts collected under this part during any month as support of a child who is receiving assistance under part A (or a parent or caretaker relative of such a child) shall (except in the case of a State exercising the option under subsection (b)) be distributed as follows:

"(1) an amount equal to the amount that will be disregarded pursuant to section 402(a)(8)(A)(vi) shall be taken from each of—

"(A) the amounts received in a month which represent payments for that month; and

"(B) the amounts received in a month which represent payments for a prior month which were made by the absent parent in that prior month;

and shall be paid to the family without affecting its eligibility for assistance or decreasing any amount otherwise payable as assistance to such family during such month;";

(B) in paragraph (4), by striking "or (B)" and all that follows through the period and inserting "; then (B) from any remainder, amounts equal to arrearages of such support obligations assigned, pursuant to part A, to any other State or States shall be paid to such other State or States and used to pay any such arrearages (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing); and then (C) any remainder shall be paid to the family.".

(3) by inserting after subsection (a), as redesignated, the following new subsection:

"(b) ALTERNATIVE DISTRIBUTION IN CASE OF FAMILY RECEIVING AFDC.—In the case of a State electing the option under this subsection, amounts collected as described in subsection (a) shall be distributed as follows:

"(1) an amount equal to the amount that will be disregarded pursuant to section 402(a)(8)(A)(vi) shall be taken from each of—

"(A) the amounts received in a month which represent payments for that month; and

"(B) the amounts received in a month which represent payments for a prior month which were made by the absent parent in that prior month;

and shall be paid to the family without affecting its eligibility for assistance or decreasing any amount otherwise payable as assistance to such family during such month;

"(2) second, from any remainder, amounts equal to the balance of support owed for the current month shall be paid to the family;

"(3) third, from any remainder, amounts equal to arrearages of such support obligations assigned, pursuant to part A, to the State making the collection shall be retained and used by such State to pay any such arrearages (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

"(4) fourth, from any remainder, amounts equal to arrearages of such support obligations assigned, pursuant to part A, to any other State or States shall be paid to such other State or States and used to pay any

such arrearages (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing); and

"(5) fifth, any remainder shall be paid to the family.".

(c) DISTRIBUTION TO A FAMILY NOT RECEIVING AFDC.—

(1) IN GENERAL.—Section 457(c) (42 U.S.C. 657(c)) is amended to read as follows:

"(c) DISTRIBUTIONS IN CASE OF FAMILY NOT RECEIVING AFDC.—Amounts collected by a State agency under this part during any month as support of a child who is not receiving assistance under part A (or of a parent or caretaker relative of such a child) shall (subject to the remaining provisions of this section) be distributed as follows:

"(1) first, amounts equal to the total of such support owed for such month shall be paid to the family;

"(2) second, from any remainder, amounts equal to arrearages of such support obligations for months during which such child did not receive assistance under part A shall be paid to the family;

"(3) third, from any remainder, amounts equal to arrearages of such support obligations assigned to the State making the collection pursuant to part A shall be retained and used by such State to pay any such arrearages (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing); and

"(4) fourth, from any remainder, amounts equal to arrearages of such support obligations assigned to any other State pursuant to part A shall be paid to such other State or States, and used to pay such arrearages, in the order in which such arrearages accrued (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall become effective on October 1, 1999.

(d) DISTRIBUTION TO A CHILD RECEIVING ASSISTANCE UNDER TITLE IV-E.—Section 457(d) (42 U.S.C. 657(d)) is amended, in the matter preceding paragraph (1), by striking "Notwithstanding the preceding provisions of this section, amounts" and inserting the following:

"(d) DISTRIBUTIONS IN CASE OF A CHILD RECEIVING ASSISTANCE UNDER TITLE IV-E.—Amounts".

(e) REGULATIONS.—The Secretary of Health and Human Services shall promulgate regulations—

(1) under part D of title IV of the Social Security Act, establishing a uniform nationwide standard for allocation of child support collections from an obligor owing support to more than 1 family; and

(2) under part A of such title, establishing standards applicable to States electing the alternative formula under section 457(b) of such Act for distribution of collections on behalf of families receiving Aid to Families with Dependent Children, designed to minimize irregular monthly payments to such families.

(f) CLERICAL AMENDMENTS.—Section 454 (42 U.S.C. 654) is amended—

(1) in paragraph (11)—

(A) by striking "(11)" and inserting "(11)(A)"; and

(B) by inserting after the semicolon "and"; and

(2) by redesignating paragraph (12) as subparagraph (B) of paragraph (11).

(g) MANDATORY CHILD SUPPORT PASS-THROUGH.—

(1) IN GENERAL.—Section 402(a)(8)(A)(vi) (42 U.S.C. 602(a)(8)(A)(vi)) is amended—

(A) by striking "$50" each place it appears and inserting "$50, or, if greater, $50 adjusted by the CPI (as prescribed in section 406(i));"; and

(B) by striking the semicolon at the end and inserting "or, in lieu of each dollar amount specified in this clause, such greater amount as the State may choose (and provide for in its State plan);".

(2) CPI ADJUSTMENT.—Section 406 (42 U.S.C. 606) is amended by adding at the end the following new subsection:

"(i) For purposes of this part, an amount is 'adjusted by the CPI' for any month in a calendar year by multiplying the amount involved by the ratio of—

"(1) the Consumer Price Index (as prepared by the Department of Labor) for the third quarter of the preceding calendar year, to

"(2) such Consumer Price Index for the third quarter of calendar year 1996,

and rounding the product, if not a multiple of $10, to the nearer multiple of $10.".

SEC. 103. RIGHTS TO NOTIFICATION AND HEARINGS.

(a) IN GENERAL.—Section 454 (42 U.S.C. 654), as amended by section 102(f), is amended by inserting after paragraph (11) the following new paragraph:

"(12) establish procedures to provide that—

"(A) individuals who are applying for or receiving services under this part, or are parties to cases in which services are being provided under this part—

"(i) receive notice of all proceedings in which support obligations might be established or modified; and

"(ii) receive a copy of any order establishing or modifying a child support obligation, or (in the case of a petition for modification) a notice of determination that there should be no change in the amount of the child support award, within 14 days after issuance of such order or determination;

"(B) individuals applying for or receiving services under this part have access to a fair hearing or other formal complaint procedure that meets standards established by the Secretary and ensures prompt consideration and resolution of complaints (but the resort to such procedure shall not stay the enforcement of any support order); and

"(C) the State may not provide to any noncustodial parent of a child representation relating to the establishment or modification of an order for the payment of child support with respect to that child, unless the State makes provision for such representation outside the State agency;".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on October 1, 1997.

SEC. 104. PRIVACY SAFEGUARDS.

(a) STATE PLAN REQUIREMENT.—Section 454 (42 U.S.C. 454) is amended—

(1) by striking "and" at the end of paragraph (23);

(2) by striking the period at the end of paragraph (24) and inserting "; and"; and

(3) by adding after paragraph (24) the following:

"(25) provide that the State will have in effect safeguards applicable to all sensitive and confidential information handled by the State agency designed to protect the privacy rights of the parties, including—

"(A) safeguards against unauthorized use or disclosure of information relating to proceedings or actions to establish paternity, or to establish or enforce support;

"(B) prohibitions on the release of information on the whereabouts of 1 party to another party against whom a protective order with respect to the former party has been entered; and

"(C) prohibitions on the release of information on the whereabouts of 1 party to another party if the State has reason to believe that the release of the information may result in physical or emotional harm to the former party.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on October 1, 1997.

Subtitle B—Program Administration and Funding

SEC. 111. FEDERAL MATCHING PAYMENTS.

(a) INCREASED BASE MATCHING RATE.—Section 455(a)(2) (42 U.S.C. 655(a)(2)) is amended to read as follows:

"(2) The applicable percent for a quarter for purposes of paragraph (1)(A) is—

"(A) for fiscal year 1997, 69 percent,

"(B) for fiscal year 1998, 72 percent, and

"(C) for fiscal year 1999 and succeeding fiscal years, 75 percent.".

(b) MAINTENANCE OF EFFORT.—Section 455 (42 U.S.C. 655) is amended—

(1) in subsection (a)(1), in the matter preceding subparagraph (A), by striking "From" and inserting "Subject to subsection (c), from"; and

(2) by inserting after subsection (b) the following new subsection:

"(c) Notwithstanding the provisions of subsection (a), total expenditures for the State program under this part for fiscal year 1997 and each succeeding fiscal year (excluding 1-time capital expenditures for automation), reduced by the percentage specified for such fiscal year under subsection (a)(2) shall not be less than such total expenditures for fiscal year 1996, reduced by 66 percent.".

SEC. 112. PERFORMANCE-BASED INCENTIVES AND PENALTIES.

(a) INCENTIVE ADJUSTMENTS TO FEDERAL MATCHING RATE.—Section 458 (42 U.S.C. 658) is amended to read as follows:

"INCENTIVE ADJUSTMENTS TO MATCHING RATE

"SEC. 458. (a) INCENTIVE ADJUSTMENT.—

"(1) IN GENERAL.—In order to encourage and reward State child support enforcement programs which perform in an effective manner, the Federal matching rate for payments to a State under section 455(a)(1)(A), for each fiscal year beginning on or after October 1, 1998, shall be increased by a factor reflecting the sum of the applicable incentive adjustments (if any) determined in accordance with regulations under this section with respect to Statewide paternity establishment and to overall performance in child support enforcement.

"(2) STANDARDS.—

"(A) IN GENERAL.—The Secretary shall specify in regulations—

"(i) the levels of accomplishment, and rates of improvement as alternatives to such levels, which States must attain to qualify for incentive adjustments under this section; and

"(ii) the amounts of incentive adjustment that shall be awarded to States achieving specified accomplishment or improvement levels, which amounts shall be graduated, ranging up to—

"(I) 5 percentage points, in connection with Statewide paternity establishment; and

"(II) 10 percentage points, in connection with overall performance in child support enforcement.

"(B) LIMITATION.—In setting performance standards pursuant to subparagraph (A)(i) and adjustment amounts pursuant to subparagraph (A)(ii), the Secretary shall ensure that the aggregate number of percentage point increases as incentive adjustments to

all States do not exceed such aggregate increases as assumed by the Secretary in estimates of the cost of this section as of June 1995, unless the aggregate performance of all States exceeds the projected aggregate performance of all States in such cost estimates.

"(3) DETERMINATION OF INCENTIVE ADJUSTMENT.—The Secretary shall determine the amount (if any) of incentive adjustment due each State on the basis of the data submitted by the State pursuant to section 454(15)(B) concerning the levels of accomplishment (and rates of improvement) with respect to performance indicators specified by the Secretary pursuant to this section.

"(4) FISCAL YEAR SUBJECT TO INCENTIVE ADJUSTMENT.—The total percentage point increase determined pursuant to this section with respect to a State program in a fiscal year shall apply as an adjustment to the applicable percent under section 455(a)(2) for payments to such State for the succeeding fiscal year.

"(5) RECYCLING OF INCENTIVE ADJUSTMENT.—A State shall expend in the State program under this part all funds paid to the State by the Federal Government as a result of an incentive adjustment under this section.

"(b) MEANING OF TERMS.—

"(1) STATEWIDE PATERNITY ESTABLISHMENT PERCENTAGE.—

"(A) IN GENERAL.—For purposes of this section, the term 'Statewide paternity establishment percentage' means, with respect to a fiscal year, the ratio (expressed as a percentage) of—

"(i) the total number of out-of-wedlock children in the State under 1 year of age for whom paternity is established or acknowledged during the fiscal year, to

"(ii) the total number of children requiring paternity establishment born in the State during such fiscal year.

"(B) ALTERNATIVE MEASUREMENT.—The Secretary shall develop an alternate method of measurement for the Statewide paternity establishment percentage for any State that does not record the out-of-wedlock status of children on birth certificates.

"(2) The term 'overall performance in child support enforcement' means a measure or measures of the effectiveness of the State agency in a fiscal year which takes into account factors including—

"(A) the percentage of cases requiring a child support order in which such an order was established;

"(B) the percentage of cases in which child support is being paid;

"(C) the ratio of child support collected to child support due; and

"(D) the cost-effectiveness of the State program, as determined in accordance with standards established by the Secretary in regulations.".

(b) ADJUSTMENT OF PAYMENTS UNDER PART D OF TITLE IV.—Section 455(a)(2) (42 U.S.C. 655(a)(2)), as amended by section 111(a), is amended—

(1) by striking the period at the end of subparagraph (C) and inserting a comma; and

(2) by adding after and below subparagraph (C), flush with the left margin of the paragraph, the following:

"increased by the incentive adjustment factor (if any) determined by the Secretary pursuant to section 458.".

(c) CONFORMING AMENDMENTS.—Section 454(22) (42 U.S.C. 654(22)) is amended—

(1) by striking "incentive payments" the first place it appears and inserting "incentive adjustments"; and

(2) by striking "any such incentive payments made to the State for such period" and inserting "any increases in Federal payments to the State resulting from such incentive adjustments".

(d) CALCULATION OF IV-D PATERNITY ESTABLISHMENT PERCENTAGE.—

(1) OVERALL PERFORMANCE.—Section 452(g)(1) (42 U.S.C. 652(g)(1)) is amended in the matter preceding subparagraph (A) by inserting "its overall performance in child support enforcement is satisfactory (as defined in section 458(b) and regulations of the Secretary), and" after "1994,".

(2) DEFINITION.—Section 452(g)(2)(A) (42 U.S.C. 652(g)(2)(A)) is amended, in the matter preceding clause (i)—

(A) by striking "paternity establishment percentage" and inserting "IV-D paternity establishment percentage"; and

(B) by striking "(or all States, as the case may be)".

(3) MODIFICATION OF REQUIREMENTS.—Section 452(g)(3) (42 U.S.C. 652(g)(3)) is amended—

(A) by striking subparagraph (A) and redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively;

(B) in subparagraph (A), as redesignated, by striking "the percentage of children born out-of-wedlock in the State" and inserting "the percentage of children in the State who are born out of wedlock or for whom support has not been established"; and

(C) in subparagraph (B), as redesignated—

(i) by inserting "and overall performance in child support enforcement" after "paternity establishment percentages"; and

(ii) by inserting "and securing support" before the period.

(e) REDUCTION OF PAYMENTS UNDER PART D OF TITLE IV.—

(1) NEW REQUIREMENTS.—Section 455 (42 U.S.C. 655) is amended—

(A) by redesignating subsection (e) as subsection (f); and

(B) by inserting after subsection (d) the following new subsection:

"(e)(1) Notwithstanding any other provision of law, if the Secretary finds, with respect to a State program under this part in a fiscal year beginning on or after October 1, 1997—

"(A)(i) on the basis of data submitted by a State pursuant to section 454(15)(B), that the State program in such fiscal year failed to achieve the IV-D paternity establishment percentage (as defined in section 452(g)(2)(A)) or the appropriate level of overall performance in child support enforcement (as defined in section 458(b)(2)), or to meet other performance measures that may be established by the Secretary, or

"(ii) on the basis of an audit or audits of such State data conducted pursuant to section 452(a)(4)(C), that the State data submitted pursuant to section 454(15)(B) is incomplete or unreliable; and

"(B) that, with respect to the succeeding fiscal year—

"(i) the State failed to take sufficient corrective action to achieve the appropriate performance levels as described in subparagraph (A)(i) of this paragraph, or

"(ii) the data submitted by the State pursuant to section 454(15)(B) is incomplete or unreliable,

the amounts otherwise payable to the State under this part for quarters following the end of such succeeding fiscal year, prior to quarters following the end of the first quarter throughout which the State program is in compliance with such performance requirement, shall be reduced by the percentage specified in paragraph (2).

"(2) The reductions required under paragraph (1) shall be—

"(A) not less than 3 nor more than 5 percent, or

"(B) not less than 5 nor more than 7 percent, if the finding is the second consecutive finding made pursuant to paragraph (1), or

"(C) not less than 7 nor more than 10 percent, if the finding is the third or a subsequent consecutive such finding.

"(3) For purposes of this subsection, section 402(a)(27), and section 452(a)(4), a State which is determined as a result of an audit to have submitted incomplete or unreliable data pursuant to section 454(15)(B), shall be determined to have submitted adequate data if the Secretary determines that the extent of the incompleteness or unreliability of the data is of a technical nature which does not adversely affect the determination of the level of the State's performance.".

(2) CONFORMING AMENDMENTS.—

(A) PAYMENTS TO STATES.—Section 403 (42 U.S.C. 603) is amended by striking subsection (h).

(B) DUTIES OF SECRETARY.—Subsections (d)(3)(A), (g)(1), and (g)(3)(A) of section 452 (42 U.S.C. 652) are each amended by striking "403(h)" and inserting "455(e)".

(f) EFFECTIVE DATES.—

(1) INCENTIVE ADJUSTMENTS.—

(A) IN GENERAL.—The amendments made by subsections (a), (b), and (c) shall become effective on October 1, 1997, except to the extent provided in subparagraph (B).

(B) EXCEPTION.—Section 458 of the Social Security Act, as in effect prior to the enactment of this section, shall be effective for purposes of incentive payments to States for fiscal years prior to fiscal year 1999.

(2) PENALTY REDUCTIONS.—

(A) IN GENERAL.—The amendments made by subsection (d) shall become effective with respect to calendar quarters beginning on and after the date of the enactment of this Act.

(B) REDUCTIONS.—The amendments made by subsection (e) shall become effective with respect to calendar quarters beginning on and after the date 1 which is year after the date of the enactment of this Act.

SEC. 113. FEDERAL AND STATE REVIEWS AND AUDITS.

(a) STATE AGENCY ACTIVITIES.—Section 454 (42 U.S.C. 654) is amended—

(1) in paragraph (14)—

(A) by striking "(14)" and inserting "(14)(A)"; and

(B) by inserting after the semicolon "and";

(2) by redesignating paragraph (15) as subparagraph (B) of paragraph (14); and

(3) by inserting after paragraph (14) the following new paragraph:

"(15) provide for—

"(A) a process for annual reviews of and reports to the Secretary on the State program under this part—

"(i) which shall include such information as may be necessary to measure State compliance with Federal requirements for expedited procedures and timely case processing, using such standards and procedures as are required by the Secretary; and

"(ii) under which the State agency will determine the extent to which such program is in conformity with applicable requirements with respect to the operation of State programs under this part (including the status of complaints filed under the procedure required under paragraph (12)(B)); and

"(B) a process of extracting from the State automated data processing system and transmitting to the Secretary data and calculations concerning the levels of accomplishment (and rates of improvement) with

respect to applicable performance indicators (including IV–D paternity establishment percentages and overall performance in child support enforcement) to the extent necessary for purposes of sections 452(g) and 458.".

(b) FEDERAL ACTIVITIES.—Section 452(a)(4) (42 U.S.C. 652(a)(4)) is amended to read as follows:

"(4)(A) review data and calculations transmitted by State agencies pursuant to section 454(15)(B) on State program accomplishments with respect to performance indicators for purposes of section 452(g) and 458, and determine the amount (if any) of penalty reductions pursuant to section 455(e) to be applied to the State;

"(B) review annual reports by State agencies pursuant to section 454(15)(A) on State program conformity with Federal requirements; evaluate any elements of a State program in which significant deficiencies are indicated by such report on the status of complaints under the State procedure under section 454(12)(B); and, as appropriate, provide to the State agency comments, recommendations for additional or alternative corrective actions, and technical assistance; and

"(C) conduct audits, in accordance with the government auditing standards of the United States Comptroller General—

"(i) at least once every 3 years (or more frequently, in the case of a State which fails to meet requirements of this part, or of regulations implementing such requirements, concerning performance standards and reliability of program data) to assess the completeness, reliability, and security of the data, and the accuracy of the reporting systems, used for the calculations of performance indicators specified in subsection (g) and section 458;

"(ii) of the adequacy of financial management of the State program, including assessments of—

"(I) whether Federal and other funds made available to carry out the State program under this part are being appropriately expended, and are properly and fully accounted for; and

"(II) whether collections and disbursements of support payments and program income are carried out correctly and are properly and fully accounted for; and

"(iii) for such other purposes as the Secretary may find necessary;".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to calendar quarters beginning on or after the date which is 1 year after the enactment of this section.

SEC. 114. REQUIRED REPORTING PROCEDURES.

(a) ESTABLISHMENT.—Section 452(a)(5) (42 U.S.C. 652(a)(5)) is amended by inserting ", and establish procedures to be followed by States for collecting and reporting information required to be provided under this part, and establish uniform definitions (including those necessary to enable the measurement of State compliance with the requirements of this part relating to expedited processes and timely case processing) to be applied in following such procedures" before the semicolon.

(b) STATE PLAN REQUIREMENT.—Section 454 (42 U.S.C. 654), as amended by section 104(a), is amended—

(1) by striking "and" at the end of paragraph (24);

(2) by striking the period at the end of paragraph (25) and inserting "; and"; and

(3) by adding after paragraph (25) the following:

"(26) provide that the State shall use the definitions established under section 452(a)(5) in collecting and reporting information as required under this part.".

SEC. 115. AUTOMATED DATA PROCESSING REQUIREMENTS.

(a) REVISED REQUIREMENTS.—

(1) STATE PLAN.—Section 454(16) (42 U.S.C. 654(16)) is amended—

(A) by striking ", at the option of the State,";

(B) by inserting "and operation by the State agency" after "for the establishment";

(C) by inserting "meeting the requirements of section 454A" after "information retrieval system";

(D) by striking "in the State and localities thereof, so as (A)" and inserting "so as";

(E) by striking "(i)"; and

(F) by striking "(including, but not limited to," and all that follows and to the semicolon.

(2) AUTOMATED DATA PROCESSING.—Part D of title IV (42 U.S.C. 651–669) is amended by inserting after section 454 the following new section:

"AUTOMATED DATA PROCESSING

"SEC. 454A. (a) IN GENERAL.—In order to meet the requirements of this section, for purposes of the requirement of section 454(16), a State agency shall have in operation a single statewide automated data processing and information retrieval system which has the capability to perform the tasks specified in this section, and performs such tasks with the frequency and in the manner specified in this part or in regulations or guidelines of the Secretary.

"(b) PROGRAM MANAGEMENT.—The automated system required under this section shall perform such functions as the Secretary may specify relating to management of the program under this part, including—

"(1) controlling and accounting for use of Federal, State, and local funds to carry out such program; and

"(2) maintaining the data necessary to meet Federal reporting requirements on a timely basis.

"(c) CALCULATION OF PERFORMANCE INDICATORS.—In order to enable the Secretary to determine the incentive and penalty adjustments required by sections 452(g) and 458, the State agency shall—

"(1) use the automated system—

"(A) to maintain the requisite data on State performance with respect to paternity establishment and child support enforcement in the State; and

"(B) to calculate the IV–D paternity establishment percentage and overall performance in child support enforcement for the State for each fiscal year; and

"(2) have in place systems controls to ensure the completeness, and reliability of, and ready access to, the data described in paragraph (1)(A), and the accuracy of the calculations described in paragraph (1)(B).

"(d) INFORMATION INTEGRITY AND SECURITY.—The State agency shall have in effect safeguards on the integrity, accuracy, and completeness of, access to, and use of data in the automated system required under this section, which shall include the following (in addition to such other safeguards as the Secretary specifies in regulations):

"(1) POLICIES RESTRICTING ACCESS.—Written policies concerning access to data by State agency personnel, and sharing of data with other persons, which—

"(A) permit access to and use of data only to the extent necessary to carry out program responsibilities;

"(B) specify the data which may be used for particular program purposes, and the personnel permitted access to such data; and

"(C) ensure that data obtained or disclosed for a limited program purpose is not used or redisclosed for another, impermissible purpose.

"(2) SYSTEMS CONTROLS.—Systems controls (such as passwords or blocking of fields) to ensure strict adherence to the policies specified under paragraph (1).

"(3) MONITORING OF ACCESS.—Routine monitoring of access to and use of the automated system, through methods such as audit trails and feedback mechanisms, to guard against and promptly identify unauthorized access or use.

"(4) TRAINING AND INFORMATION.—The State agency shall have in effect procedures to ensure that all personnel (including State and local agency staff and contractors) who may have access to or be required to use sensitive or confidential program data are fully informed of applicable requirements and penalties, and are adequately trained in security procedures.

"(5) PENALTIES.—The State agency shall have in effect administrative penalties (up to and including dismissal from employment) for unauthorized access to, or disclosure or use of, confidential data.".

(3) REGULATIONS.—Section 452 (42 U.S.C. 652) is amended by adding at the end the following new subsection:

"(j) The Secretary shall prescribe final regulations for implementation of the requirements of section 454A not later than 2 years after the date of the enactment of this subsection.".

(4) IMPLEMENTATION TIMETABLE.—Section 454(24) (42 U.S.C. 654(24)), as amended by sections 104(a)(2) and 114(b)(1), is amended to read as follows:

"(24) provide that the State will have in effect an automated data processing and information retrieval system—

"(A) by October 1, 1996, meeting all requirements of this part which were enacted on or before the date of the enactment of the Family Support Act of 1988; and

"(B) by October 1, 1999, meeting all requirements of this part enacted on or before the date of the enactment of the Interstate Child Support Responsibility Act of 1995 (but this provision shall not be construed to alter earlier deadlines specified for elements of such system), except that such deadline shall be extended by 1 day for each day (if any) by which the Secretary fails to meet the deadline imposed by section 452(j);".

(b) SPECIAL FEDERAL MATCHING RATE FOR DEVELOPMENT COSTS OF AUTOMATED SYSTEMS.—Section 455(a) (42 U.S.C. 655(a)) is amended—

(1) in paragraph (1)(B)—

(A) by striking "90 percent" and inserting "the percent specified in paragraph (3)";

(B) by striking "so much of"; and

(C) by striking "which the Secretary" and all that follows through "thereof"; and

(2) by adding at the end the following new paragraph:

"(3)(A) The Secretary shall pay to each State, for each quarter in fiscal year 1996, 90 percent of so much of State expenditures described in paragraph (1)(B) as the Secretary finds are for a system meeting the requirements specified in section 454(16), or meeting such requirements without regard to subparagraph (D) thereof.

"(B)(i) The Secretary shall pay to each State, for each quarter in fiscal years 1997 through 2001, the percentage specified in clause (ii) of so much of State expenditures described in paragraph (1)(B) as the Secretary finds are for a system meeting the requirements specified in section 454(16) and 454A, subject to clause (iii).

"(ii) The percentage specified in this clause, for purposes of clause (i), is the higher of—

"(I) 80 percent, or

"(II) the percentage otherwise applicable to Federal payments to the State under subparagraph (A) (as adjusted pursuant to section 458).".

(c) CONFORMING AMENDMENT.—Section 123(c) of the Family Support Act of 1988 (102 Stat. 2352; Public Law 100-485) is repealed.

SEC. 116. DIRECTOR OF CSE PROGRAM; STAFFING STUDY.

(a) REPORTING TO SECRETARY.—Section 452(a) (42 U.S.C. 652(a)) is amended in the matter preceding paragraph (1) by striking "directly".

(b) STAFFING STUDIES.—

(1) SCOPE.—The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall, directly or by contract, conduct studies of the staffing of each State child support enforcement program under part D of title IV of the Social Security Act. Such studies shall—

(A) include a review of the staffing needs created by requirements for automated data processing, maintenance of a central case registry and centralized collections of child support, and of changes in these needs resulting from changes in such requirements; and

(B) examine and report on effective staffing practices used by the States and on recommended staffing procedures.

(2) FREQUENCY OF STUDIES.—The Secretary shall complete the first staffing study required under paragraph (1) not later than October 1, 1997, and may conduct additional studies subsequently at appropriate intervals.

(3) REPORT TO THE CONGRESS.—The Secretary shall submit a report to the Congress stating the findings and conclusions of each study conducted under this subsection.

SEC. 117. FUNDING FOR SECRETARIAL ASSISTANCE TO STATE PROGRAMS.

Section 452 (42 U.S.C. 652), as amended by section 115(a)(3), is amended by adding at the end the following new subsection:

"(k)(1) There shall be available to the Secretary, from amounts appropriated for fiscal year 1996 and each succeeding fiscal year for payments to States under this part, the amount specified in paragraph (2) for the costs to the Secretary for—

"(A) information dissemination and technical assistance to States, training of State and Federal staff, staffing studies, and related activities needed to improve programs (including technical assistance concerning State automated systems);

"(B) research, demonstration, and special projects of regional or national significance relating to the operation of State programs under this part; and

"(C) operation of the Federal Parent Locator Service under section 453, to the extent such costs are not recovered through user fees.

"(2) The amount specified in this paragraph for a fiscal year is the amount equal to a percentage of the reduction in Federal payments to States under part A on account of child support (including arrearages) collected in the preceding fiscal year on behalf of children receiving aid under such part A in such preceding fiscal year (as determined on the basis of the most recent reliable data available to the Secretary as of the end of the third calendar quarter following the end of such preceding fiscal year), equal to—

"(A) 1 percent, for the activities specified in subparagraphs (A) and (B) of paragraph (1); and

"(B) 2 percent, for the activities specified in subparagraph (C) of paragraph (1).".

SEC. 118. DATA COLLECTION AND REPORTS BY THE SECRETARY.

(a) ANNUAL REPORT TO CONGRESS.—

(1) IN GENERAL.—Section 452(a)(10)(A) (42 U.S.C. 652(a)(10)(A)) is amended—

(A) by striking "this part;" and inserting "this part, including—"; and

(B) by adding at the end the following indented clauses:

"(i) the total amount of child support payments collected as a result of services furnished during such fiscal year to individuals receiving services under this part;

"(ii) the cost to the States and to the Federal Government of furnishing such services to those individuals; and

"(iii) the number of cases involving families—

"(I) who became ineligible for aid under part A during a month in such fiscal year; and

"(II) with respect to whom a child support payment was received in the same month;".

(2) CERTAIN DATA.—Section 452(a)(10)(C) (42 U.S.C. 652(a)(10)(C)) is amended—

(A) in the matter preceding clause (i), by striking "with the data required under each clause being separately stated for cases" and all that follows through "part:" and inserting "separately stated for cases where the child is receiving aid to families with dependent children (or foster care maintenance payments under part E), or formerly received such aid or payments and the State is continuing to collect support assigned to it under section 402(a)(26), 471(a)(17), or 1912, and all other cases under this part—";

(B) in each of clauses (i) and (ii), by striking ", and the total amount of such obligations";

(C) in clause (iii), by striking "described in" and all that follows through the semicolon and inserting "in which support was collected during the fiscal year;";

(D) by striking clause (iv); and

(E) by redesignating clause (v) as clause (vii), and inserting after clause (iii) the following new clauses:

"(iv) the total amount of support collected during such fiscal year and distributed as current support;

"(v) the total amount of support collected during such fiscal year and distributed as arrearages;

"(vi) the total amount of support due and unpaid for all fiscal years; and".

(3) USE OF FEDERAL COURTS.—Section 452(a)(10)(G) (42 U.S.C. 652(a)(10)(G)) is amended by striking "on the use of Federal courts and".

(4) ADDITIONAL INFORMATION NOT NECESSARY.—Section 452(a)(10) (42 U.S.C. 652(a)(10)) is amended by striking all that follows subparagraph (I).

(b) DATA COLLECTION AND REPORTING.—Section 469 (42 U.S.C. 669) is amended—

(1) by striking subsections (a) and (b) and inserting the following:

"(a) The Secretary shall collect and maintain, on a fiscal year basis, up-to-date statistics, by State, with respect to services to establish paternity and services to establish child support obligations, the data specified in subsection (b), separately stated, in the case of each such service, with respect to—

"(1) families (or dependent children) receiving aid under plans approved under part A (or E); and

"(2) families not receiving such aid.

"(b) The data referred to in subsection (a) are—

"(1) the number of cases in the caseload of the State agency administering the plan under this part in which such service is needed; and

"(2) the number of such cases in which the service has been provided."; and

(2) in subsection (c), by striking "(a)(2)" and inserting "(b)(2)".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to fiscal year 1996 and succeeding fiscal years.

Subtitle C—Locate and Case Tracking

SEC. 121. CENTRAL STATE AND CASE REGISTRY.

Section 454A, as added by section 115(a)(2), is amended by adding at the end the following new subsections:

"(e) CENTRAL CASE REGISTRY.—

"(1) IN GENERAL.—The automated system required under this section shall perform the functions, in accordance with the provisions of this subsection, of a single central registry containing records with respect to each case in which services are being provided by the State agency (including, on and after October 1, 1998, each order specified in section 466(a)(12)), using such standardized data elements (such as names, social security numbers or other uniform identification numbers, dates of birth, and case identification numbers), and containing such other information (such as information on case status) as the Secretary may require.

"(2) PAYMENT RECORDS.—Each case record in the central registry shall include a record of—

"(A) the amount of monthly (or other periodic) support owed under the support order, and other amounts due or overdue (including arrearages, interest or late payment penalties, and fees);

"(B) all child support and related amounts collected (including such amounts as fees, late payment penalties, and interest on arrearages);

"(C) the distribution of such amounts collected; and

"(D) the birth date of the child for whom the child support order is entered.

"(3) UPDATING AND MONITORING.—The State agency shall promptly establish and maintain, and regularly monitor, case records in the registry required by this subsection, on the basis of—

"(A) information on administrative actions and administrative and judicial proceedings and orders relating to paternity and support;

"(B) information obtained from matches with Federal, State, or local data sources;

"(C) information on support collections and distributions; and

"(D) any other relevant information.

"(f) DATA MATCHES AND OTHER DISCLOSURES OF INFORMATION.—The automated system required under this section shall have the capacity, and be used by the State agency, to extract data at such times, and in such standardized format or formats, as may be required by the Secretary, and to share and match data with, and receive data from, other data bases and data matching services, in order to obtain (or provide) information necessary to enable the State agency (or Secretary or other State or Federal agencies) to carry out responsibilities under this part. Data matching activities of the State agency shall include at least the following:

"(1) DATA BANK OF CHILD SUPPORT ORDERS.—Furnishing to the Data Bank of Child Support Orders established under section 453(h) (and updating as necessary, with information, including notice of expiration of orders) minimal information specified by the Secretary on each child support case in the central case registry.

"(2) FEDERAL PARENT LOCATOR SERVICE.—Exchanging data with the Federal Parent

Locator Service for the purposes specified in section 453.

"(3) AFDC AND MEDICAID AGENCIES.—Exchanging data with State agencies (of the State and of other States) administering the programs under part A and title XIX, as necessary for the performance of State agency responsibilities under this part and under such programs.

"(4) INTRA- AND INTERSTATE DATA MATCHES.—Exchanging data with other agencies of the State, agencies of other States, and interstate information networks, as necessary and appropriate to carry out (or assist other States to carry out) the purposes of this part.".

SEC. 122. CENTRALIZED COLLECTION AND DISBURSEMENT OF SUPPORT PAYMENTS.

(a) STATE PLAN REQUIREMENT.—Section 454 (42 U.S.C. 654), as amended by sections 104(a) and 114(b), is amended—

(1) by striking "and" at the end of paragraph (25);

(2) by striking the period at the end of paragraph (26) and inserting "; and"; and

(3) by adding after paragraph (26) the following new paragraph:

"(27) provide that the State agency, on and after October 1, 1998—

"(A) will operate a centralized, automated unit for the collection and disbursement of child support under orders being enforced under this part, in accordance with section 454B; and

"(B) will have sufficient State staff (consisting of State employees), and, at State option, contractors reporting directly to the State agency to monitor and enforce support collections through such centralized unit, including carrying out the automated data processing responsibilities specified in section 454A(g) and to impose, as appropriate in particular cases, the administrative enforcement remedies specified in section 466(c)(1).".

(b) ESTABLISHMENT OF CENTRALIZED COLLECTION UNIT.—Part D of title IV (42 U.S.C. 651–669) is amended by adding after section 454A the following new section:

"CENTRALIZED COLLECTION AND DISBURSEMENT OF SUPPORT PAYMENTS

"SEC. 454B. (a) IN GENERAL.—In order to meet the requirement of section 454(27), the State agency must operate a single, centralized, automated unit for the collection and disbursement of support payments, coordinated with the automated data system required under section 454A, in accordance with the provisions of this section, which shall be—

"(1) operated directly by the State agency (or by 2 or more State agencies under a regional cooperative agreement), or by a single contractor responsible directly to the State agency; and

"(2) used for the collection and disbursement (including interstate collection and disbursement) of payments under support orders in all cases being enforced by the State pursuant to section 454(4).

"(b) REQUIRED PROCEDURES.—The centralized collections unit shall use automated procedures, electronic processes, and computer-driven technology to the maximum extent feasible, efficient, and economical, for the collection and disbursement of support payments, including procedures—

"(1) for receipt of payments from parents, employers, and other States, and for disbursements to custodial parents and other obligees, the State agency, and the State agencies of other States;

"(2) for accurate identification of payments;

"(3) to ensure prompt disbursement of the custodial parent's share of any payment; and

"(4) to furnish to either parent, upon request, timely information on the current status of support payments.".

(c) USE OF AUTOMATED SYSTEM.—Section 454A, as added by section 115(a)(2) and as amended by section 121, is amended by adding at the end the following new subsection:

"(g) CENTRALIZED COLLECTION AND DISTRIBUTION OF SUPPORT PAYMENTS.—The automated system required under this section shall be used, to the maximum extent feasible, to assist and facilitate collections and disbursement of support payments through the centralized collections unit operated pursuant to section 454B, through the performance of functions including at a minimum—

"(1) generation of orders and notices to employers (and other debtors) for the withholding of wages (and other income)—

"(A) within 2 working days after receipt (from the directory of New Hires established under section 453(i) or any other source) of notice of and the income source subject to such withholding; and

"(B) using uniform formats directed by the Secretary;

"(2) ongoing monitoring to promptly identify failures to make timely payment; and

"(3) automatic use of enforcement mechanisms (including mechanisms authorized pursuant to section 466(c)) where payments are not timely made.".

(d) EFFECTIVE DATE.—The amendments made by this section shall become effective on October 1, 1998.

SEC. 123. AMENDMENTS CONCERNING INCOME WITHHOLDING.

(a) MANDATORY INCOME WITHHOLDING.—

(1) FROM WAGES.—Section 466(a)(1) (42 U.S.C. 666(a)(1)) is amended to read as follows:

"(1)(A) Procedures described in subsection (b) for the withholding from income of amounts payable as support in cases subject to enforcement under the State plan.

"(B) Procedures under which all child support orders issued (or modified) before October 1, 1996, and which are not otherwise subject to withholding under subsection (b), shall become subject to withholding from wages as provided in subsection (b) if arrearages occur, without the need for a judicial or administrative hearing.".

(2) REPEAL OF CERTAIN PROVISIONS CONCERNING ARREARAGES.—Section 466(a)(8) (42 U.S.C. 666(a)(8)) is repealed.

(3) PROCEDURES DESCRIBED.—Section 466(b) (42 U.S.C. 666(b)) is amended—

(A) in the matter preceding paragraph (1), by striking "subsection (a)(1)" and inserting "subsection (a)(1)(A)";

(B) in paragraph (5), by striking "a public agency" and all that follows through the period and inserting "the State through the centralized collections unit established pursuant to section 454B, in accordance with the requirements of such section 454B.";

(C) in paragraph (6)(A)(i)—

(i) by inserting ", in accordance with timetables established by the Secretary," after "must be required"; and

(ii) by striking "to the appropriate agency" and all that follows through the period and inserting "to the State centralized collections unit within 5 working days after the date such amount would (but for this subsection) have been paid or credited to the employee, for distribution in accordance with this part.";

(D) in paragraph (6)(A)(ii), by inserting "be in a standard format prescribed by the Secretary, and" after "shall"; and

(E) in paragraph (6)(D) to read as follows:

"(D) Provision must be made for the imposition of a fine against any employer who—

"(i) discharges from employment, refuses to employ, or takes disciplinary action against any absent parent subject to wage withholding required by this subsection because of the existence of such withholding and the obligations or additional obligations which it imposes upon the employer; or

"(ii) fails to withhold support from wages, or to pay such amounts to the State centralized collections unit in accordance with this subsection.".

(b) CONFORMING AMENDMENT.—Section 466(c) (42 U.S.C. 666(c)) is repealed.

(c) DEFINITION OF TERMS.—The Secretary of Health and Human Services shall promulgate regulations providing definitions, for purposes of part D of title IV of the Social Security Act, for the term "income" and for such other terms relating to income withholding under section 466(b) of such Act as the Secretary may find it necessary or advisable to define.

SEC. 124. LOCATOR INFORMATION FROM INTERSTATE NETWORKS.

Section 466(a) (42 U.S.C. 666(a)), as amended by section 123(a)(2), is amended by inserting after paragraph (7) the following new paragraph:

"(8) Procedures ensuring that the State will neither provide funding for, nor use for any purpose (including any purpose unrelated to the purposes of this part), any automated interstate network or system used to locate individuals—

"(A) for purposes relating to the use of motor vehicles; or

"(B) providing information for law enforcement purposes (where child support enforcement agencies are otherwise allowed access by State and Federal law),

unless all Federal and State agencies administering programs under this part (including the entities established under section 453) have access to information in such system or network to the same extent as any other user of such system or network.".

SEC. 125. EXPANDED FEDERAL PARENT LOCATOR SERVICE.

(a) EXPANDED AUTHORITY TO LOCATE INDIVIDUALS AND ASSETS.—Section 453 (42 U.S.C. 653) is amended—

(1) in subsection (a), by striking "information as to the whereabouts" and all that follows through the period and inserting ", for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations—

"(1) information on, or facilitating the discovery of, the location of any individual—

"(A) who is under an obligation to pay child support;

"(B) against whom such an obligation is sought; or

"(C) to whom such an obligation is owed,

including such individual's social security number (or numbers), most recent residential address, and the name, address, and employer identification number of such individual's employer; and

"(2) information on the individual's wages (or other income) from, and benefits of, employment (including rights to or enrollment in group health care coverage); and

"(3) information on the type, status, location, and amount of any assets of, or debts owed by or to, any such individual.";

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by striking "social security" and all that follows through "absent parent" and inserting "information specified in subsection (a)"; and

(B) in paragraph (2), by inserting before the period ", or from any consumer reporting agency (as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f))"; and

(3) in subsection (e)(1), by inserting before the period ", or by consumer reporting agencies".

(b) REIMBURSEMENT FOR DATA FROM FEDERAL AGENCIES.—Section 453(e)(2) (42 U.S.C. 653(e)(2)) is amended in the fourth sentence by inserting before the period "in an amount which the Secretary determines to be reasonable payment for the data exchange (which amount shall not include payment for the costs of obtaining, compiling, or maintaining the data)".

(c) ACCESS TO CONSUMER REPORTS UNDER FAIR CREDIT REPORTING ACT.—

(1) IN GENERAL.—Section 608 of the Fair Credit Reporting Act (15 U.S.C. 1681f) is amended—

(A) by striking ", limited to" and inserting "to a governmental agency (including the entire consumer report, in the case of a Federal, State, or local agency administering a program under part D of title IV of the Social Security Act, and limited to"; and

(B) by striking "employment, to a governmental agency" and inserting "employment, in the case of any other governmental agency)".

(2) REIMBURSEMENT FOR REPORTS BY STATE AGENCIES AND CREDIT BUREAUS.—Section 453 (42 U.S.C. 653) is amended by adding at the end the following new subsection:

"(g) The Secretary is authorized to reimburse to State agencies and consumer credit reporting agencies the costs incurred by such entities in furnishing information requested by the Secretary pursuant to this section in an amount which the Secretary determines to be reasonable payment for the data exchange (which amount shall not include payment for the costs of obtaining, compiling, or maintaining the data).".

(d) DISCLOSURE OF TAX RETURN INFORMATION.—

(1) BY THE SECRETARY OF THE TREASURY.—Section 6103(*l*)(6)(A)(ii) of the Internal Revenue Code of 1986 (relating to disclosure of return information to Federal, State, and local child support enforcement agencies) is amended by striking ", but only if" and all that follows to the period.

(2) BY THE SOCIAL SECURITY ADMINISTRATION.—Section 6103(*l*)(8) of the Internal Revenue Code of 1986 (relating to disclosure of certain return information by Social Security Administration to State and local child support enforcement agencies) is amended—

(A) in subparagraph (A), by striking "State or local" and inserting "Federal, State, or local"; and

(B) in subparagraph (C), by inserting "(including any entity under contract with such agency)" after "thereof".

(e) TECHNICAL AMENDMENTS.—

(1) Sections 452(a)(9), 453(a), 453(b), 463(a), and 463(e) (42 U.S.C. 652(a)(9), 653(a), 653(b), 663(a), and 663(e)) are each amended by inserting "Federal" before "Parent" each place it appears.

(2) Section 453 (42 U.S.C. 653) is amended in the heading by inserting "FEDERAL" before "PARENT".

(f) NEW COMPONENTS.—Section 453 (42 U.S.C. 653), as amended by subsection (c)(2), is amended by adding at the end the following new subsections:

"(h) DATA BANK OF CHILD SUPPORT ORDERS.—

"(1) IN GENERAL.—Not later than October 1, 1998, in order to assist States in administering their State plans under this part and parts A, F, and G, and for the other purposes specified in this section, the Secretary shall establish and maintain in the Federal Parent Locator Service an automated registry to be known as the Data Bank of Child Support Orders, which shall contain abstracts of child support orders and other information described in paragraph (2) on each case in each State central case registry maintained pursuant to section 454A(e), as furnished (and regularly updated), pursuant to section 454A(f), by State agencies administering programs under this part.

"(2) CASE INFORMATION.—The information referred to in paragraph (1), as specified by the Secretary, shall include sufficient information (including names, social security numbers or other uniform identification numbers, and State case identification numbers) to identify the individuals who owe or are owed support (or with respect to or on behalf of whom support obligations are sought to be established), and the State or States which have established or modified, or are enforcing or seeking to establish, such an order.

"(i) DIRECTORY OF NEW HIRES.—

"(1) IN GENERAL.—Not later than October 1, 1998, in order to assist States in administering their State plans under this part and parts A, F, and G, and for the other purposes specified in this section, the Secretary shall establish and maintain in the Federal Parent Locator Service an automated directory to be known as the directory of New Hires, containing—

"(A) information supplied by employers on each newly hired individual, in accordance with paragraph (2); and

"(B) information supplied by State agencies administering State unemployment compensation laws, in accordance with paragraph (3).

"(2) EMPLOYER INFORMATION.—

"(A) INFORMATION REQUIRED.—Subject to subparagraph (D), each employer shall furnish to the Secretary, for inclusion in the directory under this subsection, not later than 10 days after the date (on or after October 1, 1998) on which the employer hires a new employee (as defined in subparagraph (C)), a report containing the name, date of birth, and social security number of such employee, and the employer identification number of the employer.

"(B) REPORTING METHOD AND FORMAT.—The Secretary shall provide for transmission of the reports required under subparagraph (A) using formats and methods which minimize the burden on employers, which shall include—

"(i) automated or electronic transmission of such reports;

"(ii) transmission by regular mail; and

"(iii) transmission of a copy of the form required for purposes of compliance with section 3402 of the Internal Revenue Code of 1986.

"(C) EMPLOYEE DEFINED.—For purposes of this paragraph, the term 'employee' means any individual subject to the requirement of section 3402(f)(2) of the Internal Revenue Code of 1986.

"(D) PAPERWORK REDUCTION REQUIREMENT.—As required by the information resources management policies published by the Director of the Office of Management and Budget pursuant to section 3504(b)(1) of title 44, United States Code, the Secretary, in order to minimize the cost and reporting burden on employers, shall not require reporting pursuant to this paragraph if an alternative reporting mechanism can be developed that either relies on existing Federal or State reporting or enables the Secretary to collect the needed information in a more cost-effective and equally expeditious manner, taking into account the reporting costs on employers.

"(E) CIVIL MONEY PENALTY ON NONCOMPLYING EMPLOYERS.—

"(i) IN GENERAL.—Any employer that fails to make a timely report in accordance with this paragraph with respect to an individual shall be subject to a civil money penalty, for each calendar year in which the failure occurs, of the lesser of $500 or 1 percent of the wages or other compensation paid by such employer to such individual during such calendar year.

"(ii) APPLICATION OF SECTION 1128A.—Subject to clause (iii), the provisions of section 1128A (other than subsections (a) and (b) thereof) shall apply to a civil money penalty under clause (i) in the same manner as they apply to a civil money penalty or proceeding under section 1128A(a).

"(iii) COSTS TO SECRETARY.—Any employer with respect to whom a penalty under this subparagraph is upheld after an administrative hearing shall be liable to pay all costs of the Secretary with respect to such hearing.

"(3) EMPLOYMENT SECURITY INFORMATION.—

"(A) REPORTING REQUIREMENT.—Each State agency administering a State unemployment compensation law approved by the Secretary of Labor under the Federal Unemployment Tax Act shall furnish to the Secretary extracts of the reports to the Secretary of Labor concerning the wages and unemployment compensation paid to individuals required under section 303(a)(6), in accordance with subparagraph (B).

"(B) MANNER OF COMPLIANCE.—The extracts required under subparagraph (A) shall be furnished to the Secretary on a quarterly basis, with respect to calendar quarters beginning on and after October 1, 1996, by such dates, in such format, and containing such information as required by that Secretary in regulations.

"(j) DATA MATCHES AND OTHER DISCLOSURES.—

"(1) VERIFICATION BY SOCIAL SECURITY ADMINISTRATION.—

"(A) TRANSMISSION OF DATA.—The Secretary shall transmit data on individuals and employers in the registries maintained under this section to the Social Security Administration to the extent necessary for verification in accordance with subparagraph (B).

"(B) VERIFICATION.—The Commissioner of Social Security shall verify the accuracy of, correct or supply to the extent necessary and feasible, and report to the Secretary, the following information in data supplied by the Secretary pursuant to subparagraph (A):

"(i) the name, social security number, and birth date of each individual; and

"(ii) the employer identification number of each employer.

"(2) CHILD SUPPORT LOCATOR MATCHES.—For the purpose of locating individuals for purposes of paternity establishment and establishment and enforcement of child support, the Secretary shall—

"(A) match data in the directory of New Hires against the child support order abstracts in the Data Bank of Child Support Orders not less than every 2 working days; and

"(B) report information obtained from a match established under subparagraph (A) to concerned State agencies operating programs under this part not later than 2 working days after such match.

"(3) DATA MATCHES AND DISCLOSURES OF DATA IN ALL REGISTRIES FOR TITLE IV PROGRAM PURPOSES.—The Secretary shall—

"(A) perform matches of data in each component of the Federal Parent Locator Service maintained under this section against data in each other such component (other than the matches required pursuant to paragraph (1)), and report information resulting from such matches to State agencies operating programs under this part and parts A, F, and G; and

"(B) disclose data in such registries to such State agencies,

to the extent, and with the frequency, that the Secretary determines to be effective in assisting such States to carry out their responsibilities under such programs.

"(k) FEES.—

"(1) FOR SSA VERIFICATION.—The Secretary shall reimburse the Commissioner of Social Security, at a rate negotiated between the Secretary and the Commissioner, the costs incurred by the Commissioner in performing the verification services specified in subsection (j).

"(2) FOR INFORMATION FROM SESAS.—The Secretary shall reimburse costs incurred by State employment security agencies in furnishing data as required by subsection (i)(3), at rates which the Secretary determines to be reasonable (which rates shall not include payment for the costs of obtaining, compiling, or maintaining such data).

"(3) FOR INFORMATION FURNISHED TO STATE AND FEDERAL AGENCIES.—State and Federal agencies receiving data or information from the Secretary pursuant to this section shall reimburse the costs incurred by the Secretary in furnishing such data or information, at rates which the Secretary determines to be reasonable (which rates shall include payment for the costs of obtaining, verifying, maintaining, and matching such data or information).

"(l) RESTRICTION ON DISCLOSURE AND USE.—Data in the Federal Parent Locator Service, and information resulting from matches using such data, shall not be used or disclosed except as specifically provided in this section.

"(m) RETENTION OF DATA.—Data in the Federal Parent Locator Service, and data resulting from matches performed pursuant to this section, shall be retained for such period (determined by the Secretary) as appropriate for the data uses specified in this section.

"(n) INFORMATION INTEGRITY AND SECURITY.—The Secretary shall establish and implement safeguards with respect to the entities established under this section designed to—

"(1) ensure the accuracy and completeness of information in the Federal Parent Locator Service; and

"(2) restrict access to confidential information in the Federal Parent Locator Service to authorized persons, and restrict use of such information to authorized purposes.

"(o) LIMIT ON LIABILITY.—The Secretary shall not be liable to either a State or an individual for inaccurate information provided to a component of the Federal Parent Locator Service and disclosed by the Secretary in accordance with this section.".

(g) CONFORMING AMENDMENTS.—

(1) TO PART D OF TITLE IV OF THE SOCIAL SECURITY ACT.—Section 454(8)(B) (42 U.S.C. 654(8)(B)) is amended to read as follows:

"(B) the Federal Parent Locator Service established under section 453;".

(2) TO FEDERAL UNEMPLOYMENT TAX ACT.—Section 3304(16) of the Internal Revenue Code of 1986 (relating to approval of State laws) is amended—

(A) by striking "Secretary of Health, Education, and Welfare" each place it appears and inserting "Secretary of Health and Human Services";

(B) in subparagraph (B), by striking "such information" and all that follows through the semicolon and inserting "information furnished under subparagraph (A) or (B) is used only for the purposes authorized under such subparagraph;";

(C) by striking "and" at the end of subparagraph (A);

(D) by redesignating subparagraph (B) as subparagraph (C); and

(E) by inserting after subparagraph (A) the following new subparagraph:

"(B) wage and unemployment compensation information contained in the records of such agency shall be furnished to the Secretary of Health and Human Services (in accordance with regulations promulgated by such Secretary) as necessary for the purposes of the directory of New Hires established under section 453(i) of the Social Security Act, and".

(3) TO STATE GRANT PROGRAM UNDER TITLE III OF THE SOCIAL SECURITY ACT.—Section 303(a) (42 U.S.C. 503(a)) is amended—

(A) by striking "and" at the end of paragraph (8);

(B) by striking the period at the end of paragraph (9) and inserting "; and"; and

(C) by adding after paragraph (9) the following new paragraph:

"(10) The making of quarterly electronic reports, at such dates, in such format, and containing such information, as required by the Secretary under section 453(i)(3), and compliance with such provisions as such Secretary may find necessary to ensure the correctness and verification of such reports.".

SEC. 126. USE OF SOCIAL SECURITY NUMBERS.

(a) STATE LAW REQUIREMENT.—Section 466(a) (42 U.S.C. 666(a)), as amended by section 101(a), is amended by adding at the end the following new paragraph:

"(13) Procedures requiring the recording of social security numbers—

"(A) of both parties on marriage licenses and divorce decrees;

"(B) of both parents, on birth records and child support and paternity orders; and

"(C) on all applications for motor vehicle licenses and professional licenses.".

(b) CLARIFICATION OF FEDERAL POLICY.—Section 205(c)(2)(C)(ii) (42 U.S.C. 405(c)(2)(C)(ii)) is amended by striking the third sentence and inserting "This clause shall not be considered to authorize disclosure of such numbers except as provided in the preceding sentence.".

Subtitle D—Streamlining and Uniformity of Procedures

SEC. 131. ADOPTION OF UNIFORM STATE LAWS.

Section 466(a) (42 U.S.C. 666(a)), as amended by sections 101(a) and 126(a), is amended by adding at the end the following new paragraph:

"(14)(A) Procedures under which the State adopts in its entirety (with the modifications and additions specified in this paragraph) not later than January 1, 1997, and uses on and after such date, the Uniform Interstate Family Support Act, as approved by the National Conference of Commissioners on Uniform State Laws in August 1992.

"(B) The State law adopted pursuant to subparagraph (A) shall be applied to any case—

"(i) involving an order established or modified in one State and for which a subsequent modification is sought in another State; or

"(ii) in which interstate activity is required to enforce an order.

"(C) The State law adopted pursuant to subparagraph (A) of this paragraph shall contain the following provision in lieu of section 611(a)(1) of the Uniform Interstate Family Support Act described in such subparagraph (A):

"'(1) the following requirements are met:

"'(i) the child, the individual obligee, and the obligor—

"'(I) do not reside in the issuing State; and

"'(II) either reside in this State or are subject to the jurisdiction of this State pursuant to section 201; and

"'(ii) in any case where another State is exercising or seeks to exercise jurisdiction to modify the order, the conditions of section 204 are met to the same extent as required for proceedings to establish orders; or'.

"(D) The State law adopted pursuant to subparagraph (A) shall recognize as valid, for purposes of any proceeding subject to such State law, service of process upon persons in the State (and proof of such service) by any means acceptable in another State which is the initiating or responding State in such proceeding.".

SEC. 132. IMPROVEMENTS TO FULL FAITH AND CREDIT FOR CHILD SUPPORT ORDERS.

Section 1738B of title 28, United States Code, is amended—

(1) in subsection (a)(2), by striking "subsection (e)" and inserting "subsections (e), (f), and (i)";

(2) in subsection (b), by inserting after the first undesignated paragraph the following:

"'child's home State' means the State in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the State in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the 6-month period.";

(3) in subsection (c), by inserting "by a court of a State" before "is made";

(4) in subsection (c)(1), by inserting "and subsections (e), (f), and (g)" after "located";

(5) in subsection (d)—

(A) by inserting "individual" before "contestant"; and

(B) by striking "subsection (e)" and inserting "subsections (e) and (f)";

(6) in subsection (e), by striking "make a modification of a child support order with respect to a child that is made" and inserting "modify a child support order issued";

(7) in subsection (e)(1), by inserting "pursuant to subsection (i)" before the semicolon;

(8) in subsection (e)(2)—

(A) by inserting "individual" before "contestant" each place such term appears; and

(B) by striking "to that court's making the modification and assuming" and inserting "with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume";

(9) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively;

(10) by inserting after subsection (e) the following new subsection:

"(f) RECOGNITION OF CHILD SUPPORT ORDERS.—If 1 or more child support orders have been issued in this or another State with regard to an obligor and a child, a court shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction and enforcement:

"(1) If only 1 court has issued a child support order, the order of that court must be recognized.

"(2) If 2 or more courts have issued child support orders for the same obligor and child, and only 1 of the courts would have continuing, exclusive jurisdiction under this section, the order of that court must be recognized.

"(3) If 2 or more courts have issued child support orders for the same obligor and child, and only 1 of the courts would have continuing, exclusive jurisdiction under this section, an order issued by a court in the current home State of the child must be recognized, but if an order has not been issued in the current home State of the child, the order most recently issued must be recognized.

"(4) If 2 or more courts have issued child support orders for the same obligor and child, and none of the courts would have continuing, exclusive jurisdiction under this section, a court may issue a child support order, which must be recognized.

"(5) The court that has issued an order recognized under this subsection is the court having continuing, exclusive jurisdiction.";

(11) in subsection (g) (as so redesignated)—

(A) by striking "PRIOR" and inserting "MODIFIED"; and

(B) by striking "subsection (e)" and inserting "subsections (e) and (f)";

(12) in subsection (h) (as so redesignated)—

(A) in paragraph (2), by inserting "including the duration of current payments and other obligations of support" before the comma; and

(B) in paragraph (3), by inserting "arrears under" after "enforce"; and

(13) by adding at the end the following new subsection:

"(i) REGISTRATION FOR MODIFICATION.—If there is no individual contestant or child residing in the issuing State, the party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another State shall register that order in a State with jurisdiction over the nonmovant for the purpose of modification.".

SEC. 133. STATE LAWS PROVIDING EXPEDITED PROCEDURES.

(a) STATE LAW REQUIREMENTS.—Section 466 (42 U.S.C. 666), as amended by section 123(b), is amended—

(1) in subsection (a)(2), in the first sentence, to read as follows: "Expedited administrative and judicial procedures (including the procedures specified in subsection (c)) for establishing paternity and for establishing, modifying, and enforcing support obligations."; and

(2) by adding after subsection (b) the following new subsection:

"(c) The procedures specified in this subsection are the following:

"(1) Procedures which give the State agency the authority (and recognize and enforce the authority of State agencies of other States), without the necessity of obtaining an order from any other judicial or administrative tribunal (but subject to due process safeguards, including (as appropriate) requirements for notice, opportunity to contest the action, and opportunity for an appeal on the record to an independent administrative or judicial tribunal), to take the following actions relating to establishment or enforcement of orders:

"(A) To order genetic testing for the purpose of paternity establishment as provided in section 466(a)(5).

"(B) To enter a default order, upon a showing of service of process and any additional showing required by State law—

"(i) establishing paternity, in the case of any putative father who refuses to submit to genetic testing; and

"(ii) establishing or modifying a support obligation, in the case of a parent (or other obligor or obligee) who fails to respond to notice to appear at a proceeding for such purpose.

"(C) To subpoena any financial or other information needed to establish, modify, or enforce an order, and to sanction failure to respond to any such subpoena.

"(D) To require all entities in the State (including for-profit, nonprofit, and governmental employers) to provide promptly, in response to a request by the State agency of that or any other State administering a program under this part, information on the employment, compensation, and benefits of any individual employed by such entity as an employee or contractor, and to sanction failure to respond to any such request.

"(E) To obtain access, subject to safeguards on privacy and information security, to the following records (including automated access, in the case of records maintained in automated data bases):

"(i) Records of other State and local government agencies, including—

"(I) vital statistics (including records of marriage, birth, and divorce);

"(II) State and local tax and revenue records (including information on residence address, employer, income and assets);

"(III) records concerning real and titled personal property;

"(IV) records of occupational and professional licenses, and records concerning the ownership and control of corporations, partnerships, and other business entities;

"(V) employment security records;

"(VI) records of agencies administering public assistance programs;

"(VII) records of the motor vehicle department; and

"(VIII) corrections records.

"(ii) Certain records held by private entities, including—

"(I) customer records of public utilities and cable television companies; and

"(II) information (including information on assets and liabilities) on individuals who owe or are owed support (or against or with respect to whom a support obligation is sought) held by financial institutions (subject to limitations on liability of such entities arising from affording such access).

"(F) To order income withholding in accordance with subsection (a)(1) and (b) of section 466.

"(G) In cases where support is subject to an assignment under section 402(a)(26), 471(a)(17), or 1912, or to a requirement to pay through the centralized collections unit under section 454B) upon providing notice to obligor and obligee, to direct the obligor or other payor to change the payee to the appropriate government entity.

"(H) For the purpose of securing overdue support—

"(i) to intercept and seize any periodic or lump-sum payment to the obligor by or through a State or local government agency, including—

"(I) unemployment compensation, workers' compensation, and other benefits;

"(II) judgments and settlements in cases under the jurisdiction of the State or local government; and

"(III) lottery winnings;

"(ii) to attach and seize assets of the obligor held by financial institutions;

"(iii) to attach public and private retirement funds in appropriate cases, as determined by the Secretary; and

"(iv) to impose liens in accordance with paragraph (a)(4) and, in appropriate cases, to force sale of property and distribution of proceeds.

"(I) For the purpose of securing overdue support, to increase the amount of monthly support payments to include amounts for arrearages (subject to such conditions or restrictions as the State may provide).

"(J) To suspend drivers' licenses of individuals owing past-due support, in accordance with subsection (a)(16).

"(2) The expedited procedures required under subsection (a)(2) shall include the following rules and authority, applicable with respect to all proceedings to establish paternity or to establish, modify, or enforce support orders:

"(A) Procedures under which—

"(i) the parties to any paternity or child support proceedings are required (subject to privacy safeguards) to file with the tribunal before entry of an order, and to update as appropriate, information on location and identity (including social security number, residential and mailing addresses, telephone number, driver's license number, and name, address, and telephone number of employer); and

"(ii) in any subsequent child support enforcement action between the same parties, the tribunal shall be authorized, upon sufficient showing that diligent effort has been made to ascertain such party's current location, to deem due process requirements for notice and service of process to be met, with respect to such party, by delivery to the most recent residential or employer address so filed pursuant to clause (i).

"(B) Procedures under which—

"(i) the State agency and any administrative or judicial tribunal with authority to hear child support and paternity cases exerts statewide jurisdiction over the parties, and orders issued in such cases have statewide effect; and

"(ii) in the case of a State in which orders in such cases are issued by local jurisdictions, a case may be transferred between jurisdictions in the State without need for any additional filing by the petitioner, or service of process upon the respondent, to retain jurisdiction over the parties.".

(c) EXCEPTIONS FROM STATE LAW REQUIREMENTS.—Section 466(d) (42 U.S.C. 666(d)) is amended—

(1) by striking "(d) If" and inserting "(d)(1) Subject to paragraph (2), if"; and

(2) by adding at the end the following new paragraph:

"(2) The Secretary shall not grant an exemption from the requirements of—

"(A) subsection (a)(5) (concerning procedures for paternity establishment);

"(B) subsection (a)(10) (concerning modification of orders);

"(C) subsection (a)(12) (concerning recording of orders in the central State case registry);

"(D) subsection (a)(13) (concerning recording of social security numbers);

"(E) subsection (a)(14) (concerning interstate enforcement); or

"(F) subsection (c) (concerning expedited procedures), other than paragraph (1)(A) thereof (concerning establishment or modification of support amount).".

(c) AUTOMATION OF STATE AGENCY FUNCTIONS.—Section 454A, as added by section 115(a)(2) and as amended by sections 121 and 122(c), is amended by adding at the end the following new subsection:

"(h) EXPEDITED ADMINISTRATIVE PROCEDURES.—The automated system required under this section shall be used, to the maximum extent feasible, to implement any expedited administrative procedures required under section 466(c).".

Subtitle E—Paternity Establishment

SEC. 141. STATE LAWS CONCERNING PATERNITY ESTABLISHMENT.

(a) STATE LAWS REQUIRED.—Section 466(a)(5) (42 U.S.C. 666(a)(5)) is amended—

(1) in subparagraph (B)—

(A) by striking "(B)" and inserting "(B)(i)";

(B) in clause (i), as redesignated, by inserting before the period ", where such request is supported by a sworn statement—

"(I) by such party alleging paternity setting forth facts establishing a reasonable possibility of the requisite sexual contact of the parties; or

"(II) by such party denying paternity setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact of the parties;"; and

(C) by inserting after clause (i) (as redesignated) the following new clause:

"(ii) Procedures which require the State agency, in any case in which such agency orders genetic testing—

"(I) to pay the costs of such tests, subject to recoupment (where the State so elects) from the putative father if paternity is established; and

"(II) to obtain additional testing in any case where an original test result is disputed, upon request and advance payment by the disputing party.";

(2) by striking subparagraphs (C), (D), (E), and (F) and inserting the following:

"(C)(i) Procedures for a simple civil process for voluntarily acknowledging paternity under which the State must provide that, before a mother and a putative father can sign an acknowledgment of paternity, the putative father and the mother must be given notice, orally, in writing, and in a language that each can understand, of the alternatives to, the legal consequences of, and the rights (including, if 1 parent is a minor, any rights afforded due to minority status) and responsibilities that arise from, signing the acknowledgment.

"(ii) Such procedures must include a hospital-based program for the voluntary acknowledgment of paternity focusing on the period immediately before or after the birth of a child.

"(iii) Such procedures must require the State agency responsible for maintaining birth records to offer voluntary paternity establishment services.

"(iv) The Secretary shall prescribe regulations governing voluntary paternity establishment services offered by hospitals and birth record agencies. The Secretary shall prescribe regulations specifying the types of other entities that may offer voluntary paternity establishment services, and governing the provision of such services, which shall include a requirement that such an entity must use the same notice provisions used by, the same materials used by, provide the personnel providing such services with the same training provided by, and evaluate the provision of such services in the same manner as, voluntary paternity establishment programs of hospitals and birth record agencies.

"(D)(i) Procedures under which a signed acknowledgment of paternity is considered a legal finding of paternity, subject to the right of any signatory to rescind the acknowledgment within 60 days.

"(ii)(I) Procedures under which, after the 60-day period referred to in clause (i), a signed acknowledgment of paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger, and under which the legal responsibilities (including child support obligations) of any signatory arising from the acknowledgment may not be suspended during the challenge, except for good cause shown.

"(II) Procedures under which, after the 60-day period referred to in clause (i), a minor who signs an acknowledgment of paternity other than in the presence of a parent or court-appointed guardian ad litem may rescind the acknowledgment in a judicial or administrative proceeding, until the earlier of—

"(aa) attaining the age of majority; or

"(bb) the date of the first judicial or administrative proceeding brought (after the signing) to establish a child support obligation, visitation rights, or custody rights with respect to the child whose paternity is the subject of the acknowledgment, and at which the minor is represented by a parent, guardian ad litem, or attorney.

"(E) Procedures under which no judicial or administrative proceedings are required or permitted to ratify an unchallenged acknowledgment of paternity.

"(F) Procedures requiring—

"(i) that the State admit into evidence, for purposes of establishing paternity, results of any genetic test that is—

"(I) of a type generally acknowledged, by accreditation bodies designated by the Secretary, as reliable evidence of paternity; and

"(II) performed by a laboratory approved by such an accreditation body;

"(ii) that any objection to genetic testing results must be made in writing not later than a specified number of days before any hearing at which such results may be introduced into evidence (or, at State option, not later than a specified number of days after receipt of such results); and

"(iii) that, if no objection is made, the test results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy."; and

(3) by adding after subparagraph (H) the following new subparagraphs:

"(I) Procedures providing that the parties to an action to establish paternity are not entitled to a jury trial.

"(J) Procedures which require that a temporary order be issued, upon motion by a party, requiring the provision of child support pending an administrative or judicial determination of parentage, where there is clear and convincing evidence of paternity (on the basis of genetic tests or other evidence).

"(K) Procedures under which bills for pregnancy, childbirth, and genetic testing are admissible as evidence without requiring third-party foundation testimony, and shall constitute prima facie evidence of amounts incurred for such services and testing on behalf of the child.

"(L) At the option of the State, procedures under which the tribunal establishing paternity and support has discretion to waive rights to all or part of amounts owed to the State (but not to the mother) for costs related to pregnancy, childbirth, and genetic testing and for public assistance paid to the family where the father cooperates or acknowledges paternity before or after genetic testing.

"(M) Procedures ensuring that the putative father has a reasonable opportunity to initiate a paternity action.".

(b) NATIONAL PATERNITY ACKNOWLEDGMENT AFFIDAVIT.—Section 452(a)(7) (42 U.S.C. 652(a)(7)) is amended by inserting ", and develop an affidavit to be used for the voluntary acknowledgment of paternity which shall include the social security number of each parent" before the semicolon.

(c) TECHNICAL AMENDMENT.—Section 468 (42 U.S.C. 668) is amended by striking "a simple civil process for voluntarily acknowledging paternity and".

SEC. 142. OUTREACH FOR VOLUNTARY PATERNITY ESTABLISHMENT.

(a) STATE PLAN REQUIREMENT.—Section 454(23) (42 U.S.C. 654(23)) is amended—

(1) by striking "(23)" and inserting "(23)(A)";

(2) by inserting "and" after the semicolon; and

(3) by adding at the end the following new subparagraph:

"(B) publicize the availability and encourage the use of procedures for voluntary establishment of paternity and child support through a variety of means, which—

"(i) include distribution of written materials at health care facilities (including hospitals and clinics), and other locations such as schools;

"(ii) may include pre-natal programs to educate expectant couples on individual and joint rights and responsibilities with respect to paternity (and may require all expectant recipients of assistance under part A to participate in such pre-natal programs, as an element of cooperation with efforts to establish paternity and child support);

"(iii) include, with respect to each child discharged from a hospital after birth for whom paternity or child support has not been established, reasonable follow-up efforts, providing—

"(I) in the case of a child for whom paternity has not been established, information on the benefits of and procedures for establishing paternity; and

"(II) in the case of a child for whom paternity has been established but child support has not been established, information on the benefits of and procedures for establishing a child support order, and an application for child support services;".

(b) ENHANCED FEDERAL MATCHING.—Section 455(a)(1)(C) (42 U.S.C. 655(a)(1)(C)) is amended—

(1) by inserting "(i)" before "laboratory costs", and

(2) by inserting before the semicolon ", and (ii) costs of outreach programs designed to encourage voluntary acknowledgment of paternity".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsection (a) shall become effective October 1, 1997.

(2) EXCEPTION.—The amendments made by subsection (b) shall be effective with respect to calendar quarters beginning on and after October 1, 1996.

Subtitle F—Establishment and Modification of Support Orders

SEC. 151. NATIONAL CHILD SUPPORT GUIDELINES COMMISSION.

(a) ESTABLISHMENT.—There is hereby established a commission to be known as the "National Child Support Guidelines Commission" (in this section referred to as the "Commission").

(b) GENERAL DUTIES.—

(1) IN GENERAL.—The Commission shall determine—

(A) whether it is appropriate to develop a national child support guideline for consideration by the Congress or for adoption by individual States; or

(B) based on a study of various guideline models, the benefits and deficiencies of such models, and any needed improvements.

(2) DEVELOPMENT OF MODELS.—If the Commission determines under paragraph (1)(A) that a national child support guideline is needed or under paragraph (1)(B) that improvements to guideline models are needed, the Commission shall develop such national guideline or improvements.

(c) MATTERS FOR CONSIDERATION BY THE COMMISSION.—In making the recommendations concerning guidelines required under subsection (b), the Commission shall consider—

(1) the adequacy of State child support guidelines established pursuant to section 467;

(2) matters generally applicable to all support orders, including—

(A) the feasibility of adopting uniform terms in all child support orders;

(B) how to define income and under what circumstances income should be imputed; and

(C) tax treatment of child support payments;

(3) the appropriate treatment of cases in which either or both parents have financial obligations to more than 1 family, including the effect (if any) to be given to—

(A) the income of either parent's spouse; and

(B) the financial responsibilities of either parent for other children or stepchildren;

(4) the appropriate treatment of expenses for child care (including care of the children of either parent, and work-related or job-training-related child care);

(5) the appropriate treatment of expenses for health care (including uninsured health care) and other extraordinary expenses for children with special needs;

(6) the appropriate duration of support by 1 or both parents, including

(A) support (including shared support) for post-secondary or vocational education; and

(B) support for disabled adult children;

(7) procedures to automatically adjust child support orders periodically to address changed economic circumstances, including changes in the consumer price index or either parent's income and expenses in particular cases;

(8) procedures to help non-custodial parents address grievances regarding visitation and custody orders to prevent such parents from withholding child support payments until such grievances are resolved; and

(9) whether, or to what extent, support levels should be adjusted in cases in which custody is shared or in which the noncustodial parent has extended visitation rights.

(d) MEMBERSHIP.—

(1) NUMBER; APPOINTMENT.—

(A) IN GENERAL.—The Commission shall be composed of 12 individuals appointed jointly by the Secretary of Health and Human Services and the Congress, not later than January 15, 1997, of which—

(i) 2 shall be appointed by the Chairman of the Committee on Finance of the Senate, and 1 shall be appointed by the ranking minority member of the Committee;

(ii) 2 shall be appointed by the Chairman of the Committee on Ways and Means of the House of Representatives, and 1 shall be appointed by the ranking minority member of the Committee; and

(iii) 6 shall be appointed by the Secretary of Health and Human Services.

(B) QUALIFICATIONS OF MEMBERS.—Members of the Commission shall have expertise and experience in the evaluation and development of child support guidelines. At least 1 member shall represent advocacy groups for custodial parents, at least 1 member shall represent advocacy groups for noncustodial parents, and at least 1 member shall be the director of a State program under part D of title IV of the Social Security Act.

(2) TERMS OF OFFICE.—Each member shall be appointed for a term of 2 years. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(e) COMMISSION POWERS, COMPENSATION, ACCESS TO INFORMATION, AND SUPERVISION.—The first sentence of subparagraph (C), the first and third sentences of subparagraph (D), subparagraph (F) (except with respect to the conduct of medical studies), clauses (ii) and (iii) of subparagraph (G), and subparagraph (H) of section 1886(e)(6) of the Social Security Act shall apply to the Commission in the same manner in which such provisions apply to the Prospective Payment Assessment Commission.

(f) REPORT.—Not later than 2 years after the appointment of members, the Commission shall submit to the President, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, a recommended national child support guideline and a final assessment of issues relating to such a proposed national child support guideline.

(g) TERMINATION.—The Commission shall terminate 6 months after the submission of the report described in subsection (e).

SEC. 152. SIMPLIFIED PROCESS FOR REVIEW AND ADJUSTMENT OF CHILD SUPPORT ORDERS.

Section 466(a)(10) (42 U.S.C. 666(a)(10)) is amended to read as follows:

"(10)(A)(i) Procedures under which—

"(I) every 3 years, at the request of either parent subject to a child support order, the State shall review and, as appropriate, adjust the order in accordance with the guidelines established under section 467(a) if the amount of the child support award under the order differs from the amount that would be awarded in accordance with such guidelines, without a requirement for any other change in circumstances; and

"(II) upon request at any time of either parent subject to a child support order, the State shall review and, as appropriate, adjust the order in accordance with the guidelines established under section 467(a) based on a substantial change in the circumstances of either such parent.

"(ii) Such procedures shall require both parents subject to a child support order to be notified of their rights and responsibilities provided for under clause (i) at the time the order is issued and in the annual information exchange form provided under subparagraph (B).

"(B) Procedures under which each child support order issued or modified in the State after the effective date of this subparagraph shall require the parents subject to the order to provide each other with a complete statement of their respective financial condition annually on a form which shall be provided by the State. The Secretary shall establish regulations for the enforcement of such exchange of information.".

Subtitle G—Enforcement of Support Orders

SEC. 161. FEDERAL INCOME TAX REFUND OFFSET.

(a) CHANGED ORDER OF REFUND DISTRIBUTION UNDER INTERNAL REVENUE CODE.—Section 6402(c) of the Internal Revenue Code of 1986 (relating to offset of past-due support against overpayments) is amended—

(1) by striking "The amount" and inserting "(1) IN GENERAL.—The amount";

(2) by striking "paid to the State. A reduction" and inserting "paid to the State.

"(2) PRIORITIES FOR OFFSET.—A reduction";

(3) by striking "has been assigned" and inserting "has not been assigned"; and

(4) by striking "and shall be applied" and all that follows and inserting "and shall thereafter be applied to satisfy any past-due support that has been so assigned.".

(b) ELIMINATION OF DISPARITIES IN TREATMENT OF ASSIGNED AND NON-ASSIGNED ARREARAGES.—

(1) IN GENERAL.—Section 464(a) (42 U.S.C. 664(a)) is amended—

(A) in paragraph (1)—

(i) in the first sentence, by striking "which has been assigned to such State pursuant to section 402(a)(26) or section 471(a)(17)"; and

(ii) in the second sentence, by striking "in accordance with section 457 (b)(4) or (d)(3)" and inserting "as provided in paragraph (2)";

(B) in paragraph (2), to read as follows:

"(2) The State agency shall distribute amounts paid by the Secretary of the Treasury pursuant to paragraph (1)—

"(A) in accordance with subsection (a)(4) or (d)(3) of section 457, in the case of past-due support assigned to a State pursuant to section 402(a)(26) or section 471(a)(17); and

"(B) to or on behalf of the child to whom the support was owed, in the case of past-due support not so assigned.";

(C) in paragraph (3)—

(i) by striking "or (2)" each place it appears; and

(ii) in subparagraph (B), by striking "under paragraph (2)" and inserting "on account of past-due support described in paragraph (2)(B)".

(2) NOTICES OF PAST-DUE SUPPORT.—Section 464(b) (42 U.S.C. 664(b)) is amended—

(A) by striking "(b)(1)" and inserting "(b)"; and

(B) by striking paragraph (2).

(3) DEFINITION OF PAST-DUE SUPPORT.—Section 464(c) (42 U.S.C. 664(c)) is amended—

(A) by striking "(c)(1) Except as provided in paragraph (2), as" and inserting "(c) As"; and

(B) by striking paragraphs (2) and (3).

(c) TREATMENT OF LUMP-SUM TAX REFUND UNDER AFDC.—

(1) EXEMPTION FROM LUMP-SUM RULE.—Section 402(a)(17) (42 U.S.C. 602(a)(17)) is amended by inserting before the semicolon at the end the following: ", but this paragraph shall not apply to income received by a family that is attributable to a child support obligation owed with respect to a member of the family and that is paid to the family from amounts withheld from a Federal income tax refund otherwise payable to the person owing such obligation, to the extent that such income is placed in a qualified asset account (as defined in section 406(j)) the total amounts in which, after such placement, does not exceed $10,000".

(2) QUALIFIED ASSET ACCOUNT DEFINED.—Section 406 (42 U.S.C. 606), as amended by section 102(g)(2), is amended by adding at the end the following new subsection:

"(j)(1) The term 'qualified asset account' means a mechanism approved by the State (such as individual retirement accounts, escrow accounts, or savings bonds) that allows savings of a family receiving aid to families with dependent children to be used for qualified distributions.

"(2) The term 'qualified distribution' means a distribution from a qualified asset

account for expenses directly related to 1 or more of the following purposes:

"(A) The attendance of a member of the family at any education or training program.

"(B) The improvement of the employability (including self-employment) of a member of the family (such as through the purchase of an automobile).

"(C) The purchase of a home for the family.

"(D) A change of the family residence.".

(d) EFFECTIVE DATE.—The amendments made by this section shall become effective October 1, 1999.

SEC. 162. INTERNAL REVENUE SERVICE COLLECTION OF ARREARAGES.

(a) AMENDMENT TO INTERNAL REVENUE CODE.—Section 6305(a) of the Internal Revenue Code of 1986 (relating to collection of certain liability) is amended—

(1) in paragraph (1), by inserting "except as provided in paragraph (5)" after "collected";

(2) by striking "and" at the end of paragraph (3);

(3) by striking the period at the end of paragraph (4) and inserting ", and";

(4) by adding at the end the following new paragraph:

"(5) no additional fee may be assessed for adjustments to an amount previously certified pursuant to such section 452(b) with respect to the same obligor."; and

(5) by striking "Secretary of Health, Education, and Welfare" each place it appears and inserting "Secretary of Health and Human Services".

(b) EFFECTIVE DATE.—The amendments made by this section shall become effective October 1, 1997.

SEC. 163. AUTHORITY TO COLLECT SUPPORT FROM FEDERAL EMPLOYEES.

(a) CONSOLIDATION AND STREAMLINING OF AUTHORITIES.—

(1) Section 459 (42 U.S.C. 659) is amended—

(1) in the heading, by inserting "INCOME WITHHOLDING," before "GARNISHMENT";

(2) in subsection (a)—

(A) by striking "section 207" and inserting "section 207 and section 5301 of title 38, United States Code"; and

(B) by striking "to legal process" and all that follows through the period and inserting "to withholding in accordance with State law pursuant to subsections (a)(1) and (b) of section 466 and regulations of the Secretary thereunder, and to any other legal process brought, by a State agency administering a program under this part or by an individual obligee, to enforce the legal obligation of such individual to provide child support or alimony.";

(3) in subsection (b), to read as follows:

"(b) Except as otherwise provided herein, each entity specified in subsection (a) shall be subject, with respect to notice to withhold income pursuant to subsection (a)(1) or (b) of section 466, or to any other order or process to enforce support obligations against an individual (if such order or process contains or is accompanied by sufficient data to permit prompt identification of the individual and the moneys involved), to the same requirements as would apply if such entity were a private person.";

(4) by striking subsections (c) and (d) and inserting the following new subsections:

"(c)(1) The head of each agency subject to the requirements of this section shall—

"(A) designate an agent or agents to receive orders and accept service of process; and

"(B) publish—

"(i) in the appendix of such regulations;

"(ii) in each subsequent republication of such regulations; and

"(iii) annually in the Federal Register,

the designation of such agent or agents, identified by title of position, mailing address, and telephone number.

"(2) Whenever an agent designated pursuant to paragraph (1) receives notice pursuant to subsection (a)(1) or (b) of section 466, or is effectively served with any order, process, or interrogatories, with respect to an individual's child support or alimony payment obligations, such agent shall—

"(A) as soon as possible (but not later than 15 days) thereafter, send written notice of such notice or service (together with a copy thereof) to such individual at his duty station or last-known home address;

"(B) not later than 30 days (or such longer period as may be prescribed by applicable State law) after receipt of a notice pursuant to subsection (a)(1) or (b) of section 466, comply with all applicable provisions of such section 466; and

"(C) not later than 30 days (or such longer period as may be prescribed by applicable State law) after effective service of any other such order, process, or interrogatories, respond thereto.

"(d) In the event that a governmental entity receives notice or is served with process, as provided in this section, concerning amounts owed by an individual to more than 1 person—

"(1) support collection under section 466(b) must be given priority over any other process, as provided in section 466(b)(7);

"(2) allocation of moneys due or payable to an individual among claimants under section 466(b) shall be governed by the provisions of such section 466(b) and regulations thereunder; and

"(3) such moneys as remain after compliance with subparagraphs (A) and (B) shall be available to satisfy any other such processes on a first-come, first-served basis, with any such process being satisfied out of such moneys as remain after the satisfaction of all such processes which have been previously served.";

(5) in subsection (f)—

(A) by striking "(f)" and inserting "(f)(1)"; and

(B) by adding at the end the following new paragraph:

"(2) No Federal employee whose duties include taking actions necessary to comply with the requirements of subsection (a) with regard to any individual shall be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or on account of, any disclosure of information made by him in connection with the carrying out of such duties."; and

(6) by adding at the end the following new subsections:

"(g) Authority to promulgate regulations for the implementation of the provisions of this section shall, insofar as the provisions of this section are applicable to moneys due from (or payable by)—

"(1) the executive branch of the Federal Government (including in such branch, for the purposes of this subsection, the territories and possessions of the United States, the United States Postal Service, the Postal Rate Commission, any wholly owned Federal corporation created by an Act of Congress, and the government of the District of Columbia), be vested in the President (or the President's designee);

"(2) the legislative branch of the Federal Government, be vested jointly in the President pro tempore of the Senate and the Speaker of the House of Representatives (or their designees); and

"(3) the judicial branch of the Federal Government, be vested in the Chief Justice of the United States (or the Chief Justice's designee).

"(h) Subject to subsection (i), moneys paid or payable to an individual which are considered to be based upon remuneration for employment, for purposes of this section—

"(1) consist of—

"(A) compensation paid or payable for personal services of such individual, whether such compensation is denominated as wages, salary, commission, bonus, pay, allowances, or otherwise (including severance pay, sick pay, and incentive pay);

"(B) periodic benefits (including a periodic benefit as defined in section 228(h)(3)) or other payments—

"(i) under the insurance system established by title II;

"(ii) under any other system or fund established by the United States which provides for the payment of pensions, retirement or retired pay, annuities, dependents' or survivors' benefits, or similar amounts payable on account of personal services performed by the individual or any other individual;

"(iii) as compensation for death under any Federal program;

"(iv) under any Federal program established to provide 'black lung' benefits; or

"(v) by the Secretary of Veterans Affairs as pension, or as compensation for a service-connected disability or death (except any compensation paid by such Secretary to a former member of the Armed Forces who is in receipt of retired or retainer pay if such former member has waived a portion of his retired pay in order to receive such compensation); and

"(C) worker's compensation benefits paid under Federal or State law; but

"(2) do not include any payment—

"(A) by way of reimbursement or otherwise, to defray expenses incurred by such individual in carrying out duties associated with his employment; or

"(B) as allowances for members of the uniformed services payable pursuant to chapter 7 of title 37, United States Code, as prescribed by the Secretaries concerned (defined by section 101(5) of such title) as necessary for the efficient performance of duty.

"(i) In determining the amount of any moneys due from, or payable by, the United States to any individual, there shall be excluded amounts which—

"(1) are owed by such individual to the United States;

"(2) are required by law to be, and are, deducted from the remuneration or other payment involved, including Federal employment taxes, and fines and forfeitures ordered by court-martial;

"(3) are properly withheld for Federal, State, or local income tax purposes, if the withholding of such amounts is authorized or required by law and if amounts withheld are not greater than would be the case if such individual claimed all the dependents that the individual was entitled to (the withholding of additional amounts pursuant to section 3402(i) of the Internal Revenue Code of 1986 may be permitted only when such individual presents evidence of a tax obligation which supports the additional withholding);

"(4) are deducted as health insurance premiums;

"(5) are deducted as normal retirement contributions (not including amounts deducted for supplementary coverage); or

"(6) are deducted as normal life insurance premiums from salary or other remuneration for employment (not including amounts deducted for supplementary coverage).

"(j) For purposes of this section—".

(b) TRANSFER OF SUBSECTIONS.—Subsections (a) through (e) of section 462 (42 U.S.C. 662), are transferred and redesignated as paragraphs (1) through (4), respectively of section 459(j) (as added by subsection (a)(6)), and the left margin of each of such paragraphs (1) through (4) is indented 2 ems to the right of the left margin of subsection (j) (as added by subsection (a)(6)).

(c) CONFORMING AMENDMENTS.—

(1) TO PART D OF TITLE IV.—Sections 461 and 462 (42 U.S.C. 661) are repealed.

(2) TO TITLE 5, UNITED STATES CODE.—Section 5520a of title 5, United States Code, is amended, in subsections (h)(2) and (i), by striking "sections 459, 461, and 462 of the Social Security Act (42 U.S.C. 659, 661, and 662)" each place it appears and inserting "section 459 of the Social Security Act (42 U.S.C. 659)".

(d) MILITARY RETIRED AND RETAINER PAY.—Section 1408(a)(1) of title 10, United States Code, is amended—

(1) in paragraph (1)—

(A) in subparagraph (B), by striking "and";

(B) in subparagraph (C), by striking the period and inserting "; and"; and

(C) by adding at the end the following new subparagraph:

"(D) any administrative or judicial tribunal of a State competent to enter orders for support or maintenance (including a State agency administering a State program under part D of title IV of the Social Security Act).";

(2) in paragraph (2), by inserting "or a court order for the payment of child support not included in or accompanied by such a decree or settlement," before "which—";

(3) in subsection (d)—

(A) in the heading, by inserting "(OR FOR BENEFIT OF)" after "CONCERNED"; and

(B) in paragraph (1), in the first sentence, by inserting "(or for the benefit of such spouse or former spouse to a State central collections unit or other public payee designated by a State, in accordance with part D of title IV of the Social Security Act, as directed by court order, or as otherwise directed in accordance with such part D)" before "in an amount sufficient"; and

(4) by adding at the end the following new subsection:

"(j) RELATIONSHIP TO OTHER LAWS.—In any case involving a child support order against a member who has never been married to the other parent of the child, the provisions of this section shall not apply, and the case shall be subject to the provisions of section 459 of the Social Security Act.".

(e) EFFECTIVE DATE.—The amendments made by this section shall become effective 6 months after the date of the enactment of this Act.

SEC. 164. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS OF MEMBERS OF THE ARMED FORCES.

(a) AVAILABILITY OF LOCATOR INFORMATION.—

(1) MAINTENANCE OF ADDRESS INFORMATION.—The Secretary of Defense shall establish a centralized personnel locator service that includes the address of each member of the Armed Forces under the jurisdiction of the Secretary. Upon request of the Secretary of Transportation, addresses for members of the Coast Guard shall be included in the centralized personnel locator service.

(2) TYPE OF ADDRESS.—

(A) RESIDENTIAL ADDRESS.—Except as provided in subparagraph (B), the address for a member of the Armed Forces shown in the locator service shall be the residential address of that member.

(B) DUTY ADDRESS.—The address for a member of the Armed Forces shown in the locator service shall be the duty address of that member in the case of a member—

(i) who is permanently assigned overseas, to a vessel, or to a routinely deployable unit; or

(ii) with respect to whom the Secretary concerned makes a determination that the member's residential address should not be disclosed due to national security or safety concerns.

(3) UPDATING OF LOCATOR INFORMATION.—Not later than 30 days after a member listed in the locator service establishes a new residential address (or a new duty address, in the case of a member covered by paragraph (2)(B)), the Secretary concerned shall update the locator service to indicate the new address of the member.

(4) AVAILABILITY OF INFORMATION.—The Secretary of Defense shall make information regarding the address of a member of the Armed Forces listed in the locator service available, on request, to the Federal Parent Locator Service.

(b) FACILITATING GRANTING OF LEAVE FOR ATTENDANCE AT HEARINGS.—

(1) REGULATIONS.—The Secretary of each military department, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to facilitate the granting of leave to a member of the Armed Forces under the jurisdiction of that Secretary in a case in which—

(A) the leave is needed for the member to attend a hearing described in paragraph (2);

(B) the member is not serving in or with a unit deployed in a contingency operation (as defined in section 101 of title 10, United States Code); and

(C) the exigencies of military service (as determined by the Secretary concerned) do not otherwise require that such leave not be granted.

(2) COVERED HEARINGS.—Paragraph (1) applies to a hearing that is conducted by a court or pursuant to an administrative process established under State law, in connection with a civil action—

(A) to determine whether a member of the Armed Forces is a natural parent of a child; or

(B) to determine an obligation of a member of the Armed Forces to provide child support.

(3) DEFINITIONS.—For purposes of this subsection:

(A) The term "court" has the meaning given that term in section 1408(a) of title 10, United States Code.

(B) The term "child support" has the meaning given such term in section 462 of the Social Security Act (42 U.S.C. 662).

(c) PAYMENT OF MILITARY RETIRED PAY IN COMPLIANCE WITH CHILD SUPPORT ORDERS.—Section 1408 of title 10, United States Code, as amended by section 163(d)(4), is amended—

(1) by redesignating subsections (i) and (j) as subsections (j) and (k), respectively;

(2) by inserting after subsection (h) the following new subsection:

"(i) CERTIFICATION DATE.—It is not necessary that the date of a certification of the authenticity or completeness of a copy of a court order or an order of an administrative process established under State law for child support received by the Secretary concerned for the purposes of this section be recent in relation to the date of receipt by the Secretary."; and

(3) in subsection (d)—

(A) in paragraph (1), by inserting after the first sentence the following: "In the case of a spouse or former spouse who, pursuant to section 402(a)(26) of the Social Security Act (42 U.S.C. 602(26)), assigns to a State the rights of the spouse or former spouse to receive support, the Secretary concerned may make the child support payments referred to in the preceding sentence to that State in amounts consistent with that assignment of rights."; and

(B) by adding at the end the following new paragraph:

"(6) In the case of a court order or an order of an administrative process established under State law for which effective service is made on the Secretary concerned on or after the date of the enactment of this paragraph and which provides for payments from the disposable retired pay of a member to satisfy the amount of child support set forth in the order, the authority provided in paragraph (1) to make payments from the disposable retired pay of a member to satisfy the amount of child support set forth in a court order or an order of an administrative process established under State law shall apply to payment of any amount of child support arrearages set forth in that order as well as to amounts of child support that currently become due.".

SEC. 165. MOTOR VEHICLE LIENS.

Section 466(a)(4) (42 U.S.C. 666(a)(4)) is amended—

(1) by striking "(4)" and inserting "(4)(A)"; and

(2) by adding at the end the following new subparagraph:

"(B) Procedures for placing liens for arrearages of child support on motor vehicle titles of individuals owing such arrearages equal to or exceeding 1 month of support (or other minimum amount set by the State), under which—

"(i) any person owed such arrearages may place such a lien;

"(ii) the State agency administering the program under this part shall systematically place such liens;

"(iii) expedited methods are provided for—

"(I) ascertaining the amount of arrears;

"(II) affording the person owing the arrears or other titleholder to contest the amount of arrears or to obtain a release upon fulfilling the support obligation;

"(iv) such a lien has precedence over all other encumbrances on a vehicle title other than a purchase money security interest; and

"(v) the individual or State agency owed the arrears may execute on, seize, and sell the property in accordance with State law.".

SEC. 166. VOIDING OF FRAUDULENT TRANSFERS.

Section 466(a) (42 U.S.C. 666(a)), as amended by sections 101(a), 126(a), and 131, is amended by adding at the end the following new paragraph:

"(15) Procedures under which—

"(A) the State has in effect—

"(i) the Uniform Fraudulent Conveyance Act of 1981,

"(ii) the Uniform Fraudulent Transfer Act of 1984, or

"(iii) another law, specifying indicia of fraud which create a prima facie case that a debtor transferred income or property to avoid payment to a child support creditor, which the Secretary finds affords comparable rights to child support creditors; and

"(B) in any case in which the State knows of a transfer by a child support debtor with respect to which such a prima facie case is established, the State must—

"(i) seek to void such transfer; or

"(ii) obtain a settlement in the best interests of the child support creditor.".

SEC. 167. STATE LAW AUTHORIZING SUSPENSION OF LICENSES.

Section 466(a) (42 U.S.C. 666(a)), as amended by sections 101(a), 126(a), 131, and 166, is amended by adding at the end the following new paragraph:

"(16) Procedures under which the State has (and uses in appropriate cases) authority (subject to appropriate due process safeguards) to withhold or suspend, or to restrict the use of driver's licenses, professional and occupational licenses, and recreational licenses of individuals owing overdue child support or failing, after receiving appropriate notice, to comply with subpoenas or warrants relating to paternity or child support proceedings.".

SEC. 168. REPORTING ARREARAGES TO CREDIT BUREAUS.

Section 466(a)(7) (42 U.S.C. 666(a)(7)) is amended to read as follows:

"(7)(A) Procedures (subject to safeguards pursuant to subparagraph (B)) requiring the State to report periodically to consumer reporting agencies (as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) the name of any absent parent who is delinquent in the payment of support, and the amount of overdue support owed by such parent.

"(B) Procedures ensuring that, in carrying out subparagraph (A), information with respect to an absent parent is reported—

"(i) only after such parent has been afforded all due process required under State law, including notice and a reasonable opportunity to contest the accuracy of such information; and

"(ii) only to an entity that has furnished evidence satisfactory to the State that the entity is a consumer reporting agency.".

SEC. 169. EXTENDED STATUTE OF LIMITATION FOR COLLECTION OF ARREARAGES.

(a) IN GENERAL.—Section 466(a)(9) (42 U.S.C. 666(a)(9)) is amended—

(1) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively;

(2) by striking "(9)" and inserting "(9)(A)"; and

(3) by adding at the end the following new subparagraph:

"(B) Procedures under which the statute of limitations on any arrearages of child support extends at least until the child owed such support is 30 years of age.".

(b) APPLICATION OF REQUIREMENT.—The amendment made by this section shall not be interpreted to require any State law to revive any payment obligation which had lapsed prior to the effective date of such State law.

SEC. 170. CHARGES FOR ARREARAGES.

(a) STATE LAW REQUIREMENT.—Section 466(a) (42 U.S.C. 666(a)), as amended by sections 101(a), 126(a), 131, 166, and 167, is amended by adding at the end the following new paragraph:

"(17) Procedures providing for the calculation and collection of interest or penalties for arrearages of child support, and for distribution of such interest or penalties collected for the benefit of the child (except where the right to support has been assigned to the State).".

(b) REGULATIONS.—The Secretary of Health and Human Services shall establish by regulation a rule to resolve choice of law conflicts arising in the implementation of the amendment made by subsection (a).

(c) CONFORMING AMENDMENT.—Section 454(21) (42 U.S.C. 654(21)) is repealed.

(d) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to arrearages accruing on or after October 1, 1998.

SEC. 171. DENIAL OF PASSPORTS FOR NONPAYMENT OF CHILD SUPPORT.

(a) HHS CERTIFICATION PROCEDURE.—

(1) SECRETARIAL RESPONSIBILITY.—Section 452 (42 U.S.C. 652), as amended by sections 115(a)(3) and 117, is amended by adding at the end the following new subsection:

"(l)(1) If the Secretary receives a certification by a State agency in accordance with the requirements of section 454(28) that an individual owes arrearages of child support in an amount exceeding $5,000 or in an amount exceeding 24 months' worth of child support, the Secretary shall transmit such certification to the Secretary of State for action (with respect to denial, revocation, or limitation of passports) pursuant to section 171(b) of the Interstate Child Support Responsibility Act of 1995.

"(2) The Secretary shall not be liable to an individual for any action with respect to a certification by a State agency under this section.".

(2) STATE CSE AGENCY RESPONSIBILITY.—Section 454 (42 U.S.C. 654), as amended by sections 104(a), 114(b), and 122(a), is amended—

(A) by striking "and" at the end of paragraph (26);

(B) by striking the period at the end of paragraph (27) and inserting "; and"; and

(C) by adding after paragraph (27) the following new paragraph:

"(28) provide that the State agency will have in effect a procedure (which may be combined with the procedure for tax refund offset under section 464) for certifying to the Secretary, for purposes of the procedure under section 452(*l*) (concerning denial of passports) determinations that individuals owe arrearages of child support in an amount exceeding $5,000 or in an amount exceeding 24 months' worth of child support, under which procedure—

"(A) each individual concerned is afforded notice of such determination and the consequences thereof, and an opportunity to contest the determination; and

"(B) the certification by the State agency is furnished to the Secretary in such format, and accompanied by such supporting documentation, as the Secretary may require.".

(b) STATE DEPARTMENT PROCEDURE FOR DENIAL OF PASSPORTS.—

(1) IN GENERAL.—The Secretary of State, upon certification by the Secretary of Health and Human Services, in accordance with section 452(*l*) of the Social Security Act, that an individual owes arrearages of child support in excess of $5,000, shall refuse to issue a passport to such individual, and may revoke, restrict, or limit a passport issued previously to such individual.

(2) LIMIT ON LIABILITY.—The Secretary of State shall not be liable to an individual for any action with respect to a certification by a State agency under this section.

(c) EFFECTIVE DATE.—This section and the amendments made by this section shall become effective October 1, 1996.

SEC. 172. INTERNATIONAL CHILD SUPPORT ENFORCEMENT.

(a) SENSE OF THE CONGRESS THAT THE UNITED STATES SHOULD RATIFY THE UNITED NATIONS CONVENTION OF 1956.—It is the sense of the Congress that the United States should ratify the United Nations Convention of 1956.

(b) TREATMENT OF INTERNATIONAL CHILD SUPPORT CASES AS INTERSTATE CASES.—Section 454 (42 U.S.C. 654), as amended by sections 104(a), 114(b), 122(a), and 171(a)(2) of this Act, is amended—

(1) by striking "and" at the end of paragraph (27);

(2) by striking the period at the end of paragraph (28) and inserting "; and"; and

(3) by inserting after paragraph (28) the following new paragraph:

"(29) provide that the State must treat international child support cases in the same manner as the State treats interstate child support cases under the plan.".

Subtitle H—Medical Support

SEC. 181. TECHNICAL CORRECTION TO ERISA DEFINITION OF MEDICAL CHILD SUPPORT ORDER.

(a) IN GENERAL.—Section 609(a)(2)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1169(a)(2)(B)) is amended—

(1) by striking "issued by a court of competent jurisdiction";

(2) in clause (ii) by striking the period and inserting a comma; and

(3) by adding after clause (ii), the following flush left language:

"if such judgment, decree, or order (I) is issued by a court of competent jurisdiction or (II) is issued by an administrative adjudicator and has the force and effect of law under applicable State law.".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall become effective on the date of the enactment of this Act.

(2) PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1996.—

(A) IN GENERAL.—Any amendment to a plan required to be made by an amendment made by this section shall not be required to be made before the first plan year beginning on or after January 1, 1996, if—

(i) during the period after the date before the date of the enactment of this Act and before such first plan year, the plan is operated in accordance with the requirements of the amendments made by this section; and

(ii) such plan amendment applies retroactively to the period after the date before the date of the enactment of this Act and before such first plan year.

(B) NO FAILURE FOR COMPLIANCE WITH THIS PARAGRAPH.—A plan shall not be treated as failing to be operated in accordance with the provisions of the plan merely because it operates in accordance with this paragraph.

Subtitle I—Access and Visitation Programs

SEC. 191. GRANTS TO STATES FOR ACCESS AND VISITATION PROGRAMS.

(a) IN GENERAL.—Part D of title IV is amended by adding at the end the following new section:

"GRANTS TO STATES FOR ACCESS AND VISITATION PROGRAMS

"SEC. 469A. (a) PURPOSES; AUTHORIZATION OF APPROPRIATIONS.—For purposes of enabling States to establish and administer programs to support and facilitate absent parents' access to and visitation of their children, by means of activities including mediation (both voluntary and mandatory), counseling, education, development of parenting plans, visitation enforcement (including monitoring, supervision, and neutral drop-off and pickup), and development of guidelines for visitation and alternative custody arrangements, there are authorized to be appropriated $5,000,000 for each of fiscal years 1996 and 1997, and $10,000,000 for each succeeding fiscal year.

"(b) PAYMENTS TO STATES.—

"(1) IN GENERAL.—Each State shall be entitled to payment under this section for each fiscal year in an amount equal to its allotment under subsection (c) for such fiscal year, to be used for payment of 90 percent of

State expenditures for the purposes specified in subsection (a).

"(2) SUPPLEMENTARY USE.—Payments under this section shall be used by a State to supplement (and not to substitute for) expenditures by the State, for activities specified in subsection (a), at a level at least equal to the level of such expenditures for fiscal year 1994.

"(c) ALLOTMENTS TO STATES.—

"(1) IN GENERAL.—For purposes of subsection (b), each State shall be entitled (subject to paragraph (2)) to an amount for each fiscal year bearing the same ratio to the amount authorized to be appropriated pursuant to subsection (a) for such fiscal year as the number of children in the State living with only 1 biological parent bears to the total number of such children in all States.

"(2) MINIMUM ALLOTMENT.—Allotments to States under paragraph (1) shall be adjusted as necessary to ensure that no State is allotted less than $50,000 for fiscal year 1996 or 1997, or $100,000 for any succeeding fiscal year.

"(d) FEDERAL ADMINISTRATION.—The program under this section shall be administered by the Administration for Children and Families.

"(e) STATE PROGRAM ADMINISTRATION.—

"(1) IN GENERAL.—Each State may administer the program under this section directly or through grants to or contracts with courts, local public agencies, or non-profit private entities.

"(2) STATEWIDE PLAN PERMISSIBLE.—State programs under this section may, but need not, be statewide.

"(3) EVALUATION.—States administering programs under this section shall monitor, evaluate, and report on such programs in accordance with requirements established by the Secretary.".

TITLE II—EFFECT OF ENACTMENT

SEC. 201. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise specifically provided (but subject to subsections (b) and (c))—

(1) provisions of title I requiring enactment or amendment of State laws under section 466 of the Social Security Act, or revision of State plans under section 454 of such Act, shall be effective with respect to periods beginning on and after October 1, 1996; and

(2) all other provisions of title I shall become effective upon the date of the enactment of this Act.

(b) GRACE PERIOD FOR STATE LAW CHANGES.—The provisions of title I shall become effective with respect to a State on the later of—

(1) the date specified in title I, or

(2) the effective date of laws enacted by the legislature of such State implementing such provisions,

but in no event later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

(c) GRACE PERIOD FOR STATE CONSTITUTIONAL AMENDMENT.—A State shall not be found out of compliance with any requirement enacted by title I if it is unable to comply without amending the State constitution until the earlier of—

(1) the date which is 1 year after the effective date of the necessary State constitutional amendment, or

(2) the date which is 5 years after the date of the enactment of this Act.

SEC. 202. SEVERABILITY.

If any provision of title I or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of title I which can be given effect without regard to the invalid provision or application, and to this end the provisions of title I shall be severable.

INTERSTATE CHILD SUPPORT RESPONSIBILITY ACT OF 1995—BILL SUMMARY

The Interstate Child Support Responsibility Act of 1995 is a comprehensive effort to repair the state-based system of child support. It would establish uniform procedures among states; create state and national databases to locate absent parents and garnish the wages of parents who owe child support; improve paternity establishment; and make it easier to modify child support orders as necessary.

The legislation is based on recommendations of the U.S. Commission on Interstate Child Support Enforcement, the Office of Child Support Enforcement at HHS, and child support administrators from many states. Its provisions are comparable to those of S. 689 in the 103d Congress (the Bradley bill) and the child support section of S. 2224, the Work and Family Responsibility Act, updated to account for more recent innovations in enforcement at the state level. It also parallels H.R. 785, with exceptions as noted below.

STATE UNIFORMITY

States would be required to adopt the Uniform Interstate Family Support Act (UIFSA) in its entirety. This model legislation, already adopted by 20 states, sets a framework for determining jurisdiction of interstate cases, and governs the relationship among states.

The Full Faith and Credit Act, signed into law last year, which requires every state to respect child support orders from other states, would be modified to follow UIFSA.

States would establish administrative procedures for paternity establishment, subpoenas, liens, access to financial information, and suspension of drivers' and professional licenses for parents in arrears on child support. Custodial parents would not have to go to court.

ENFORCEMENT OF SUPPORT ORDERS

Outlines the procedures by which a state may suspend the licenses (including driver's, professional and occupational) of delinquent non-custodial parents, as well as procedures through which the state may place liens on the delinquent parent property.

Requires states to report to credit bureaus delinquencies that exceed 30 days.

Grants families who are owed child support the right to first access to an IRS refund credited to a delinquent non-custodial parent, except for amounts due from time the family received AFDC.

Subjects federal employees to the same withholding and enforcement rules as other workers. Clarifies rules for active-duty military personnel.

Extends the statute of limitations for the collection of child support arrearage to the child's 30th birthday.

Permits the denial of a passport for individuals who are more than $5,000 or 24 months in arrears.

Establlishes state-based demonstration projects to address non-custodial parents' visitation and custody issues.

STATE AUTOMATED SYSTEMS

Each state would establish a database of basic information about every child support order opened in that state. This data would be sent to a national registry on a regular basis to aid in enforcement of interstate cases.

States would centralize the collection and disbursement of information and payments. Employers would be able to send withheld income to one state location, even if a county has jurisdiction over the child support order. States may contract the collection and distribution system out to private firms.

NATIONAL SYSTEMS—EXPANDED FEDERAL PARENT LOCATOR SYSTEM

The modified Federal Parent Locator System would contain three components: a databank of Child Support Orders; directory of new hires, and expanded locator.

The Databank of Child Support Orders contains information on child support orders, as obtained from the individual states.

The Directory of New Hires will record basic information supplied by employers. This data will be compared against the child support data in order to better track down parents evading payment of child support, especially on the interstate level.

The expanded locator component allows states to access federal information to not only enforce orders, but also to establish paternity and establish and modify orders.

VOLUNTARY PATERNITY ESTABLISHMENT

The process of determination of paternity would be simplified, and voluntary paternity processes enhanced. These provisions would strengthen the hospital-based paternity establishment provisions enacted into law in the 1993 budget reconciliation.

For parents who voluntarily acknowledge paternity, a signed affidavit would be presumed to be a final judgement of paternity 60 days after signature. Both parents must be informed of their rights and responsibilities before signing the acknowledgement. Exceptions to the final judgement status include fraud, duress, or material mistake of fact.

Minor parents who sign the voluntary acknowledgement not in the presence of a parent or guardian may rescind that acknowledgment at any time until turning 18, or until court proceedings in which the teen and his or her attorney, parent or guardian is present.

At state option, states may waive fees charged to fathers who cooperate with the state, e.g. for genetic testing.

MODIFICATION AND ESTABLISHMENT OF SUPPORT ORDERS

Requires that child support orders may be reviewed by a state at the request of either parent every three years or when there is a substantial change in the financial circumstances of either parent.

Requires parents to exchange financial information annually.

Establishes a National Child Support Guidelines Commission, which will develop support order guidelines which states may adopt of Congress may consider adopting nationally.

PROGRAM ADMINISTRATION AND FUNDING

Increases the base federal matching rate for child support services from 66% to 75%. Creates an incentive payment to state of up to 15% for paternity establishment and overall performance of a state IV-D program. Strengthens penalties on states for failure to comply with program requirements.

COSTS

Increased match rate will cost approximately $300 million over five years. Other costs to federal and state taxpayers have not been scored by CBO, but all will be offset by

increased collections. (The existing program, despite flaws, collects $3.98 for every $1 spent.)

DIFFERENCES BETWEEN SENATE BILL AND H.R. 785

Senate bill authorizes a demonstration in several states of innovative procedures to mediate disputes over visitation and custody.

Senate bill is slightly less prescriptive to states.

Senate bill includes more specific instructions to the Commission on Child Support Guidelines, and permits the Commission to conclude that national guidelines are not needed.•

• Mr. CHAFEE. Mr. President, I am pleased to support the Child Support Act of 1995, introduced by Mr. BRADLEY.

With over half of our marriages ending in divorce in the United States, and more and more children being born out-of-wedlock, single parent households have become more and more common. Most of the children in these homes grow up to be healthy and happy contributors to our society. Too many, however, are abandoned by a parent at a young age and struggle into adulthood. Mom or Dad, while raising a child, is working to make ends meet—without the help of the child's other parent.

We have spent a great deal of time talking about family and the role of the State in preserving traditional families. We have talked at great length about how to help poor unwed and single mothers become independent from government handouts. Certainly, a central factor as to why these mothers are on welfare in the first place and may not be able to get off, is because of the lack of support coming from their child's father.

Only 58 percent of single mothers had a child support order in 1990—the vast majority of single mothers had applied for such an order but were unsuccessful in receiving one. The numbers are quite stark: over half of the 17.2 million children in single parent homes in our Nation are living in poverty.

I think there is consensus on this issue—Republican or Democrat, Rhode Islander or Mississippian—we all agree that the time has come for Congress to become more involved in ensuring that children are not cheated out of a healthy childhood. This legislation does an admirable job of addressing the problems of "dead-beat" parents.

Currently, States have a rather haphazard way of collecting child support. With the ease in which citizens move from one State to another, there is a real need to have strong and efficient communication between the States in collecting child support. This legislation addresses this problem through the creation of a national data base of child support orders. States will be required to periodically contribute new child support orders to this registry which may then be accessed by other states. Clearly, such a program aids greatly in tracking down interstate cases. In addition, by requiring parents to exchange financial information annually and streamlining the collection and distribution policy of the States, this legislation will make it far less complicated to ensure that those families deserving of child support moneys will get it.

I would urge my colleagues to support this crucial legislation. By some estimates, in 1990, if we had enforceable child support orders reflecting ability to pay, single mothers and children would have received nearly $50 billion in child support. I am sure that you would agree that such a number is astounding. This money is wilfully being kept from the children who need it. We cannot, in good conscience, talk about reforming our welfare system without discussing more effective ways to ensure that poor children are in fact receiving the fiscal and emotional support that they need in order to grow and to thrive. Thank you very much for your time and consideration.•

• Mr. LIEBERMAN. Mr. President, I am pleased to join Senator BRADLEY today as a cosponsor of the Interstate Child Support Responsibility Act of 1995. My esteemed colleague from Connecticut, Representative JOHNSON, introduced a similar bill in the House, and I thank them both for their leadership on this issue. The bill will greatly strengthen our child support enforcement system. This year, as Congress debates dramatic changes to our welfare system, we should make child support enforcement a key part of our welfare reform agenda and should pass the comprehensive reforms set forth in this act.

A tough child support enforcement system has three far-reaching benefits for our society. First, child support directly improves the lives of millions of children. An increasing number of our children depend on child support. Thirty years ago the vast number of children lived with both of their parents. But an astounding 50 percent of all children born in the 1980's will spend some time in a single-parent family. Children living with only one parent are all too likely to experience poverty. In 1992, half of the children living in single-parent families—over 8 million children—were poor. Improving child support enforcement will directly improve the quality of these children's lives and their chances for a bright future.

Second, enhancing child support enforcement will help keep families off of public assistance. About 45 percent of families enter our welfare system as a result of a divorce or separation, and another 30 percent seek welfare assistance after having a child out-of-wedlock. Receiving support from the absent parent can make the difference for many families between self-sufficiency and dependency.

Third, strengthening child support enforcement sends a critical message of responsibility to parents. The decision to have a child has profound moral content. Our child support policies must clearly signal that our society will hold all parents accountable for their children. In an era of skyrocketing out-of-wedlock births and rising teen pregnancy rates, child support enforcement payments must become a well known and unavoidable fact of life for absent fathers and mothers. Would-be "dead-beat" dads must know that they can't simply cross a State border to escape support payments.

For too many parents today, child support collection is not a certainty. Less than 60 percent of custodial mothers establish a child support order. And only half of support orders are paid in full. The Urban Institute estimates that the gap between the amount of child support parents should be paying and the amount we are actually collecting is $34 billion a year.

The bill we are introducing today will help close that child support collection gap. It will help States at each step of the child support collection process. The bill will make it easier for States to locate absent noncustodial parents; establish paternity; establish a court order; and enforce payment of court orders.

To help States locate parents and collect child support the bill, among other things: Requires States to automate and centralize child support order data to aid in enforcement of interstate cases; requires employers to notify States of new hires and establishes a Federal directory of new hires to aid in locating parents; streamlines procedures for voluntary paternity establishment; provides States with greater financial incentives to establish paternity; requires more frequent modification of child support orders so awards will increase with parents' earnings; requires States to have procedures for suspending drivers licenses and professional licenses of deadbeat parents; and provides greater incentives for States to increase child support collection.

The bill will also support State demonstration projects to address an underlying cause of some parents' failure to pay child support because access or visitation rulings limit their involvement in their children's lives. The bill will help States try new ways of working with families to increase noncustodial parents' visitation privileges and their financial commitment to their children.

While the bill will impose modest administrative costs on States and the Federal Government, it will also save both levels of government money over the long term. That is why State welfare administrators support it. The U.S. Department of Health and Human Services Reports that for every $1 spent on child support enforcement, $4

is collected. The collected funds are delivered to families and are used in part to reimburse Federal and State governments for welfare expenditures. This bill's provisions will increase the rate of return on our investment, benefiting children, families, and taxpayers.

Mr. President, let me reiterate that child support enforcement must be a part of our welfare reform strategy. Last month I introduced S. 246, the Welfare Reform That Works Act—a bill that would help States make bold changes to their welfare systems to move welfare recipients into the work force and strengthen families. I stated when I introduced the bill, and I want to reiterate now, that the States ability to achieve our welfare reform goals will be limited if we do not improve our child support enforcement programs. States' welfare caseloads will be higher and their budgets lower if deadbeat parents can continue to evade their responsibilities, if teenagers know that they can continue to have babies without consequences.

Mr. President, I urge my colleagues to join Senator BRADLEY and the bill's other cosponsors in supporting the act.●

ADDITIONAL COSPONSORS

S. 31

At the request of Mr. MCCAIN, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of S. 31, a bill to amend title II of the Social Security Act to eliminate the earnings test for individuals who have attained retirement age.

S. 47

At the request of Mr. SARBANES, the names of the Senator from Colorado [Mr. CAMPBELL], and the Senator from California [Mrs. BOXER] were added as cosponsors of S. 47, a bill to amend certain provisions of title 5, United States Code, in order to ensure equality between Federal firefighters and other employees in the civil service and other public sector firefighters, and for other purposes.

S. 141

At the request of Mrs. KASSEBAUM, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of S. 141, a bill to repeal the Davis-Bacon Act of 1931 to provide new job opportunities, effect significant cost savings on Federal construction contracts, promote small business participation in Federal contracting, reduce unnecessary paperwork and reporting requirements, and for other purposes.

S. 160

At the request of Mr. SHELBY, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 160, a bill to impose a moratorium on immigration by aliens other than refugees, certain priority and skilled workers, and immediate relatives of United States citizens and permanent resident aliens.

S. 227

At the request of Mr. HATCH, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 227, a bill to amend title 17, United States Code, to provide an exclusive right to perform sound recordings publicly by means of digital transmissions and for other purposes.

S. 234

At the request of Mr. CAMPBELL, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of 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.

S. 262

At the request of Mr. GRASSLEY, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of S. 262, a bill to amend the Internal Revenue Code of 1986 to increase and make permanent the deduction for health insurance costs of self-employed individuals.

S. 270

At the request of Mr. SMITH, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 270, a bill to provide special procedures for the removal of alien terrorists.

S. 275

At the request of Mr. GRASSLEY, the name of the Senator from North Dakota [Mr. DORGAN] was added as a cosponsor of S. 275, a bill to establish a temporary moratorium on the Interagency Memorandum of Agreement Concerning Wetlands Determinations until enactment of a law that is the successor to the Food, Agriculture, Conservation, and Trade Act of 1990, and for other purposes.

S. 277

At the request of Mr. D'AMATO, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of S. 277, a bill to impose comprehensive economic sanctions against Iran.

S. 356

At the request of Mr. SHELBY, the names of the Senator from Mississippi [Mr. COCHRAN] and the Senator from Minnesota [Mr. GRAMS] were added as cosponsors of S. 356, a bill to amend title 4, United States Code, to declare English as the official language of the Government of the United States.

SENATE JOINT RESOLUTION 24

At the request of Mr. COCHRAN, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of Senate Joint Resolution 24, a joint resolution proposing an amendment to the Constitution of the United States relative to the free exercise of religion.

AMENDMENT NO. 274

At the request of Mrs. FEINSTEIN the names of the Senator from Arizona [Mr. MCCAIN], the Senator from Maryland [Ms. MIKULSKI], the Senator from Wisconsin [Mr. KOHL], and the Senator from Iowa [Mr. HARKIN] were added as cosponsors of Amendment No. 274 intended to be proposed to House Joint Resolution 1, a joint resolution proposing a balanced budget amendment to the Constitution of the United States.

SENATE CONCURRENT RESOLUTION 8—RELATIVE TO MAMMOGRAPHY SCREENING GUIDELINES

Ms. SNOWE submitted the following concurrent resolution; which was referred to the Committee on Labor and Human Resources:

S. CON. RES. 8

Whereas the National Cancer Institute is the lead Federal agency for research on the causes, prevention, diagnosis, and treatment of cancer;

Whereas health professionals and consumers throughout the Nation regard the guidelines of the National Cancer Institute as reliable scientific and medical advice;

Whereas it has been proven that intervention with routine screening for breast cancer through mammography can save women's lives at a time when medical science is unable to prevent this disease;

Whereas there are statistical limitations to evaluating the efficacy of mammography in a 5–10 year age range of women, using existing studies designed to test the efficacy of mammography in a 25–30 year age range of women;

Whereas there were numerous shortcomings identified in a Canadian study designed to address reduction of mortality from breast cancer in the 40–49 age range;

Whereas to date, it is not possible to have the same degree of scientific confidence about the benefit of mammography for women ages 40–49 as exists for women ages 50–69 due to inherent limitations in the studies that have been conducted;

Whereas meta-analysis (combining the results of several studies) is sometimes useful, and the studies used to reach the National Cancer Institute's conclusions were not easily combined because of variations in design, technology, screening interval, the inclusion or exclusion of clinical breast examination, and quality;

Whereas the existing clinical trial data are inadequate to provide a definite answer to the efficacy of early detection in the 40–49 age group and there has been a dramatic change in technology during the 30-year period since the initiation of the first study of breast cancer screening;

Whereas the majority, approximately 80 percent, of women who are diagnosed with breast cancer have no identifiable risk for this disease;

Whereas breast cancer is the leading cause of cancer death among women in the age group 15–54;

Whereas the American Cancer Society and 21 other national medical organizations and

health and consumer groups are at variance with the recently rescinded guideline of the National Cancer Institute for mammography for women ages 40–49; and

Whereas the statement of scientific fact on breast cancer screening issued by the National Cancer Institute on December 3, 1993, will cause widespread confusion and concern among women and physicians, erode confidence in mammography, and reinforce barriers and negative attitudes that keep women of all ages from being screened: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that—

(1) adequately designed and conducted studies are needed to determine the benefit of screening women ages 40–49 through mammography and other emerging technologies;

(2) the National Cancer Institute's statement of scientific fact on breast cancer screening should clearly state that the uncertainty of evidence for women in this age group is due to the limitations of existing studies (as of the date of issuance of the statement); and

(3) the National Cancer Institute should reissue the recently rescinded guideline for mammography for women ages 40–49 or direct the public to consider guidelines issued by other organizations.

• Ms. SNOWE. Mr. President, breast cancer is the most common form of cancer in American women. One out of every eight women in the United States will develop breast cancer in her lifetime—a staggering increase from the 1-out-of-14 rate in 1960. An estimated 2.6 million women in America are living with breast cancer—1.6 million who have been diagnosed and an estimated 1 million do not yet know they have the disease. And every 12 minutes, a woman will die from breast cancer.

We do not know what causes breast cancer, or how to cure it. Women with breast cancer are dying at the same rate today as they did in the 1930's, and the same basic methods of treatment are being used—surgery, chemotherapy, and radiation. Clearly, we need to promote research into the cause of, optimal treatment of, and cure for breast cancer.

However, another important weapon in fighting the battle against breast cancer is detecting breast cancer in its early stages. Survival rates drop dramatically the later the disease is diagnosed. And one of the most important tools for early detection is mammography, a low-dose x ray used to examine a woman's breasts.

Recognizing the importance of consistent guidelines on breast cancer screening, the American College of Radiology convened a series of meetings in 1987. As a result of those meetings, in June 1989, 12 U.S. medical organizations including the American Medical Association, the American Cancer Society, and the National Cancer Institute endorsed breast cancer screening guidelines which advised that asymptomatic women should begin having mammograms at age 40.

However, in 1993, the National Cancer Institute rescinded its guidelines stating that there was no evidence that the examinations significantly reduced breast cancer deaths in that age group. It seems clear, upon closer inspection, that studies used to reach the National Cancer Institute's conclusions did not warrant a rescission of the guidelines because there were significant variations in design, technology, screening intervals, the inclusion or exclusion of clinical breast examination, and quality between studies. Furthermore, the National Cancer Institute's statement has caused widespread confusion and concern among women and physicians, eroded confidence in mammography, and reinforced barriers and negative attitudes that discourage women from seeking mammograms.

Consequently, I am introducing this resolution expressing the sense of the Congress that adequately designed and conducted studies are needed to determine the benefit of screening women ages 40 to 49 through mammography and other emerging technologies, that the National Cancer Institute's statement on breast cancer screening should clearly state that the uncertainty of evidence for women in this age group is due to limitations of studies conducted prior to the rescission of its guidelines, and that the National Cancer Institute should reissue its guidelines.

Hopefully, by reducing the barriers which presently discourage women from seeking mammograms, the adoption of this resolution will add to our limited arsenal of weapons to fight breast cancer.•

AMENDMENTS SUBMITTED

BALANCED BUDGET CONSTITUTIONAL AMENDMENT

GRAMM AMENDMENTS NOS. 285–286

(Ordered to lie on the table.)

Mr. GRAMM submitted two amendments intended to be proposed by him to the joint resolution (H.J. Res. 1) proposing a balanced budget amendment to the Constitution of the United States; as follows:

AMENDMENT NO. 285

In lieu of the matter proposed to be inserted, insert the following:

"No bill to increase receipts shall become law unless approved by a three-fifths majority of the whole number in each House of Congress."

AMENDMENT NO. 286

At the appropriate place, in the amendment, insert the following:

"Section . No bill to increase receipts shall become law unless approved by a three-fifths majority of the whole number in each House of Congress."

KERRY AMENDMENT NO. 287

(Ordered to lie on the table.)

Mr. KERRY submitted an amendment intended to be proposed by him to amendment No. 276 submitted by him to the joint resolution, House Joint Resolution 1, supra; as follows:

On page 1, beginning on line 4, strike "unless a" and all that follows through line 7 on page 2, and insert the following:

"unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a rollcall vote.

"SECTION 2. The limit on the debt of the United States held by the public shall not be increased, unless a majority of the whole number of each House shall provide by law for such an increase by a rollcall vote.

"SECTION 3. Prior to each fiscal year, the President shall transmit to the Congress a proposed budget for the United States Government for that fiscal year, in which total outlays do not exceed total receipts.

"SECTION 4. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

"SECTION 5. The provisions of this article may be waived for any fiscal year during which the United States experiences economic distress or a natural or manmade disaster the injurious effects of which are likely to be exacerbated by adherence to this article, and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law."

KERRY AMENDMENT NO. 288

(Ordered to lie on the table.)

Mr. KERRY submitted an amendment intended to be proposed by him to amendment No. 277 submitted by him to the joint resolution House Joint Resolution 1, supra; as follows:

On page 1, beginning on line 1, strike "Sense of the Congress" and all that follows through line 1 on page 3, and insert the following:

"Sense of the Congress that the Congress of the United States currently possesses all necessary power and authority to adopt at any time a balanced budget for the United States Government, in that its outlays do not exceed its receipts, and to pass and submit to the President all legislation as may be necessary to implement such a balanced budget, including legislation reducing expenditures for federally-funded programs and agencies and increasing revenues.

"It is further the Sense of the Congress that it is the responsibility of members of the House of Representatives and the Senate to do everything possible to use the power and authority the Congress now possesses in order to conduct the fiscal affairs of the nation in a prudent fashion that does not permit the federal government to provide the current generation with a standard of services and benefits for which that generation is unwilling to pay, thereby passing the repsonsibility for meeting costs of those services and benefits to later generations, which is the result of approving budgets which are significantly deficit financed.

"It is further the Sense of the Congress that all members of the House and the Senate who vote to approve submission to the

states of a proposed amendment to the United States Constitution requiring a balanced budget, have a responsibility to their constituents to support a budget plan to balance the budget by no later than 2002.

"It is further the Sense of the Congress that the Congress should, prior to August 15, 1995, adopt a concurrent resolution on the budget establishing a budget plan to balance the budget by fiscal year 2002 consisting of the items set forth below:

"(a)(1) a budget for each fiscal year beginning with fiscal year 1996 and ending with fiscal year 2002 containing—

"(A) aggregate levels of new budget authority, outlays, revenues, and the deficit or surplus;

"(B) totals of new budget authority and outlays for each major functional category;

"(C) new budget authority and outlays, on an account-by-account basis, for each account with actual outlays or offsetting receipts of at least $100,000,000 in fiscal year 1994; and

"(D) an allocation of Federal revenues among the major sources of such revenues;

"(2) a detailed list and description of changes in Federal law (including laws authorizing appropriations or direct spending and tax laws) required to carry out the plan and the effective date of each such change; and

"(3) reconciliation directives to the appropriate committees of the House of Representatives and Senate instructing them to submit legislative changes to the Committee on the Budget of the House or Senate, as the case may be, to implement the plan set forth in the concurrent resolution, with the cited directives deemed to be directives within the meaning of section 310(a) of the Congressional Budget Act of 1974, and with the cited committee submissions combined without substantive revision upon their receipt by the Committee on the Budget into an omnibus reconciliation bill which the Committee shall report to its House where it shall be considered in accord with procedures set forth in section 310 of the Congressional Budget Act of 1974.

"(c) the budget plan described in section (a)(1) shall be based upon Congressional Budget Office economic and technical assumptions and estimates of the spending and revenue effects of the legislative changes described in subsection (a)(2)."

BYRD AMENDMENTS NOS. 289–290

(Ordered to lie on the table.)

Mr. BYRD submitted two amendments intended to be proposed by him to the joint resolution, House Joint Resolution 1, supra; as follows:

AMENDMENT NO. 289

On page 2, strike lines 15 through 17, and insert the following:

"SECTION 4. No bill to increase revenue shall become law unless three-fifths of the whole number of each House shall provide by law for such an increase by a rollcall vote.

AMENDMENT NO. 290

On page 2, strike lines 15 through 17, and insert the following:

"SECTION 4. No bill to increase tax revenue shall become law unless three-fifths of the whole number of each House shall provide by law for such an increase by a rollcall vote.

FEINGOLD AMENDMENTS NOS. 291–294

(Ordered to lie on the table.)

Mr. FEINGOLD submitted four amendments intended to be proposed by him to the joint resolution, House Joint Resolution 1, supra; as follows:

AMENDMENT NO. 291

On page 3, line 8, after "principal." insert "The receipts and outlays of the Tennessee Valley Authority shall be counted as receipts or outlays for purposes of this article."

AMENDMENT NO. 292

On page 3, line 8, after "principal." insert "The receipts and outlays of the Tennessee Valley Authority shall be counted as receipts or outlays for purposes of this article."

AMENDMENT NO. 293

On page 3, line 8, after "principal." insert "The receipts and outlays of all quasi-Federal agencies created under authority of acts of Congress shall not be counted as receipts or outlays for purposes of this article."

AMENDMENT NO. 294

On page 3, line 8, after "principal." insert "The receipts and outlays of all quasi-Federal agencies created under authority of acts of Congress shall not be counted as receipts or outlays for purposes of this article."

GRAHAM AMENDMENTS NOS. 295–296

(Ordered to lie on the table.)

Mr. GRAHAM submitted two amendments intended to be proposed by him to the joint resolution, House Joint Resolution 1, supra; as follows:

AMENDMENT NO. 295

On page 2, lines 7 and 8, strike "limit on the debt of the United States held by the public" and insert "public debt limit of the United States".

AMENDMENT NO. 296

On age 2, line 8, insert "on the effective date of this article" after "public".

NOTICE OF HEARINGS

SUBCOMMITTEE ON FORESTS AND PUBLIC LAND MANAGEMENT

Mr. CRAIG. Mr. President, I would like to announce for the information of the Senate and the public a hearing which has been scheduled before the Subcommittee on Forests and Public Land Management.

The hearing will take place on Wednesday, March 1, 1995, at 2 p.m. in room SD–366 of the Dirksen Senate Office Building in Washington, DC. The purpose of the hearing is to receive testimony on S. 391, the Federal Lands Forest Health Protection and Restoration Act.

Those wishing to testify or who wish to submit written statements should write to the Committee on Energy and Natural Resources, Subcommittee on Forests and Public Land Management, U.S. Senate, Washington, DC 20510. For further information, please call Mark Rey at 202–224–2878.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the public that a hearing has been scheduled before the full Committee on Energy and Natural Resources.

The hearing will take place Thursday, March 2, 1995, at 9:30 a.m., in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of this hearing is to receive testimony regarding S. 443, the Electric Consumers and Environmental Protection Act of 1995, S. 167, the Nuclear Waste Police Act of 1995, and draft legislation being considered by the full Committee.

Those wishing to testify or who wish to submit written statements should write to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510. For further information, please call Karen Hunsicker at (202) 224–3543.

COMMITTEE ON ENERGY AND NATURAL RESOURCES, SUBCOMMITTEE ON PARKS, HISTORIC PRESERVATION AND RECREATION

Mr. THOMAS. Mr. President, I would like to announce for the public that a joint hearing has been scheduled before the Subcommittee on Parks, Historic Preservation and Recreation and the Subcommittee on National Parks, Forests and Lands of the House Committee on Resources.

The hearing will take place Tuesday, March 7, 1995, at 9:30 a.m. in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of this hearing is to receive testimony from officials of the General Accounting Office regarding their ongoing study on the health of the National Park System. For further information, please call Jim O'Toole at (202) 224–5161.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. SMITH. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet at 9:30 a.m. on Thursday, February 16, 1995, in open session (and possibly closed session), to receive testimony from the unified commanders on their military strategies, operational requirements, and the defense authorization request for fiscal year 1996, including the future years defense program.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. SMITH. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Thursday, February 16, 1995, for purposes of conducting a full committee hearing which is scheduled to begin at 9:30 a.m. The purpose of the hearing is to receive testimony on the President's fiscal year 1996 Budget for the Department of the Interior.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. SMITH. Mr. President, I ask unanimous consent that the full Committee on Environment and Public Works be granted permission to meet Thursday, February 16, 1995, at 10:30 a.m. to receive testimony from Dan M. Berkovitz, nominated by the President to be member, Nuclear Regulatory Commission; and Shirley Ann Jackson, nominated by the President to be member, Nuclear Regulatory Commission.

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

COMMITTEE ON FINANCE

Mr. SMITH. Mr. President, I ask unanimous consent that the Finance Committee be permitted to meet Thursday, February 16, 1995, beginning at 9:30 a.m., in room 215 of the Dirksen Senate Office Building, to conduct a hearing on indexation of assets, and on the nominations of Mr. Maurice Foley, to be a judge on the U.S. Tax Court for a term of 15 years; Mr. Juan Vasquez, to be a judge on the U.S. Tax Court for a term of 15 years; Dr. Shirley Chater, nominated to be Commissioner of Social Security for a term expiring January 19, 2001.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. SMITH. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, February 16, 1995, at 2 p.m. to hold a nomination hearing for Mr. Johnnie Carson to be Ambassador to Zimbabwe and Mr. Bismarck Myrick to be Ambassador to the Kingdom of Lesotho.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. SMITH. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, February 16, 1995, at 2:30 p.m. to hold a hearing on Trade and Investment in Africa.

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

COMMITTEE ON SMALL BUSINESS

Mr. SMITH. Mr. President, I ask unanimous consent that the Committee on Small Business be authorized to meet during the session of the Senate on Thursday, February 16, at 2 p.m., in room SR-428A, to conduct a hearing focusing on small business owner's perspective on the Small Business Administration.

The PRESIDING OFFICER. Without objection, it is so ordered

COMMITTEE ON INDIAN AFFAIRS

Mr. SMITH. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Thursday, February 16, 1995, beginning at 9:30 a.m., in room 485 of the Russell Senate Office Building on the fiscal year 1996 budget oversight hearing.

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

SUBCOMMITTEE ON CHILDREN AND FAMILIES

Mr. SMITH. Mr. President, I ask unanimous consent that the Subcommittee on Children and Families of the Committee on Labor and Human Resources be authorized to meet for a hearing on the child care and development block grant, during the session of the Senate on Thursday, February 16, 1995, at 10 a.m.

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

ADDITIONAL STATEMENTS

EROSION OF U.S. ELECTRONIC WARFARE CAPABILITY

• Mr. D'AMATO. Mr. President, the Air Force and Navy are quietly scrapping our electronic warfare [EW] squadrons. At best, the Services are making penny wise and pound foolish decisions. At worst, the Air Force and Navy are attempting to force Congress into funding an all-stealthy tactical aviation fleet. Either way, America is on the verge of losing its decisive edge in EW.

Reviewing the "Conduct of the Persian Gulf War," one is struck by the crucial role EW played in achieving air superiority:

> The attacks on the Iraqi electronic order of battle [EOB] affected every aspect of [the] air supremacy operation. Coalition aircraft conducting air defense suppression missions saturated Iraqi airspace with jammers, shooters, and bombers. Iraqi defense that attempted to engage were disrupted, and risked being destroyed. EF-111A's and EA-6B's were used in stand-off and close-in orbits to jam early warning, acquisition, and [Ground Control Intercept] GCI radars. EC-130H Compass Call aircraft jammed radio communications, data links, and navigation systems. F-4G's, F-16's, EA-6B's, A-6E's, A-7E's, and F/A-18's used [High-Speed Anti-Radiation Missiles] HARMs to destroy acquisition, GCI, and target tracking radars. Various aircraft dropped bombs on air defense emplacements and control facilities. [Suppression of Enemy Air Defenses] SEAD forces and bomb droppers caused confusion, hesitation, and loss of capability, which degraded Iraqi air defense capability.

This confusion, hesitation, and loss of capability was directly responsible for the spectacular success of our air and ground campaigns. More importantly, air superiority was a key element in reducing Coalition losses in men and material. Yet, a mere 4 years since Desert Storm, our EW capability is rapidly wasting away for lack of funds.

The most immediate dilemma facing Congress is the proposed termination of the EF-111A System Improvement Program (SIP). EF-111 performance, pre-SIP, was described in glowing terms in the "Conduct of the Persian Gulf War:"

> [EF-111As] were part of the initial surge of aircraft across the Iraqi border the first night of the war, and established orbits to escort strike packages into the H-3 and Baghdad areas. They jammed EW, height finder, GCI, and target-acquisition radars, and were effective in tricking the enemy into opening fire at fake radar returns in areas where there were no Coalition aircraft.

It should be noted that only F-117's were cleared for Baghdad, a point that I will return to in a moment.

The SIP will significantly enhance the effectiveness, reliability, and maintainability of the already proven EF-111. Unfortunately, the Air Force proposed, and the Office of the Secretary of Defense accepted, the termination of the SIP in fiscal year 1996 for budgetary reasons preparatory to retiring the aircraft in fiscal year 1997.

To compensate for the loss of EW capability that will result from the termination of the SIP and retirement of the EF-111A, the Air Force has suggested a number of alternatives:

> Navy EA-6B's can handle EW duties: Jointness at its most cynical. The EA-6B Advanced Capability (ADVCAP) upgrade was cancelled by the Navy in February 1994. The future of Navy EW is in disarray, and it is likely that EA-6B modernization will be limited to safety of flight improvements until the retirement of the aircraft;
>
> Stealthy aircraft require less EW support: Perhaps, but, as mentioned before, F-117's benefited from EW support in the skies over Baghdad. Stealth is actually an EW force multiplier, because the jamming power and techniques needed to hide an aircraft with the radar cross section (RCS) of a B-52 will be many times more effective hiding an aircraft with the RCS of a sparrow; and,
>
> Jamming pods can replace stand-off jammers: This is, at best, only a partial solution. Pods provide only self-protection, frequencies, power output, and techniques are limited, man-in-the-loop responsiveness is lost, and aircraft maneuverability, payload, speed, and range are reduced.

The menu of options presented by the Air Force is hardly ideal, and, taken separately, or in some combination, represent a significant diminution of U.S. EW capability. Worse yet, the use of prior year EF-111A SIP funds as a source for the supplemental by the House Appropriations Committee may foreclose our opportunity to debate the wisdom of the EF-111A SIP cancellation. If prior year EF-111A SIP funds are rescinded, the termination of the program will be irreversible.

So what do we do? First, drop EF-111A SIP funds as a source for the supplemental. Second, pry loose the congressionally mandated Joint Tactical Electronic Warfare Study. Third, if the study says what I think it will, ensure that the fiscal year 1996 defense authorization and appropriations bills include funds to maintain and modernize the EF-111A, EA-6B, and F-4G ("Wild Weasel") fleets.

The alternative is to let the services have their way, and let America's EW

advantage erode. This erosion will have profound implications for Congress. Without proper EW support, conventional aircraft are almost immediately obsolete. For Members vaporlocking over the cost of the F-22, it is worth considering that the 442 F-22's proposed will only fill out 4 of the 20 Fighter Wing Equivalents (FWE's) in the Bottom Up Review Force. That means one of two things: First, we buy 17 more FWE's worth of stealthy tactical aircraft, or second, we accept considerably higher losses among conventional aircraft in the next conflict. For Congress, an ugly choice.•

RULES OF SELECT COMMITTEE ON ETHICS

• Mr. McCONNELL. Mr. President, in accordance with rule XXVI(2) of the Standing Rules of the Senate, I ask that the Rules of Procedure of the Select Committee on Ethics, which were adopted February 23, 1978, and the Interim Procedures for Requests for Review Under Section 308 of the Government Employee Rights Act of 1991 be printed in the CONGRESSIONAL RECORD for the 104th Congress.

The material follows:

SELECT COMMITTEE ON ETHICS—

RULE 1. GENERAL PROCEDURES

(a) Officers: The Committee shall select a Chairman and a Vice Chairman from among its Members. In the absence of the Chairman, the duties of the Chair shall be filled by the Vice Chairman or, in the Vice Chairman's absence, a Committee Member designated by the Chairman.

(b) Procedural Rules: The basic procedural rules of the Committee are stated as a part of the Standing Orders of the Senate in Senate Resolution 338, 88th Congress, as amended, as well as other resolutions and laws. Supplementary Procedural Rules are stated herein and are hereinafter referred to as the Rules. The Rules shall be published in the Congressional Record not later than thirty days after adoption, and copies shall be made available by the Committee office upon request.

(c) Meetings:

(1) The regular meeting of the Committee shall be the first Thursday of each month while the Congress is in session.

(2) Special meetings may be held at the call of the Chairman or Vice Chairman if at least forty-eight hours notice is furnished to all Members. If all Members agree, a special meeting may be held on less than forty-eight hours notice.

(3)(A) If any Member of the Committee desires that a special meeting of the Committee be called, the Member may file in the office of the Committee a written request to the Chairman or Vice Chairman for that special meeting.

(B) Immediately upon the filing of the request the Clerk of the Committee shall notify the Chairman and Vice Chairman of the filing of the request. If, within three calendar days after the filing of the request, the Chairman or the Vice Chairman does not call the requested special meeting, to be held within seven calendar days after the filing of the request, any three of the Members of the Committee may file their written notice in the office of the Committee that a special meeting of the Committee will be held at a specified date and hour; such special meeting may not occur until forty-eight hours after the notice is filed. The Clerk shall immediately notify all Members of the Committee of the date and hour of the special meeting. The Committee shall meet at the specified date and hour.

(d) Quorum:

(1) A majority of the Members of the Select Committee shall constitute a quorum for the transaction of business involving complaints and allegations of misconduct, including the consideration of matters involving sworn complaints, unsworn allegations or information, resultant preliminary inquiries, initial reviews, investigations, hearings, recommendations or reports and matters relating to Senate Resolution 400, agreed to May 19, 1976.

(2) Three Members shall constitute a quorum for the transaction of the routine business of the Select Committee not covered by the first subparagraph of this paragraph, including requests for opinions and interpretations concerning the Code of Official Conduct or any other statute or regulation under the jurisdiction of the Select Committee, if one Member of the quorum is a Member of the majority Party and one Member of the quorum is a Member of the minority Party. During the transaction of routine business any Member of the Select Committee constituting the quorum shall have the right to postpone further discussion of a pending matter until such time as a majority of the Members of the Select Committee are present.

(3) Except for an adjudicatory hearing under Rule 6 and any deposition taken outside the presence of a Member under Rule 7, one Member shall constitute a quorum for hearing testimony, provided that all Members have been given notice of the hearing and the Chairman has designated a Member of the majority Party and the Vice Chairman has designated a Member of the minority Party to be in attendance, either of whom in the absence of the other may constitute the quorum.

(e) Order of Business: Questions as to the order of business and the procedure of the Committee shall in the first instance by decided by the Chairman and Vice Chairman, subject to reversal by a vote by a majority of the Committee.

(f) Hearings Announcements: The Committee shall make public announcement of the date, place and subject matter of any hearing to be conducted by it at least one week before the commencement of that hearing, and shall publish such announcement in the Congressional Record. If the Committee determines that there is good cause to commence a hearing at an earlier date, such notice will be given at the earliest possible time.

(g) Open and Closed Committee Meetings: Meetings of the Committee shall be open to the public or closed to the public (executive session), as determined under the provisions of paragraphs 5(b) to (d) of Rule XXVI of the Standing Rules of the Senate. Executive session meetings of the Committee shall be closed except to the Members and the staff of the Committee. On the motion of any Member, and with the approval of a majority of the Committee Members present, other individuals may be admitted to an executive session meeting for a specified period or purpose.

(h) Record of Testimony and Committee Action: An accurate stenographic or transcribed electronic record shall be kept of all Committee proceedings, whether in executive or public session. Such record shall include Senators' votes on any question on which a recorded vote is held. The record of a witness' testimony, whether in public or executive session, shall be made available for inspection to the witness or his counsel under Committee supervision; a copy of any testimony given by that witness in public session, or that part of the testimony given by the witness in executive session and subsequently quoted or made part of the record in a public session shall be made available to any witness if he so requests. (See Rule 6 on Procedures for Conducting Hearings.)

(i) Secrecy of Executive Testimony and Action and of Complaint Proceedings:

(1) All testimony and action taken in executive session shall be kept secret and shall not be released outside the Committee to any individual or group, whether governmental or private, without the approval of a majority of the Committee.

(2) All testimony and action relating to a sworn complaint shall be kept secret and shall not be released by the Committee to any individual or group, whether governmental or private, except the respondent, without the approval of a majority of the Committee, until such time as a report to the Senate is required under Senate Resolution 338, 88th Congress, as amended, or unless otherwise permitted under these Rules. (See rule 9 on Procedures for Handling Committee Sensitive and Classified Materials.)

(j) Release of Reports to Public: No information pertaining to, or copies of any Committee report, study, or other document which purports to express the view, findings, conclusions or recommendations of the Committee in connection with any of its activities or proceedings may be released to any individual or group whether governmental or private, without the authorization of the Committee. Whenever the Chairman or Vice Chairman is authorized to make any determination, then the determination may be released at his or her discretion. Each Member of the Committee shall be given a reasonable opportunity to have separate views included as part of any Committee report. (See rule 9 on Procedures for Handling Committee Sensitive and Classified Materials.)

(k) Ineligibility or Disqualification of Members and Staff:

(1) A Member of the Committee shall be ineligible to participate in any Committee proceeding that relates specifically to any of the following:

(A) the Member's own conduct;

(B) The conduct of any employee or officer that the Member supervises, as defined in paragraph [12] of rule XXXVII of the Standing Rules of the Senate;

(C) The conduct of any employee or any officer that the Member supervises; or

(D) A complaint, sworn or unsworn, that was filed by a Member, or by any employee or officer that the Member supervises.

(2) If any Committee proceeding appears to relate to a Member of the Committee in a manner described in subparagraph (1) of this paragraph, the staff shall prepare a report to the Chairman and Vice Chairman. If either the Chairman or the Vice Chairman concludes from the report that it appears that the Member may be ineligible, the Member shall be notified in writing of the nature of the particular proceeding and the reason that it appears that the Member may be ineligible to participate in it. If the Member agrees that he or she is ineligible, the Member shall so notify the Chairman or Vice

Chairman. If the Member believes that he or she is not ineligible, he or she may explain the reasons to the Chairman and Vice Chairman, and if they both agree that the Member is not ineligible, the Member shall continue to serve. But if either the Chairman or Vice Chairman continues to believe that the Member is ineligible, while the Member believes that he or she is not ineligible, the matter shall be promptly referred to the Committee. The Member shall present his or her arguments to the Committee in executive session. Any contested questions concerning a Member's eligibility shall be decided by a majority vote of the Committee, meeting in executive session, with the Member in question not participating.

(3) A Member may also disqualify himself from participating in a Committee proceeding in other circumstances not listed in subparagraph (k)(1).

(4) The President of the Senate shall be given written notice of the ineligibility or disqualification of any Member from any initial review, investigation, or other proceeding requiring the appointment of another Member in accordance with subparagraph (k)(5).

(5) Whenever a Member of the Committee is ineligible to participate in or disqualifies himself from participating in any initial review, investigation, or other substantial Committee proceeding, another Member of the Senate who is of the same party shall be appointed by the Senate in accordance with the provisions of paragraph 1 of rule XXIV of the Standing Rules of the Senate, to serve as a Member of the Committee solely for the purposes of that proceeding.

(6) A Member of the Committee staff shall be ineligible to participate in any Committee proceeding that the staff director or outside counsel determines relates specifically to any of the following:

(A) the staff Member's own conduct;

(B) the conduct of any employee that the staff Member supervises;

(C) the conduct of any Member, officer or employee for whom the staff Member has worked for any substantial period; or

(D) a complaint, sworn or unsworn, that was filed by the staff Member. At the direction or with the consent of the staff director or outside counsel, a staff Member may also be disqualified from participating in a Committee proceeding in other circumstances not listed above.

(l) Recorded Votes: Any Member may require a recorded vote on any matter.

(m) Proxies; Recording Votes of Absent Members:

(1) Proxy voting shall not be allowed when the question before the Committee is the initiation or continuation of an initial review or an investigation, or the issuance of a report or recommendation related thereto concerning a Member or officer of the Senate. In any such case an absent Member's vote may be announced solely for the purpose of recording the Member's position and such announced votes shall not be counted for or against the motion.

(2) On matters other than matters listed in paragraph (m)(1) above, the Committee may order that the record be held open for the vote of absentees or recorded proxy votes if the absent Committee Member has been informed of the matter on which the vote occurs and has affirmatively requested the Chairman or Vice Chairman in writing that he be so recorded.

(3) All proxies shall be in writing, and shall be delivered to the Chairman or Vice Chairman to be recorded.

(4) Proxies shall not be considered for the purpose of establishing a quorum.

(n) Approval of Blind Trusts and Foreign Travel Requests Between Sessions and During Extended Recesses: During any period in which the Senate stands in adjourment between sessions of the Congress or stands in a recess scheduled to extend beyond fourteen days, the Chairman and Vice Chairman, or their designees, acting jointly, are authorized to approve or disapprove blind trusts under the provision of rule XXXIV, and to approve or disapprove foreign travel requests which require immediate resolution.

(o) Committee Use of Services or Employees of Other Agencies and Departments: With the prior consent of the department or agency involved, the Committee may (1) utilize the services, information, or facilities of any such department or agency of the Government, and (2) employ on a reimbursable basis or otherwise the services of such personnel of any such department or agency as it deems advisable. With the consent of any other committee of the Senate, or any subcommittee, the Committee may utilize the facilities and the services of the staff of such other committee or subcommittee whenever the Chairman and Vice Chairman of the Committee, acting jointly, determine that such action is necessary and appropriate.

RULE 2: PROCEDURES FOR SWORN COMPLAINTS

(a) Sworn Complaints: Any person may file a sworn complaint with the Committee, alleging that any Senator, or officer, or employee of the Senate has violated a law, the Senate Code of Official Conduct, or any rule or regulation of the Senate relating to the conduct of any individual in the performance of his or her duty as a Member, officer, or employee of the Senate, or has engaged in improper conduct which may reflect upon the Senate.

(b) Form and Content of Complaints: A complaint filed under paragraph (a) shall be in writing and under oath, and shall set forth in simple, concise and direct statements:

(1) The name and legal address of the party filing the complaint (hereinafter, the complainant);

(2) The name and position or title of each Member, officer, or employee of the Senate who is specifically alleged to have engaged in the improper conduct or committed the violation (hereinafter, the respondent);

(3) The nature of the alleged improper conduct or violation, including, if possible, the specific provision of the Senate Code of Official Conduct or other law, rule, or regulation alleged to have been violated.

(4)(A) A statement of the facts within the personal knowledge of the complainant that are alleged to constitute the improper conduct or violation.

(B) The term "personal knowledge" is not intended to and does not limit the complainant's statement to situations that he or she personally witnessed or to activities in which the complainant was a participant.

(C) Where allegations in the sworn complaint are made upon the information and belief of the complainant, the complaint shall so state, and shall set forth the basis for such information and belief.

(5) The complainant must swear that all of the information contained in the complaint either (a) is true, or (b) was obtained under circumstances such that the complainant has sufficient personal knowledge of the source of the information reasonably to believe that it is true. The complainant may so swear either by oath or by solemn affirmation before a notary public or other authorized official.

(6) All documents in the possession of the complainant relevant to or in support of his or her allegations may be appended to the complaint.

(c) Processing of Sworn Complaints:

(1) When the Committee receives a sworn complaint against a Member, officer or employee of the Senate, it shall determine by majority vote whether the complaint is in substantial compliance with paragraph (b) of this rule.

(2) If it is determined by the Committee that a sworn complaint does not substantially comply with the requirements of paragraph (b), complaint shall be returned promptly to the complainant, with a statement explaining how the complaint fails to comply and a copy of the rules for filing sworn complaints. The complainant may resubmit the complaint in the proper form. If the complaint is not revised so that it substantially complies with the stated requirements, the Committee may in its discretion process the complaint in accordance with rule 3.

(3) A sworn complaint against any Member, officer, or employee of the Senate that is determined by the Committee to be in substantial compliance shall be transmitted to the respondent within five days of the determination. The transmittal notice shall include the date upon which the complaint, was received, a statement that the complaint conforms to the applicable rules, a statement that the Committee will immediately begin an initial review of the complaint, and a statement inviting the respondent to provide any information relevant to the complaint to the Committee. A copy of the Rules of the Committee shall be supplied with the notice.

RULE 3: PROCEDURES ON RECEIPT OF ALLEGATIONS OTHER THAN A SWORN COMPLAINT; PRELIMINARY INQUIRY

(a) Unsworn Allegations or Information: Any Member or Staff Member of the Committee shall report to the Committee, and any other person may report to the Committee, any credible information available to him or her that indicates that any named or unnamed Member, officer or employees of the Senate may have—

(1) violated the Senate Code of Official Conduct;

(2) violated a law;

(3) violated any rule or regulation of the Senate relating to the conduct of individuals in the performance of their duties as Members, officers, or employees of the Senate; or

(4) engaged in improper conduct which may reflect upon the Senate. Such allegations or information may be reported to the Chairman, the Vice Chairman, a Committee Member, or a Committee staff Member.

(b) Sources of Unsworn Allegations or Information: The information to be reported to the Committee under paragraph (a), may be obtained from a variety of sources, including but not limited to the following:

(1) sworn complaints that do not satisfy all of the requirements of Rule 2;

(2) anonymous or informal complaints, whether or not satisfying the requirements of Rule 2;

(3) information developed during a study or inquiry by the Committee or other committees or subcommittees of the Senate, including information obtained in connection with legislative or general oversight hearings;

(4) information reported by the news media; or

(5) information obtained from any individual, agency or department of the executive branch of the Federal Government.

(c) Preliminary Inquiry:

(1) When information is presented to the Committee pursuant to paragraph (a), it shall immediately be transmitted to the Chairman and the Vice Chairman, for one of the following actions:

(A) The Chairman and Vice Chairman, acting jointly, may conduct or may direct the Committee staff to conduct, a preliminary inquiry.

(B) The Chairman and Vice Chairman, acting jointly may present the allegations or information received directly to the Committee for it to determine whether an initial review should be undertaken. (See paragraph (d).)

(2) A preliminary inquiry may include any inquiries, interviews, sworn statements, depositions, and subpoenas that the Chairman and Vice Chairman deem appropriate to obtain information upon which to make any determination provided for by this Rule.

(3) At the conclusion of a preliminary inquiry, the Chairman and Vice Chairman shall receive a full report of its findings. The Chairman and Vice Chairman, acting jointly, shall then determine what further action, if any, is appropriate in the particular case, including any of the following:

(A) No further action is appropriate, because the alleged improper conduct or violation is clearly not within the jurisdiction of the Committee;

(B) No further action is appropriate, because there is no reason to believe that the alleged improper conduct or violation may have occurred; or

(C) The unsworn allegations or information, and a report on the preliminary inquiry, should be referred to the Committee, to determine whether an initial review should be undertaken. (See paragraph (d).)

(4) If the Chairman and the Vice Chairman are unable to agree on a determination at the conclusion of a preliminary inquiry, then they shall refer the allegations or information to the Committee, with a report on the preliminary inquiry, for the Committee to determine whether an initial review should be undertaken. (See paragraph (d).)

(5) A preliminary inquiry shall be completed within sixty days after the unsworn allegations or information were received by the Chairman and Vice Chairman. The sixty day period may be extended for a specified period by the Chairman and Vice Chairman, acting jointly. A preliminary inquiry is completed when the Chairman and the Vice Chairman have made the determination required by subparagraphs (3) and (4) of this paragraph.

(d) Determination Whether To Conduct an Initial Review: When information or allegations are presented to the Committee by the Chairman and the Vice Chairman, the Committee shall determine whether an initial review should be undertaken.

(1) An initial review shall be undertaken when—

(A) there is reason to believe on the basis of the information before the Committee that the possible improper conduct or violation may be within the jurisdiction of the Committee; and

(B) there is reason to believe on the basis of the information before the Committee that the improper conduct or violation may have occurred.

(2) The determination whether to undertake an initial review shall be made by recorded vote within thirty days following the Committee's receipt of the unsworn allegations or information from the Chairman or Vice Chairman, or at the first meeting of the Committee thereafter if none occurs within thirty days, unless this time is extended for a specified period by the Committee.

(3) The Committee may determine that an initial review is not warranted because (a) there is no reason to believe on the basis of the information before the Committee that the improper conduct or violation may have occurred, or (b) the improper conduct or violation, even if proven, is not within the jurisdiction of the Committee.

(A) If the Committee determines that an initial review is not warranted, it shall promptly notify the complainant, if any, and any known respondent.

(B) If there is a complainant, he or she may also be invited to submit additional information, and notified of the procedures for filing a sworn complaint. If the complainant later provides additional information, not in the form of a sworn complaint, it shall be handled as a new allegation in accordance with the procedures of Rule 3. If he or she submits a sworn complaint, it shall be handled in accordance with Rule 2.

(4)(A) The Committee may determine that there is reason to believe on the basis of the information before it that the improper conduct or violation may have occurred and may be within the jurisdiction of the Committee, and that an initial review must therefore be conducted.

(B) If the Committee determines that an initial review will be conducted, it shall promptly notify the complainant, if any, and the respondent, if any.

(C) The notice required under subparagraph (B) shall include a general statement of the information or allegations before the Committee and a statement that the Committee will immediately begin an initial review of the complaint. A copy of the Rules of the Committee shall be supplied with the notice.

(5) If a Member of the Committee believes that the preliminary inquiry has provided sufficient information for the Committee to determine whether there is substantial credible evidence which provides substantial cause for the Committee to conclude that a violation within the jurisdiction of the Committee has occurred, the Member may move that the Committee dispense with the initial review and move directly to the determinations described in Rule 4(f). The Committee may adopt such a motion by majority vote of the full Committee.

RULE 4: PROCEDURES FOR CONDUCTING AN INITIAL REVIEW

(a) Basis for Initial Review: The Committee shall promptly commence an initial review whenever it has received either (1) a sworn complaint that the Committee has determined is in substantial compliance with the requirements of Rule 2, or (2) unsworn allegations or information that have caused the Committee to determine in accordance with Rule 3 that an initial review must be conducted.

(b) Scope of Initial Review:

(1) The initial review shall be of such duration and scope as may be necessary to determine whether there is substantial credible evidence which provides substantial cause for the Committee to conclude that a violation within the jurisdiction of the Committee has occurred.

(2) An initial review may include any inquiries, interviews, sworn statements, depositions, and subpoenas that the Committee deems appropriate to obtain information upon which to make any determination provided for by this Rule.

(c) Opportunity for Response: An initial review may include an opportunity for any known respondent or his designated representative, to present either a written or oral statement, or to respond orally to questions from the Committee. Such an oral statement or answers shall be transcribed and signed by the person providing the statement or answers.

(d) Status Reports: The Committee staff or outside counsel shall periodically report to the Committee in the form and according to the schedule prescribed by the Committee. The reports shall be confidential.

(e) Final Report: When the initial review is completed, the staff or outside counsel shall make a confidential report to the Committee on findings and recommendations.

(f) Committee Action: As soon as practical following submission of the report on the initial review, the Committee shall determine by a recorded vote whether there is substantial credible evidence which provides substantial cause for the Committee to conclude that a violation within the jurisdiction of the Committee has occurred. The Committee may make any of the following determinations:

(1) The Committee may determine that there is not such substantial credible evidence. In this case, the Committee shall report its determination to the complainant, if any, and to the respondent, together with an explanation of the basis for the determination. The explanation may be as detailed as the Committee desires, but it is not required to include a complete discussion of the evidence collected in the initial review.

(2) The Committee may determine that there is such substantial credible evidence, but that the alleged violation is inadvertent, technical, or otherwise of a de minimis nature. In this case, the Committee may attempt to correct or to prevent such violation by informal methods. The Committee's final determination in this matter shall be reported to the complainant, if any, and to the respondent, if any.

(3) The Committee may determine that there is such substantial credible evidence, but that the alleged violation, if proven, although not of a de minimis nature, would not be sufficiently serious to justify the severe disciplinary actions specified in Senate Resolution 338, 88th Congress, as amended (i.e., for a Member, censure, explusion, or recommendation to the appropriate party conference regarding the Member's seniority or positions of responsibility; or for an officer or employee, suspension or dismissal). In this case, the Committee, by the recorded affirmative vote of at least four Members, may propose a remedy that it deems appropriate. If the respondent agrees to the proposed remedy, a summary of the Committee's conclusions and the remedy proposed and agreed to shall be filed as a public record with the Secretary of the Senate and a notice of the filing shall be printed in the CONGRESSIONAL RECORD.

(4) The Committee may determine, by recorded affirmative vote of at least four Members, that there is such substantial credible evidence, and also either:

(A) that the violation, if proved, would be sufficiently serious to warrant imposition of one of the severe disciplinary actions listed in paragraph (3); or

(B) that the violation, if proven, is less serious, but was not resolved pursuant to the procedure in paragraph (3). In either case, the Committee shall order that an investigation promptly be conducted in accordance with Rule 5.

RULE 5: PROCEDURES FOR CONDUCTING AN INVESTIGATION

(a) Definition of Investigation: An "investigation" is a proceeding undertaken by the

Committee, by recorded affirmative vote of at least four Members, after a finding on the basis of an initial review that there is substantial credible evidence which provides substantial cause for the Committee to conclude that a violation within its jurisdiction has occurred.

(b) Scope of Investigation: When the Committee decides to conduct an investigation, it shall be of such duration and scope as is necessary for the Committee to determine whether a violation within its jurisdiction has occurred. In the course of the investigation, designated outside counsel, or if the Committee determines not to use outside counsel, the Committee or its staff, may conduct inquiries or interviews, take sworn statements, use compulsory process as described in Rule 7, or take any other actions that the Committee deems appropriate to secure the evidence necessary to make this determination.

(c) Notice to Respondent: The Committee shall give written notice to any know respondent who is the subject of an investigation. The notice shall be sent to the respondent no later than five working days after the Committee has voted to conduct an investigation. The notice shall include a statement of the nature of the possible violation, and a description of the evidence indicating that a possible violation occurred. The Committee shall offer the respondent an opportunity to present a statement or to respond to questions from Members of the Committee, the Committee staff, or outside counsel.

(d) Right to a Hearing: The Committee shall accord a respondent an opportunity for a hearing before it recommends disciplinary action against that respondent to the Senate.

(e) Progress Report to Committee: The Committee staff or outside counsel shall periodically report to the Committee concerning the progress of the investigation. Such reports shall be delivered to the Committee in the form and according to the schedule prescribed by the Committee, and shall be confidential.

(f) Report of Investigation:

(1) Upon completion of an investigation, including any hearings held pursuant to Rule 6, the outside counsel or the staff shall submit a confidential written report to the Committee, which shall detail the factual findings of the investigation and which may recommend disciplinary action, if appropriate. Findings of the fact of the investigation shall be detailed in this report whether or not disciplinary action is recommended.

(2) The Committee shall consider the report of the staff or outside counsel promptly following its submission. The Committee shall prepare and submit a report to the Senate, including a recommendation to the Senate concerning disciplinary action, if appropriate. A report shall be issued, stating in detail the Committee's findings of fact, whether or not disciplinary action is recommended. The report shall also explain fully the reasons underlying the Committee's recommendation concerning disciplinary action, if any. No recommendation or resolution of the Committee concerning the investigation of a Member, officer or employee of the Senate may be approved except by the affirmative recorded vote of not less than four Members of the Committee.

(3) Promptly, after the conclusion of the investigation, the Committee's report and recommendation shall be forwarded to the Secretary of the Senate, and a copy shall be provided to the complainant and the respondent. The full report and recommendation shall be printed and made public, unless the Committee determines by majority vote that it should remain confidential.

RULE 6: PROCEDURES FOR HEARINGS

(a) Right to Hearing: The Committee may hold a public or executive hearing in any inquiry, initial review, investigation, or other proceeding. The Committee shall accord a respondent an opportunity for a hearing before it recommends disciplinary action against that respondent to the Senate. (See Rule 5(d).)

(b) Non-Public Hearings: The Committee may at any time during a hearing determine in accordance with paragraph 5(b) of Rule XXVI of the Standing Rules of the Senate whether to receive the testimony of specific witnesses in executive session. If a witness desires to express a preference for testifying in public or in executive session, he or she shall so notify the Committee at least five days before he or she is scheduled to testify.

(c) Adjudicatory Hearings: The Committee may, by majority vote, designate any public or executive hearing as an adjudicatory hearing; and, any hearing which is concerned with possible disciplinary action against a respondent or respondents designated by the Committee shall be an adjudicatory hearing. In any adjudicatory hearing, the procedures described in paragraph (j) shall apply.

(d) Subpoena Power: The Committee may require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such correspondence, books, papers, documents or other articles as it deems advisable. (See Rule 7.)

(e) Notice of Hearings: The Committee shall make public an announcement of the date, place, and subject matter of any hearing to be conducted by it, in accordance with Rule 1(f).

(f) Presiding Officer: The Chairman shall preside over the hearings, or in his absence the Vice Chairman. If the Vice Chairman is also absent, a Committee Member designated by the Chairman shall preside. If an oath or affirmation is required, it shall be administered to a witness by the Presiding Officer, or in his absence, by any Committee Member.

(g) Witnesses:

(1) A subpoena or other request to testify shall be served on a witness sufficiently in advance of his or her scheduled appearance to allow the witness a reasonable period of time, as determined by the Committee, to prepare for the hearing and to employ counsel if desired.

(2) The Committee may, by majority vote, rule that no Member of the Committee or staff or outside counsel shall make public the name of any witness subpoenaed by the Committee before the date of that witness' scheduled appearance, except as specifically authorized by the Chairman and Vice Chairman, acting jointly.

(3) Any witness desiring to read a prepared or written statement in executive or public hearings shall file a copy of such statement with the Committee at least two working days in advance of the hearing at which the statement is to be presented. The Chairman and Vice Chairman shall determine whether such statements may be read or placed in the record of the hearing.

(4) Insofar as practicable, each witness shall be permitted to present a brief oral opening statement, if he or she desires to do so.

(h) Right To Testify: Any person whose name is mentioned or who is specifically identified or otherwise referred to in testimony or in statements made by a Committee Member, staff Member or outside counsel, or any witness, and who reasonably believes that the statement tends to adversely affect his or her reputation may—

(1) Request to appear personally before the Committee to testify in his or her own behalf; or

(2) File a sworn statement of facts relevant to the testimony or other evidence or statement of which he or she complained. Such request and such statement shall be submitted to the Committee for its consideration and action.

(i) Conduct of Witnesses and Other Attendees: The Presiding Officer may punish any breaches of order and decorum by censure and exclusion from the hearings. The Committee, by majority vote, may recommend to the Senate that the offender be cited for contempt of Congress.

(j) Adjudicatory Hearing Procedures:

(1) Notice of hearings: A copy of the public announcement of an adjudicatory hearing, required by paragraph (e), shall be furnished together with a copy of these Rules to all witnesses at the time that they are subpoenaed or otherwise summoned to testify.

(2) Preparation for adjudicatory hearings:

(A) At least five working days prior to the commencement of an adjudicatory hearing, the Committee shall provide the following information and documents to the respondent, if any:

(i) a list of proposed witnesses to be called at the hearing;

(ii) copies of all documents expected to be introduced as exhibits at the hearing; and

(iii) a brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing.

(B) At least two working days prior to the commencement of an adjudicatory hearing, the respondent, if any, shall provide the information and documents described in divisions (i), (ii) and (iii) of subparagraph (A) to the Committee.

(C) At the discretion of the Committee, the information and documents to be exchanged under this paragraph shall be subject to an appropriate agreement limiting access and disclosure.

(D) If a respondent refuses to provide the information and documents to the Committee (see A) and (B) of this subparagraph), or if a respondent or other individual violates an agreement limiting access and disclosure, the Committee, by majority vote, may recommend to the Senate that the offender be cited for contempt of Congress.

(3) Swearing of witnesses: All witnesses who testify at adjudicatory hearings shall be sworn unless the Presiding Officer, for good cause, decides that a witness does not have to be sworn.

(4) Right to counsel: Any witness at an adjudicatory hearing may be accompanied by counsel of his or her own choosing, who shall be permitted to advise the witness of his or legal rights during the testimony.

(5) Right to cross-examine and call witnesses:

(A) In adjudicatory hearings, any respondent who is the subject of an investigation, and any other person who obtains the permission of the Committee, may personally or through counsel cross-examine witnesses called by the Committee and may call witnesses in his or her own behalf.

(B) A respondent may apply to the Committee for the issuance of subpoenas for the appearance of witnesses or the production of documents on his or her behalf. An application shall be approved upon a concise showing by the respondent that the proposed testimony or evidence is relevant and appropriate, as determined by the Chairman and Vice Chairman.

(C) With respect to witnesses called by a respondent, or other individual given permission by the Committee, each such witness shall first be examined by the party who called the witness or by the party's counsel.

(D) At least one working day before a witness' scheduled appearance, a witness or a witness' counsel may submit to the Committee written questions proposed to be asked of that witness. If the Committee determines that it is necessary, such questions may be asked by any Member of the Committee, or by any Committee staff Member if directed by a Committee Member. The witness or witness' counsel may also submit additional sworn testimony for the record within twenty-four hours after the last day that the witness has testified. The insertion of such testimony in that day's record is subject to the approval of the Chairman and Vice Chairman acting jointly within five days after the testimony is received.

(6) Admissibility of evidence:

(A) The object of the hearing shall be to ascertain the truth. Any evidence that may be relevant and probative shall be admissible unless privileged under the Federal Rules of Evidence. Rules of Evidence shall not be applied strictly, but the Presiding Officer shall exclude irrelevant or unduly repetitious testimony. Objections going only to the weight that should be given evidence will not justify its exclusion.

(B) The Presiding Officer shall rule upon any question of the admissibility of testimony or other evidence presented to the Committee. Such rules shall be final unless reversed or modified by a majority vote of the Committee before the recess of that day's hearings.

(C) Notwithstanding paragraphs (A) and (B), in any matter before the Committee involving allegations of sexual discrimination, including sexual harassment, or sexual misconduct, by a Member, officer, or employee within the jurisdiction of the Committee, the Committee shall be guided by the standards and procedures of Rule 412 of the Federal Rules of Evidence, except that the Committee may admit evidence subject to the provisions of this paragraph only upon a determination of a majority of the Members of the full Committee that the interests of justice require that such evidence be admitted.

(7) Supplementary hearing procedures: The Committee may adopt any additional special hearing procedures that it deems necessary or appropriate to a particular adjudicatory hearing. Copies of such supplementary procedures shall be furnished to witnesses and respondents, and shall be made available upon request to any Member of the public.

(k) Transcripts:

(1) An accurate stenographic or recorded transcript shall be made of all public and executive hearings. Any Member of the Committee, Committee staff Member, outside counsel retained by the Committee, or witness may examine a copy of the transcript retained by the Committee of his or her own remarks and may suggest to the official reporter any typographical or transcription errors. If the reporter declines to make the requested corrections, the Member, staff Member, outside counsel or witness may request a ruling by the Chairman and Vice Chairman, acting jointly. Any Member or witness shall return the transcript with suggested corrections to the Committee offices within five working days after receipt of the transcript, or as soon thereafter as is practicable. If the testimony was given in executive session, the Member or witness may only inspect the transcript at a location determined by the Chairman and Vice Chairman, acting jointly. Any questions arising with respect to the processing and correction of transcripts shall be decided by the Chairman and Vice Chairman, acting jointly.

(2) Except for the record of a hearing which is closed to the public, each transcript shall be printed as soon as is practicable after receipt of the corrected version. The Chairman and Vice Chairman, acting jointly, may order the transcript of a hearing to be printed without the corrections of a Member or witness if they determine that such Member or witness has been afforded a reasonable time to correct such transcript and such transcript has not been returned within such time.

(3) The Committee shall furnish each witness, at no cost, one transcript copy of that witness' testimony given at a public hearing. If the testimony was given in executive session, then a transcript copy shall be provided upon request, subject to appropriate conditions and restrictions prescribed by the Chairman and Vice Chairman. If any individual violates such conditions and restrictions, the Committee may recommend by majority vote that he or she be cited for contempt of Congress.

RULE 7: SUBPOENAS AND DEPOSITIONS

(a) Subpoenas:

(1) Authorization for Issuance: Subpoenas for the attendance and testimony of witnesses at depositions or hearings, and subpoenas for the production of documents and tangible things at depositions, hearings, or other times and places designated therein, may be authorized for issuance by either (A) a majority vote of the Committee, or (B) the Chairman and Vice Chairman, acting jointly, at any time before a preliminary inquiry, for the purpose of obtaining information to evaluate unsworn allegations or information, or at any time during a preliminary inquiry, initial review, investigation, or other proceeding.

(2) Signature and Service: All subpoenas shall be signed by the Chairman or the Vice Chairman and may be served by any person eighteen years of age or older, who is designated by the Chairman or Vice Chairman. Each subpoena shall be served with a copy of the Rules of the Committee and a brief statement of the purpose of the Committee's proceeding.

(3) Withdrawal of Subpoena: The Committee, by majority vote, may withdraw any subpoena authorized for issuance by it or authorized for issuance by the Chairman and Vice Chairman, acting jointly. The Chairman and Vice Chairman, acting jointly, may withdraw any subpoena authorized for issuance by them.

(b) Depositions:

(1) Persons Authorized To Take Depositions: Depositions may be taken by any Member of the Committee, designated by the Chairman and Vice Chairman, acting jointly, or by any other person designated by the Chairman and Vice Chairman, acting jointly, including outside counsel, Committee staff, other employees of the Senate, or government employees detailed to the Committee.

(2) Deposition Notices: Notices for the taking of depositions shall be authorized by the Committee, or the Chairman and Vice Chairman, acting jointly, and issued by the Chairman, Vice Chairman, or a Committee staff Member or outside counsel designated by the Chairman and Vice Chairman, acting jointly. Depositions may be taken at any time before a preliminary inquiry, for the purpose of obtaining information to evaluate unsworn allegations or information, or at any time during a preliminary inquiry, initial review, investigation, or other proceeding. Deposition notices shall specify a time and place for examination. Unless otherwise specified, the deposition shall be in private, and the testimony taken and documents produced shall be deemed for the purpose of these rules to have been received in a closed or executive session of the Committee. The Committee shall not initiate procedures leading to criminal or civil enforcement proceedings for a witness's failure to appear, or to testify, or to produce documents, unless the deposition notice was accompanied by a subpoena authorized for issuance by the Committee, or the Chairman and Vice Chairman, acting jointly.

(3) Counsel at Depositions: Witnesses may be accompanied at a deposition by counsel to advise them of their rights.

(4) Deposition Procedure: Witnesses at depositions shall be examined upon oath administered by an individual authorized by law to administer oaths, or administered by any Member of the Committee if one is present. Questions may be propounded by any person or persons who are authorized to take depositions for the Committee. If a witness objects to a question and refuses to testify, or refuses to produce a document, any Member of the Committee who is present may rule on the objection and, if the objection is overruled, direct the witness to answer the question or produce the document. If no Member of the Committee is present, the individual who has been designated by the Chairman and Vice Chairman, acting jointly, to take the deposition may proceed with the deposition, or may, at that time or at a subsequent time, seek a ruling by telephone or otherwise on the objection from the Chairman or Vice Chairman of the Committee, who may refer the matter to the Committee or rule on the objection. If the Chairman or Vice Chairman, or the Committee upon referral, overrules the objection, the Chairman, Vice Chairman, or the Committee as the case may be, may direct the witness to answer the question or produce the document. The Committee shall not initiate procedures leading to civil or criminal enforcement unless the witness refuses to testify or produce documents after having been directed to do so.

(5) Filing of Depositions: Deposition testimony shall be transcribed or electronically recorded. If the deposition is transcribed, the individual administering the oath shall certify on the transcript that the witness was duly sworn in his or her presence and the transcriber shall certify that the transcript is a true record of the testimony. The transcript with these certifications shall be filed with the chief clerk of the Committee, and the witness shall be furnished with access to a copy at the Committee's offices for review. Upon inspecting the transcript, within a time limit set by the Chairman and Vice Chairman, acting jointly, a witness may request in writing changes in the transcript to correct errors in transcription. The witness may also bring to the attention of the Committee errors of fact in the witness's testimony by submitting a sworn statement about those facts with a request that it be attached to the transcript. The Chairman and Vice Chairman, acting jointly, may rule on the witness's request, and the changes or attachments allowed shall be certified by the Committee's chief clerk. If the witness fails to make any request under this paragraph within the time limit set, this fact shall be noted by the Committee's chief clerk. Any person authorized by the Committee may

stipulate with the witness to changes in this procedure.

RULE 8: VIOLATIONS OF LAW; PERJURY; LEGISLATIVE RECOMMENDATIONS; AND APPLICABLE RULES AND STANDARDS OF CONDUCT

(a) Violations of Law: Whenever the Committee determines by majority vote that there is reason to believe that a violation of law may have occurred, it shall report such possible violation to the proper state and federal authorities.

(b) Perjury: Any person who knowingly and willfully swears falsely to a sworn complaint or any other sworn statement to the Committee does so under penalty of perjury. The Committee may refer any such case to the Attorney General for prosecution.

(c) Legislative Recommendations: The Committee shall recommend to the Senate by report or resolution such additional rules, regulations, or other legislative measures as it determines to be necessary or desirable to ensure proper standards of conduct by Members, officers, or employees of the Senate. The Committee may conduct such inquiries as it deems necessary to prepare such a report or resolution, including the holding of hearings in public or executive session and the use of subpoenas to compel the attendance of witnesses or the production of materials. The Committee may make legislative recommendations as a result of its findings in an initial review, investigation, or other proceeding.

(d) Applicable Rules and Standards of Conduct:

(1) No initial review or investigation shall be made of an alleged violation of any law, rule, regulation, or provision of the Senate Code of Official Conduct which was not in effect at the time the alleged violation occurred. No provision of the Senate Code of Official Conduct shall apply to, or require disclosure of any act, relationship, or transaction which occurred prior to the effective date of the applicable provision of the code.

(2) The Committee may conduct an initial review or investigation of an alleged violation of a rule or law which was in effect prior to the enactment of the Senate code of Official Conduct if the alleged violation occurred while such rule or law was in effect and the violation was not a matter resolved on the merits by the predecessor Committee.

RULE 9: PROCEDURES FOR HANDLING COMMITTEE SENSITIVE AND CLASSIFIED MATERIALS

(a) Procedures for Handling Committee Sensitive materials:

(1) Committee Sensitive information or material is information or material in the possession of the Select Committee on Ethics which pertains to illegal or improper conduct by a present or former member, officer, or employee of the Senate; to allegations or accusation of such conduct; to any resulting preliminary inquiry, initial review, or investigation by the Select Committee on Ethics into such allegations or conduct; to the investigative techniques and procedures of the Select Committee on Ethics; or to other information or material designated by the staff director, or outside counsel designated by the Chairman and Vice Chairman.

(2) The Chairman and Vice Chairman of the Committee shall establish such procedures as may be necessary to prevent the unauthorized disclosure of Committee Sensitive information in the possession of the Committee or its staff. Procedures for protecting Committee Sensitive materials shall be in writing and shall be given to each Committee staff Member.

(b) Procedures for Handling Classified Materials:

(1) Classified information on material is information or material which is specifically designated as classified under the authority of Executive Order 11652 requiring protection of such information or material from unauthorized disclosure in order to prevent damage to the United States.

(2) The Chairman and Vice Chairman of the Committee shall establish such procedures as may be necessary to prevent the unauthorized disclosure of classified information in the possession of the Committee or its staff. Procedures for handling such information shall be in writing and a copy of the procedures shall be given to each staff Member cleared for access to classified information.

(3) Each Member of the Committee shall have access to classified material in the Committee's possession. Only Committee staff Members with appropriate security clearances and a need-to-know, as approved by the Chairman and Vice Chairman, acting jointly, shall have access to classified information in the Committee's possession.

(c) Procedures for Handling Committee Sensitive and Classified Documents:

(1) Committee Sensitive and classified documents and materials shall be segregated in secure filing safes. Removal from the Committee offices of such documents or materials is prohibited except as necessary for use in, or preparation for, interviews or Committee meetings, including the taking of testimony, or as otherwise specifically approved by the staff director or by outside counsel designated by the Chairman and Vice Chairman.

(2) Each Member of the Committee shall have access to all materials in the Committee's possession. The staffs of Members shall not have access to Committee Sensitive or classified documents and materials without the specific approval in each instance of the Chairman, and Vice Chairman, acting jointly. Members may examine such materials in the Committee's offices. If necessary, requested materials may be taken by a Member of the Committee staff to the office of a Member of the Committee for his or her examination, but the Committee staff Member shall remain with the Committee Sensitive or classified documents or materials at all times except as specifically authorized by the Chairman or Vice Chairman.

(3) Any Member of the Senate who is not a Member of the Committee and who seeks access to any Committee Sensitive or classified documents or materials, other than documents or materials which are matters of public record, shall request access in writing. The Committee shall decide by majority vote whether to make documents or materials available. If access is granted, the Member shall not disclose the information except as authorized by the Committee.

(4) Whenever the Committee makes Committee Sensitive or classified documents or materials available to any Member of the Senate who is not a Member of the Committee, or to a staff person of a Committee Member in response to a specific request to the Chairman and Vice Chairman, a written record shall be made identifying the Member of the Senate requesting such documents or materials and describing what was made available and to whom.

(d) Non-Disclosure Policy and Agreement:

(1) Except as provided in the last sentence of this paragraph, no Member of the Select Committee on Ethics, its staff or any person engaged by contract or otherwise to perform services for the Select Committee on Ethics shall release, divulge, publish, reveal by writing, word, conduct, or disclose in any way, in whole, or in part, or by way of summary, during tenure with the Select Committee on Ethics or anytime thereafter, any testimony given before the Select Committee on Ethics in executive session (including the name of any witness who appeared or was called to appear in executive session), any classified or Committee Sensitive information, document or material, received or generated by the Select Committee on Ethics or any classified or Committee Sensitive information which may come into the possession of such person during tenure with the Select Committee on Ethics or its staff. Such information, documents, or material may be released to an official of the executive branch properly cleared for access with a need-to-know, for any purpose or in connection with any proceeding, judicial or otherwise, as authorized by the Select Committee on Ethics, or in the event of termination of the Select Committee on Ethics, in such a manner as may be determined by its successor or by the Senate.

(2) No Member of the Select Committee on Ethics staff or any person engaged by contract or otherwise to perform services for the Select Committee on Ethics, shall be granted access to classified or Committee Sensitive information or material in the possession of the Select Committee on Ethics unless and until such person agrees in writing, as a condition of employment, to the nondisclosure policy. The agreement shall become effective when signed by the Chairman and Vice Chairman on behalf of the Committee.

RULE 10: BROADCASTING AND NEWS COVERAGE OF COMMITTEE PROCEEDINGS

(a) Whenever any hearing or meeting of the Committee is open to the public, the Committee shall permit that hearing or meeting to be covered in whole or in part, by television broadcast, radio broadcast, still photography, or by any other methods of coverage, unless the Committee decides by majority vote that such coverage is not appropriate at a particular hearing or meeting.

(b) Any witness served with a subpoena by the Committee may request not to be photographed at any hearing or to give evidence or testimony while the broadcasting, reproduction, or coverage of that hearing, by radio, television, still photography, or other methods is occurring. At the request of any such witness who does not wish to be subjected to radio, television, still photography, or other methods of coverage, and subject to the approval of the Committee, all lenses shall be covered and all microphones used for coverage turned off.

(c) If coverage is permitted, it shall be in accordance with the following requirements:

(1) Photographers and reporters using mechanical recording, filming, or broadcasting apparatus shall position their equipment so as not to interfere with the seating, vision, and hearing of the Committee Members and staff, or with the orderly process of the meeting or hearing.

(2) If the television or radio coverage of the hearing or meeting is to be presented to the public as live coverage, the coverage shall be conducted and presented without commercial sponsorship.

(3) Personnel providing coverage by the television and radio media shall be currently accredited to the Radio and Television Correspondents' Galleries.

(4) Personnel providing coverage by still photography shall be currently accredited to the Press Photographers' Gallery Committee of Press Photographers.

(5) Personnel providing coverage by the television and radio media and by still photography shall conduct themselves and the coverage activities in an orderly and unobtrusive manner.

RULE 11 PROCEDURES FOR ADVISORY OPINIONS

(a) When Advisory Opinions Are Rendered:.

(1) The Committee shall render an advisory opinion, in writing within a reasonable time, in response to a written request by a Member or officer of the Senate or a candidate for nomination for election, or election to the Senate, concerning the application of any law, the Senate Code of Official Conduct, or any rule or regulation of the Senate within the Committee's jurisdiction, to a specific factual situation pertinent to the conduct or proposed conduct of the person seeking the advisory opinion.

(2) The Committee may issue an advisory opinion in writing within a reasonable time in response to a written request by any employee of the Senate concerning the application of any law, the Senate Code of Official Conduct, or any rule or regulation of the Senate within the Committee's jurisdiction, to a specific factual situation pertinent to the conduct or proposed conduct of the person seeking the advisory opinion.

(b) Form of Request: A request for an advisory opinion shall be directed in writing to the Chairman of the Committee and shall include a complete and accurate statement of the specific factual situation with respect to which the request is made as well as the specific question or questions which the requestor wishes the Committee to address.

(c) Opportunity for Comment:

(1) The Committee will provide an opportunity for any interested party to comment on a request for an advisory opinion—

(A) which requires an interpretation on a significant question of first impression that will affect more than a few individuals; or

(B) when the Committee determines that comments from interested parties would be of assistance.

(2) Notice of any such request for an advisory opinion shall be published in the Congressional Record, with appropriate deletions to insure confidentiality, and interested parties will be asked to submit their comments in writing to the Committee within ten days.

(3) All relevant comments received on a timely basis will be considered.

(d) Issuance of an Advisory Opinion:

(1) The Committee staff shall prepare a proposed advisory opinion in draft form which will first be reviewed and approved by the Chairman and Vice Chairman, acting jointly, and will be presented to the Committee for final action. If (A) the Chairman and Vice Chairman cannot agree, or (B) either the Chairman or Vice Chairman requests that it be taken directly to the Committee, then the proposed advisory opinion shall be referred to the Committee for its decision.

(2) An advisory opinion shall be issued only by the affirmative recorded vote of a majority of the Members voting.

(3) Each advisory opinion issued by the Committee shall be promptly transmitted for publication in the Congressional Record after appropriate deletions are made to insure confidentiality. The Committee may at any time revise, withdraw, or elaborate on any advisory opinion.

(e) Reliance on Advisory Opinions:

(1) Any advisory opinion issued by the Committee under Senate Resolution 338, 88th Congress, as amended, and the rules may be relied upon by—

(A) Any person involved in the specific transaction or activity with respect to which such advisory opinion is rendered if the request for such advisory opinion included a complete and accurate statement of the specific factual situation; and

(B) any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered.

(2) Any person who relies upon any provision or finding of an advisory opinion in accordance with the provisions of Senate Resolution 338, 88th Congress, as amended, and of the rules, and who acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of any such act, be subject to any sanction by the Senate.

RULE 12: PROCEDURES FOR INTERPRETATIVE RULINGS

(a) Basis for Interpretative Rulings: Senate Resolution 338, 88th Congress, as amended, authorizes the Committee to issue interpretative rulings explaining and clarifying the application of any law, the Code of Official Conduct, or any rule or regulation of the Senate within its jurisdiction. The Committee also may issue such rulings clarifying or explaining and rule or regulation of the Select Committee on Ethics.

(b) Request for Ruling: A request for such a ruling must be directed in writing to the Chairman or Vice Chairman of the Committee.

(c) Adoption of Ruling:

(1) The Chairman and Vice Chairman, acting jointly, shall issue a written, interpretative ruling in response to any such request, unless—

(A) they cannot agree,

(B) it requires an interpretation of a significant question of first impression, or

(C) either requests that it be taken to the Committee, in which event the request shall be directed to the Committee for a ruling.

(2) A ruling on any request taken to the Committee under subparagraph (1) shall be adopted by a majority of the Members voting and the ruling shall then be issued by the Chairman and Vice Chairman.

(d) Publication of Rulings; The Committee will publish in the Congressional Record, after making appropriate deletions to ensure confidentiality, any interpretative rulings issued under this Rule which the Committee determines may be of assistance or guidance to other Members, officers or employees. The Committee may at any time revise, withdraw, or elaborate on interpretative rulings.

(e) Reliance on Rulings: Whenever an individual can demonstrate to the Committee's satisfaction that his or her conduct was in good faith reliance on an interpretative ruling issued in accordance with this Rule, the Committee will not recommend sanctions to the Senate as a result of such conduct.

(f) Rulings by Committee Staff: The Committee staff is not authorized to make rulings or give advice, orally or in writing, which binds the Committee in any way.

RULE 13: PROCEDURES FOR COMPLAINTS INVOLVING IMPROPER USE OF THE MAILING FRANK

(a) Authority To Receive Complaints; The Committee is directed by section 6(b) of Public Law 9309191 to receive and dispose of complaints that a violation of the use of the mailing frank has occurred or is about to occur by a Member or officer of the Senate or by a surviving spouse of a Member. All such complaints will be processed in accordance with the provisions of these Rules, except as provided in paragraph (b).

(b) Disposition of Complaints:

(1) The Committee may dispose of any such complaint by requiring restitution of the cost of the mailing if it finds that the franking violation was the result of a mistake.

(2) Any complaint disposed of by restitution that is made after the Committee has formally commenced an initial review or investigation, must be summarized, together with the disposition, in a notice promptly transmitted for publication in the Congressional Record.

(3) If a complaint is disposed of by restitution, the complainant, if any, shall be notified of the disposition in writing.

(c) Advisory Opinions and Interpretative Rulings: Requests for advisory opinions or interpretative rulings involving franking questions shall be processed in accordance with Rules 11 and 12.

RULE 14: PROCEDURES FOR WAIVERS

(a) Authority for Waivers: The Committee is authorized to grant a waiver under the following provisions of the Standing Rules of the Senate:

(1) Section 101(h) of the Ethics in Government Act of 1978, as amended (Rule XXXIV), relating to the filing of financial disclosure reports by individuals who are expected to perform or who have performed the duties of their offices or positions for less than one hundred and thirty days in a calendar year;

(2) Section 102(a)(2)(D) of the Ethics in Government Act, as amended (Rule XXXIV), relating to the reporting of gifts;

(3) Paragraph 1 of Rule XXXV relating to acceptance of gifts; or

(4) Paragraph 5 of Rule XLI relating to applicability of any of the provisions of the Code of Official Conduct to an employee of the Senate hired on a per diem basis.

(b) Requests for Waivers: A request for a waiver under paragraph (a) must be directed to the Chairman or Vice Chairman in writing and must specify the nature of the waiver being sought and explain in detail the facts alleged to justify a waiver. In the case of a request submitted by an employee, the views of his or her supervisor (as determined under paragraph 12 of Rule XXXVII of the Standing Rules of the Senate) should be included with the waiver request.

(c) Ruling: The Committee shall rule on a waiver request by recorded vote, with a majority of those voting affirming the decision.

(d) Availability of Waiver Determinations: A brief description of any waiver granted by the Committee, with appropriate deletions to ensure confidentiality, shall be made available for review upon request in the Committee office. Waivers granted by the Committee pursuant to the Ethics in Government Act of 1978, as amended, may only be granted pursuant to a publicly available request as required by the Act.

RULE 15: DEFINITION OF "OFFICER OR EMPLOYEE"

(a) As used in the applicable resolutions and in these rules and procedures, the term "officer or employee of the Senate" means:

(1) An elected officer of the Senate who is not a Member of the Senate;

(2) An employee of the Senate, any committee or subcommittee of the Senate, or any Member of the Senate;

(3) The Legislative Counsel of the Senate or any employee of his office;

(4) An Official Reporter of Debates of the Senate and any person employed by the Official Reporters of Debates of the Senate in connection with the performance of their official duties;

(5) A Member of the Capitol Police force whose compensation is disbursed by the Secretary of the Senate;

(6) An employee of the Vice President, if such employee's compensation is disbursed by the Secretary of the Senate;

(7) An employee of a joint committee of the Congress whose compensation is disbursed by the Secretary of the Senate;

(8) An officer or employee of any department or agency of the Federal Government whose services are being utilized on a full-time and continuing basis by a Member, officer, employee, or committee of the Senate in accordance with Rule XLI(3) of the Standing Rules of the Senate; and

(9) Any other individual whose full-time services are utilized for more than ninety days in a calendar year by a Member, officer, employee, or committee of the Senate in the conduct of official duties in accordance with Rule XLI(4) of the Standing Rules of the Senate.

RULE 16: COMMITTEE STAFF

(a) Committee Policy:

(1) The staff is to be assembled and retained as a permanent, professional, nonpartisan staff.

(a) Each Member of the staff shall be professional and demonstrably qualified for the position for which he or she is hired.

(3) The staff as a whole and each Member of the staff shall perform all official duties in a nonpartisan manner.

(4) No Member of the staff shall engage in any partisan political activity directly affecting any congressional or presidential election.

(5) No Member of the staff or outside counsel may accept public speaking engagements or write for publication on any subject that is in any way related to his or her employment or duties with the Committee without specific advance permission from the Chairman and Vice Chairman.

(6) No Member of the staff may make public, without Committee approval, any Committee Sensitive or classified information, documents, or other material obtained during the course of his or her employment with the Committee.

(b) Appointment of Staff:

(1) The appointment of all staff Members shall be approved by the Chairman and Vice Chairman, acting jointly.

(2) The Committee may determine by majority vote that it is necessary to retain staff Members, including a staff recommended by a special counsel, for the purpose of a particular initial review, investigation, or other proceeding. Such staff shall be retained only for the duration of that particular undertaking.

(3) The Committee is authorized to retain and compensate counsel not employed by the Senate (or by any department or agency of the Executive Branch of the Government) whenever the Committee determines that the retention of outside counsel if necessary or appropriate for any action regarding any complaint or allegation, initial review, investigation, or other proceeding, which in the determination of the Committee, is more appropriately conducted by counsel not employed by the Government of the United States as a regular employee. The Committee shall retain and compensate outside counsel to conduct any investigation undertaken after an initial review of a sworn complaint, unless the Committee determines that the use of outside counsel is not appropriate in the particular case.

(c) Dismissal of Staff: A staff Member may not be removed for partisan, political reasons, or merely as a consequence of the rotation of the Committee Membership. The Chairman and Vice Chairman, acting jointly, shall approve the dismissal of any staff Member.

(d) Staff Works for Committee as Whole: All staff employed by the Committee or housed in Committee offices shall work for the Committee as a whole, under the general direction of the Chairman and Vice Chairman, and the immediate direction of the staff director or outside counsel.

(e) Notice of Summons To Testify: Each Member of the Committee staff shall immediately notify the Committee in the event that he or she is called upon by a properly constituted authority to testify or provide confidential information obtained as a result of and during his or her employment with the Committee.

RULE 17: CHANGES IN SUPPLEMENTARY PROCEDURAL RULES

(a) Adoption of Changes in Supplementary Rules: The Rules of the Committee, other than rules established by statute, or by the Standing Rules and Standing Orders of the Senate, may be modified, amended, or suspended at any time, pursuant to a majority vote of the entire Membership taken at a meeting called with due notice when prior written notice of the proposed change has been provided each Member of the Committee.

(b) Publication: Any amendments adopted to the Rules of this Committee shall be published in the Congressional Record in accordance with Rule XXVI(2) of the Standing Rules of the Senate.

ETHICS COMMITTEE INTERIM PROCEDURES UNDER TITLE III OF PUBLIC LAW 102-166, THE GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991

RULE 1. AUTHORITY

The Senate Select Committee on Ethics (the Committee) is authorized by section 308(a) of the Government Employee Rights Act of 1991 (the Act), Title III of the Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1088, to review hearing board decisions in employment discrimination cases filed with the Office of Senate Fair Employment Practices (the Office) under the Act, and by section 307(f) (2) and (3) of the Act to receive referrals for rulings on testimonial objections arising in connection with such cases, and to recommend to the Senate civil or criminal enforcement of hearing board subpoenas.

RULE 2. TIME

2.1 *Computation of Time.*

(a) *Counting days.* A day means calender day. In computing the time for taking any action required or permitted under these rules to be taken within a specified time, the first day counted shall be the day after the event from which the time period begins to run and the last day counted is the last day for taking the action. When the last day falls on a Saturday, Sunday, or federal government holiday or any other day, other than a Saturday or a Sunday, when the Office is closed, the last day for taking the action shall be the next day that is not a Saturday, Sunday, or federal government holiday or a day when the Office is closed. Where a prescribed time period is less than seven days, then Saturdays, Sundays, and federal government holidays shall be excluded from the computation of the time period. Federal government holiday means New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, any other day appointed as a holiday by the President or Congress of the United States.

(b) *Added days for mail.* Whenever a party or the Office has the right or is required to do some act within a prescribed period after the date of service of a notice or other paper and the notice or other paper is served upon the party by mail through the United States Postal Service, 3 days shall be added to the prescribed period. This additional 3 days does not apply to the request for Committee review under Rule 3.

2.2 *Service and filing.* Except as otherwise provided in Rule 3.1, a document required under these rules to be submitted to or filed with the Committee or the Office, or served on a party or the Office within a specified time shall be deemed timely submitted, filed, or served if it is received by the Committee, the Office or the party, or if mailed, it is postmarked, on or before the last day of the applicable time period.

2.3 *Extension of time.* Upon written request of the Office or a party, the Committee may extend the time for taking action under these rules, except that the Committee may not extend the time for taking any action for which the Act specifies a time limit.

2.4 *Where to File.* Documents required to be filed with the Committee shall be filed at the offices of the Senate Select Committee on Ethics, Hart Senate Office Building, Room 220, Washington, D.C. 20510. Documents required to be filed with or served on the Office shall be filed or served at the Office of Senate Fair Employment Practices, Hart Senate Office Building, Suite 103, Washington, D.C. 20510.

RULE 3. REQUESTS FOR COMMITTEE REVIEW OF HEARING BOARD DECISION

3.1 *Requirements for Filing a Request for Review.*

(a) *Who May Request Review of a Hearing Board Decision.* An employee or the head of an employing office with respect to whom a hearing board decision was issued is a party entitled to request Committee review of that decision. The Office may also request review of a decision.

(b) *Request by a party.* Not later than 10 days after receipt of a decision of a hearing board, including any decision following a remand of the case as provided in Rule 4.2(c), a party may file with the Office a request that the Committee review the decision. A request for review shall specify the party requesting review, and shall designate the decision, or part thereof, for which review is requested. A request for review must be received in the Office not later than the 10th day after the date of receipt of the hearing board decision [a postmark on the 10th day will not satisfy this timeliness requirement.] Within 24 hours after receipt of a request for review, the Office shall transmit a copy of such request to the Committee and serve a copy on any other party.

(c) *Request by the Office.* The Office, at the discretion of its Director, on its own initiative and for good cause, may file with the Committee a request for review of a hearing board decision, including any decision following a remand of the case as provided in Rule 4.2(c), not later than 5 days after the time for the parties to file a request for review with the Office has expired. A request for review shall specify that the Office is requesting review, shall designate the decision, or part thereof, for which review is requested, and shall specify the circumstances which the Office asserts constitute good cause for the request. A request for review by the Office must be received in the Committee's office not later than the 5th day after the time for the parties to file a request for review with the Office has expired

[a postmark on the 5th day will not satisfy this timeliness requirement.] Within 24 hours after filing a request for review with the Committee, the Office shall serve a copy of such request on all parties.

3.2 *Transmittal of Record.* As soon as possible, and in no event later than 10 days after receipt by the Office of a request for review or the Office's filing of a request for review with the Committee, the Office shall transmit to the Committee the full and complete record of the hearing board connected with the decision for which review has been requested. The Chief Clerk of the Committee shall promptly serve notice of the Committee's receipt of the record on all parties.

RULE 4. PROCEDURES UPON RECEIPT OF A REQUEST FOR REVIEW OF A HEARING BOARD DECISION

4.1 *Briefs and Arguments.*

(a) *Petitioner brief.* A party who filed a request for review, or the Office if it requested review, may file a brief in support of its position. The brief shall be filed with the Committee and a copy served on any other party and the Office, if it requested review, within 10 days of the filing of the request for review with the Office, or the Committee if the Office requested review.

(b) *Respondent brief.* A party may file a brief in response to a petitioner's brief. Such respondent brief shall be filed with the Committee and a copy served on any other party and the Office, if the Office filed a request for review, within 15 days after service of the petitioner brief. If no petitioner brief is filed, such respondent brief shall be filed within 20 days of filing of the request for review. The Office may file a respondent brief only if it failed a request for review.

(c) *Reply brief.* Any reply brief shall be filed with the Committee and served on all parties and the Office if it requested review, within 5 days after service of the respondent brief to which it replies. No one may file a reply brief who did not file a petitioner brief.

(d) *Alternative briefing schedule.* With notice to all parties and the Office, if it requested review, the Committee may specify a different briefing schedule than that prescribed by subsections 4.1 (a), (b) and (c).

(e) *Additional briefs.* At its discretion, the Committee may direct or permit additional written briefs.

(f) *Requirements for briefs.* Briefs shall be on 8½ inch by 11 inch paper, one side only, and 15 copies shall be provided. No brief shall exceed 50 typewritten double spaced pages, excluding any table of contents, list of authorities, or attached copies of statutes, rules, or regulations. Footnotes shall not be used excessively to evade this limitation. All references to evidence or information in the record must be accompanied by notations indicating the page or pages where such evidence or information appears in the record.

(g) *Oral argument.* At the request of a party or the Office, the Committee may permit oral argument in exceptional circumstances. A request for oral argument must specify the circumstances which are asserted to be exceptional.

4.2 *Remand.*

(a) *Only one Remand.* There are two kinds of remand. The Committee may remand the record respecting a decision, or it may remand the case respecting a decision, but in no event can there be more than one remand with respect to a decision of a hearing board. If the Committee remands the record respecting a decision, there can be no further remand of any kind with respect to such decision. If the Committee remands the case respecting a decision, there can be no remand of any kind with respect to a hearing board decision issued following remand. A Committee decision remanding to the hearing board shall contain a written statement of the reasons for the Committee decision.

(b) *Remand of the Record.* Within the time for a decision under subsection 308(d) of the Act, the Committee may remand the record of a decision to the hearing board for the purpose of supplementing the record. After the hearing board has supplemented the record as directed by the Committee, the hearing board shall transmit the record to the Office, and the Office shall immediately notify the parties of the hearing board's action and transmit the supplemented record to the Committee. The Committee retains jurisdiction over a request for review during remand of the record, and no new request for review is needed for further Committee consideration under section 308 of the Act. A record shall be deemed remanded to the hearing board until the day the Committee receives the supplemented record from the Office, and the Committee shall transmit a written final decision to the Office not later than 60 calendar days during which the Senate is in session after receipt of the record as supplemented on remand. The Committee may extend the 60 day period for 15 days during which the Senate is in session.

(c) *Remand of the Case.* Within the time for a decision under subsection 308(d) of the Act, the Committee may remand the case to the hearing board for the purpose of further consideration. After further consideration, the hearing board shall issue a new written decision with respect to the matter as provided in section 307 of the Act. If the Committee remands the case to the hearing board, the Committee does not retain jurisdiction, and a new request for review, filed in accordance with Rule 3, will be necessary if a party or the Office seeks review of a decision issued following remand.

4.3 *Final Written Decision.* All final decisions shall include a statement of the reasons for the Committee's decision, together with dissenting views of Committee members, if any, and shall be transmitted to the Office not later than 60 calendar days during which the Senate is in session after filing of a request for review. The period for transmission to the Office of a final decision may be extended by the Committee for 15 calendar days during which the Senate is in session. A final written decision of the Committee with respect to a request for review may affirm, modify, or reverse the hearing board decision in whole or in part. The Committee may decide not to grant a request for review of a hearing board decision. The Committee will serve a copy of any final decision on all parties.

RULE 5. HEARING BOARD REFERRAL OF TESTIMONIAL OBJECTIONS

5.1 *Procedure for Ruling on Testimonial Objections.* If any witness to a hearing board proceeding appearing by subpoena objects to a question and refuses to testify, or refuses to produce a document, a hearing board may refer the objection to the Committee for a ruling. Such referrals may be made by telephone or otherwise to the Chairman or Vice Chairman of the Committee who may rule on the objection or refer the matter to the Committee for decision. If the Chairman or Vice Chairman, or the Committee upon referral, overrules the objection, the Chairman or Vice Chairman, or the Committee as the case may be, may direct the witness to answer the question or produce the document. The Committee, or the Chairman or Vice Chairman, shall rule on objections as expeditiously as possible.

5.2 *Enforcement.* The Committee may make recommendations to the Senate, including recommendations for criminal or civil enforcement, with respect to the failure or refusal of any person to appear or produce documents in obedience to a subpoena or order of a hearing board, or for the failure or refusal of any person to answer questions during his or her appearance as a witness in a proceeding under section 307 of the Act. The Office shall be deemed a Senate committee for purposes of section 1365 of Title 28 of the United States Code.

RULE 6. MEETINGS AND VOTING

6.1 *Quorum, Proxies, Recorded Votes.* A majority of the members of the Committee shall constitute a quorum for purposes of issuing a decision under section 308 of the Act, and for purposes of hearing oral argument if such argument is permitted. Proxy votes shall not be considered for the purpose of establishing a quorum, nor for purposes of decisions under section 308 (c) and (d) of the Act. Decisions of the Committee under section 308 (c) or (d) of the Act shall be by recorded vote.

6.2 *Meetings.* Meetings to consider matters before the Committee pursuant to the Act may be held at the call of the Chairman or Vice Chairman, if at least 48 hours notice is furnished to all Members. If all Members agree, a meeting may be held on less than 48 hours notice.

RULE 7. CONFIDENTIALITY OF PROCEEDINGS

Confidentiality. The final written decision of the Committee shall be made public if the decision is in favor of a Senate employee who filed a complaint or if the decision reverses a decision of the hearing board which had been in favor of the employee. The Select Committee may decide to release any other decision at its discretion. All testimony, records, or documents received by the Committee in the course of any review under these rules shall otherwise be deemed "Committee Sensitive Information" and subject to the "Non-Disclosure Policy and Agreement" as prescribed in Rule 9 of the Committee's Supplemental Rules of Procedure.

RULE 8. AUTHORITY TO DISCIPLINE

Official Misconduct. None of the provisions of the Act or these rules limit the authority of the Committee under S. Res. 338, 88th Cong., 2d Sess. (1964), as amended, to otherwise review, investigate, and report to the Senate with respect to violations of the Senate Code of Official Conduct, or any other rule or regulation of the Senate relating to the conduct of individuals in the performance of their duties as members, officers, or employees of the Senate.•

VIOLENCE ON TELEVISION INITIATIVE

• Mr. GRAHAM. Mr. President, a recent report by the Journal of American Medicine estimates that the average American child has watched 100,000 acts of violence by the end of elementary school—including 8,000 murders. By 18, the average child has watched 200,000 acts of violence and 40,000 murders.

Parents are rightly concerned. As a father of four and a grandfather of four, with four more on the way, I am concerned.

Over the past year, Congress has begun to respond. We are asking

whether it is appropriate to get involved on behalf of the interests of Children. Broadcasters are also beginning to pay attention. Last year, cable and broadcasting outlets agreed, with encouragement from Congress, to allow an independent monitor to review their programming for violence. While the monitoring project is underway, the debate continues over whether Congress should regulate violence on television.

I believe that if the Federal Government plans to become involved in this issue—which may be appropriate—the Federal Government must first lead by example.

That's why I have asked the three agencies, or federally related companies, that spend the most money per year on TV advertising, to join me in developing a uniform policy regarding advertising on violent television programming.

The three groups are the Department of Defense, which spent $37.3 million last year on television advertising, the U.S. Postal Service, which spent $22.9 million on television advertising last year, and Amtrak, which spent $8.1 million.

I was glad to learn that the Department of Defense, the Postal Service, and Amtrak all have existing policies in place to monitor their advertising. Our goal in asking these three entities to sign this pledge is to reaffirm their commitment by agreeing on a uniform policy defines violence and establishes a common goal for spending their advertising dollars.

We define violence as "an act perpetrated on another person or persons with the specific intent to cause physical harm, injury and/or death."

And we consider programs violent if they contain violence which is inappropriate or unnecessary to the story.

Generally, our definition excludes documentary programs, including news and sporting programs.

This is not censorship. This is a voluntary agreement among Federal, or federally related entities to act in the best interest of Americans.

In voluntarily signing this pledge, the Department of Defense, the Postal Service, and Amtrak are sending an important message—that various elements of the Federal Government can work effectively together in the best interests of Americans. And they are saying we can accomplish worthwhile goals—such as limiting violence on television—without new legislation and regulations.

Our next goal is to encourage other agencies, and private companies to follow this example, and to take responsibility for the placement of their television advertisements.

Four reputable groups with an interest in the TV violence issue support our initiative. They are: Americans for Responsible TV; the National Coalition on TV Violence; the National Education Association; and the National PTA.

Finally, Mr. President, I would like to thank the representatives from the Department of Defense, the Postal Service, and Amtrak for attending this morning's announcement. Their cooperation and leadership in this initiative testifies to their concern about violence on television.•

TRIBUTE TO KELLER GEORGE

• Mr. D'AMATO. Mr. President, I rise today to pay tribute to Keller George, who was recently elected president of the United South and Eastern Tribes.

Mr. George, a resident of Oneida, NY, is a member of the Onieda Indian Nation, a nation whose triumphant history includes playing an integral part in the victory of the colonists during the American Revolutionary War. Onieda Indians brought food to the American Army during the harsh winter at Valley Forge, and fought by their side at the Battle of Oriskany. The epic battle that took place at Oriskany represented a partnership between native Americans, Europeans, and Americans for freedom and self-determination. The battle was the bloodiest in the revolution.

Mr. George has quite an impressive and extensive résumé in serving both the United States of America and the Onieda Indian Nation. For over 20 years he was a member of the U.S. Air Force. Mr. George has been a businessman, managing the Onieda Nation's first smokeshop. He currently holds the position of special assistant to Onieda Nation representative Ray Halbritter. But that only scratches the surface of Mr. George's substantial role as a leader in the Onieda Nation. He is also first representative for the Onieda Nation's sovereign housing authority, first representative and treasurer for the Onieda Indian Nation Gaming Commission, a member of the Onieda Nation's men's council, a member of the board of directors for the National Indian Gaming Association, and vice president of the northeastern area of the National Congress of American Indians.

Now Mr. George has risen to the position of president of the United South and Eastern Tribes. The United South and Eastern Tribes is composed of 21 tribes whose purpose is to provide leadership for its member tribes and to advance the causes of all native Indians. Mr. President, all Americans can related to these causes. They include providing educational opportunity and promoting understanding among the general public of the achievements of their member tribes. I can think of no other person who is more qualified and more deserving of such a position as Keller George.

I congratulate him on this tremendous achievement, and wish him the best of luck in his new position.•

PUBLIC BROADCASTING CLARIFICATION

• Mr. PRESSLER. Mr. President, I wish to correct an error in my statement from the CONGRESSIONAL RECORD of January 24, 1995. In a discussion of the financial potential of public broadcasting, my statement as published stated that, according to the viewer magazine of WETA Washington, this public television station's viewers have an average household net worth of $627,000 plus an average investment portfolio of $249,000. My statement should have been recorded as saying WETA's contributors, not its viewers, have that financial status.•

MORNING BUSINESS

SENATE RESOLUTION 78—RECOGNIZING HALEYVILLE, AL, THE BIRTHPLACE OF "911"

Mr. HEFLIN. Mr. President, since communication is crucial to acting in any emergency, the familiar 911 emergency telephone system has been recognized throughout the country as a key factor in fire, police, medical, and rescue personnel being able to respond quickly. Often, there are only a few precious minutes separating life and death. In many cases, quick action means life.

Back on February 16, 1968, a historic first test call of the 911 system was made to a red telephone located at the Haleyville, AL, police dispatch office, a call that marked the beginning of a service that has helped save lives and protect property for 27 years. The call was answered by Congressman TOM BEVILL. The town's 911 system has been in continuous service ever since, longer than anywhere else in the Nation.

Haleyville's telephone switching wiring, which required little modification in order to accommodate 911, was the main reason it worked here first. Haleyville is located in Winston County, in the northwest corner of Alabama.

Alabamians are justifiably proud of the contribution they have made to public safety, and the resolution I introduced commends Haleyville for its unique place in the history of the 911 service that we often take for granted today.

I thank my colleagues for their support of this resolution.

THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD

Mr. BRADLEY. Mr. President, this afternoon, in New York, Ambassador Madeleine Albright will sign the U.N.

Convention on the Rights of the Child. This marks a small, but long overdue step toward improving the lot of the world's children. I urge the President to take a much larger, and equally overdue step, and submit the convention at once to the Senate for advice and consent to ratification.

I have stood on the Senate floor many times over the past 6 years to discuss the importance of this convention and to urge its ratification. There are many arguments in favor of the convention, but they all boil down to one basic point—children in less-fortunate circumstances deserve the same rights and protections we demand for our own kids.

In addition, whether we ratify it or not, the convention is a reminder that we ourselves have much to do to make sure that every American child enjoys the full benefits of the principles enshrined in this convention. It is a standing reproach to our own unsuccessful efforts to end the tragedy of infant mortality, the terror of child abuse, the scourge of drugs, and the wasted potential of school dropouts.

The U.N. Convention on the Rights of the Child recognizes, as does U.S. law, that children need special protections. It states that every child has the right to a name and nationality, stresses the importance of child survival measures, pledges the signatories to work to abolish traditional practices harmful to children's health, recognizes the importance of education, and prohibits sexual exploitation.

Opponents of the convention argue that it would insert government into the parent-child relationship. They assert that it would take children away from parents. This simply is not true. The convention is explicit on the primacy of the parents in the life of the child. For example, article 5 states:

> States Parties shall respect the responsibilities, rights and duties of parents . . . to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

But, as a practical document, the convention also recognizes that there will be times when the parents are unable to fulfill their responsibilities. In these cases, the convention requires the State to step in, in accordance with the best interests of the child. This is already the practice in the United States. But, for the first time, the convention lays down commonsense guidelines to make sure that, in those extraordinary cases in which the State must intervene, its actions are in fact in the best interests of the child.

So far, 176 nations have ratified the U.N. Convention on the Rights of the Child. The list of countries that have not is a rogue's gallery of international pariahs such as Libya and Iraq. It is an embarrassment to the United States to be on this list.

But ratification is more than a matter of appearances. The lives of children are at stake. Until we ratify this convention, we will be unable to exert the leadership necessary to make a difference in the lives of the world's children. President Clinton has done the right thing by instructing Ambassador Albright to sign the convention. He should now submit it to the Senate, and we should ratify it without delay.

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES!

Mr. HELMS. Mr. President, I doubt that there have been many, if any, candidates for the Senate who have not pledged to do something about the enormous Federal debt run up by the Congress during the past half-century or more. But Congress, both House and Senate, have never up to now even toned down the deficit spending that sent the Federal debt into the stratosphere and beyond.

We must pray that this year will be different, that Federal spending will at long last be reduced drastically. Indeed, if we care about America's future, there must be some changes.

You see, Mr. President, as of the close of business Wednesday, February 15, the Federal debt stood (down to the penny) at exactly $4,828,675,772,079.58. This means that on a per capita basis, every man, woman and child in America owes $18,329.74 as his or her share of the Federal debt.

Compare this, Mr. President, to the total debt about two years ago (January 5, 1993) when the debt stood at exactly $4,167,872,986,583.67—or averaged out, $15,986.56 for every American. During the past 2 years (that is, during the 103d Congress) the Federal debt increased over $6 billion.

This illustrates, Mr. President, the point that so many politicians talk a good game (at home) about bringing the Federal debt under control, but vote in support of bloated spending bills when they get back to Washington. If the Republicans do not do a better job of getting a handle on this enormous debt, their constituents are not likely to overlook it 2 years hence.

WILLIAM F. LACKMAN, JR. (1929–1995)

Mr. WARNER. Mr. President, I rise today to pay respect to the memory of William F. Lackman, Jr., a resident of Middleburg, VA, who died last week at the age of 65. Mr. Lackman was a distinguished public servant to whom the Nation owes its most profound respect and gratitude.

Bill Lackman served his country for more than 40 years—first as an Army officer and then as a distinguished civilian member of the Defense Intelligence community. Graduating from West Point in 1951, Mr. Lackman served in the Army for 22 years, retiring in 1973 with the rank of colonel. He was a battle-hardened officer who led soldiers in combat during two different wars, Korea and Vietnam. Among a number of other prominent decorations, he won the Silver Star and twice earned the Combat Infantryman's Badge.

Of profound significance is the fact that he was twice felled by battlefield wounds, meriting two awards of the Purple Heart. Nevertheless, he continued his military service because he was dedicated to the ideals embodied in the United States Constitution to which he had sworn an oath to support and defend.

In addition to his wartime uniformed service, Mr. Lackman worked in a number of diversified and important military assignments. He held policy-related positions in both the Office of the Secretary of Defense and the Joint Staff. He also had the unusual distinction of having instructed cadets at both the U.S. Military Academy and at the U.S. Air Force Academy. Long before the Goldwater-Nichols Act officially recognized the need and codified a requirement for outstanding officers to serve in joint positions, Bill Lackman was walking point as a "purple suit" officer.

Starting in 1976, Bill Lackman continued his devoted service to the Nation as a Department of Defense civilian. He worked in positions of increasing responsibility within the Defense Intelligence network culminating with his service, from 1992 to 1994, as the Director of the Central Imagery Office in the Department of Defense. In that capacity, he was responsible for all aspects of imagery reconnaissance, including satellite photography, for the Department of Defense and various other national intelligence agencies. The importance and complexity of that position in this high tech age, replete with numerous and diverse threats to our security, is unmistakable. Yet Bill Lackman was more than worthy of the job and he accomplished his mission with integrity, dedication and professionalism.

Over the years, I had a number of opportunities to work with Bill. Particularly in my capacity as a member of the Senate Intelligence Committee, I often sought out insights and advice from him on a variety of intelligence matters. In every instance, his input was thorough and accurate. Suffice it to say that my respect for Bill Lackman, as both a person and an intelligence adviser, was profound.

Mr. President, I believe my colleagues will agree that William F. Lackman, Jr., was an extraordinary public servant whose dedicated service to the people of the United States, spanning more than 40 years, is worthy of our eminent praise and respect. On behalf of all Virginians and a grateful

Nation, I wish to extend my sympathies and gratitude to Bill's wife, Anne, his seven children, and his parents, Mr. and Mrs. William F. Lackman.

TRIBUTE TO VIRGINIA'S AIR FORCE RESERVE

Mr. WARNER. Mr. President, I rise to pay tribute to nearly 900 Virginians who are some of the most dedicated members of our society. They voluntarily serve our Nation as individual mobilization augmentees in the Air Force Reserve. Virginians have always served our Nation in times of peace and war. I take pride in these Air Force reservists because they are twice serving our country, as productive citizens and as citizen airmen. There are 12,000 individual mobilization augmentees in the Air Force Reserve. They serve with the active Air Force for their training, bringing the expertise from their civilian jobs to the military. Most served on active duty, so we are keeping this valuable, experienced investment in trained people for about 10 cents on the dollar.

I am especially proud to recognize the 900 individual mobilization augmentees of the Commonwealth of Virginia because of their dedicated service. They balance family, civilian career, and military service in a manner in which we can all take pride and carry on traditions that go back to George Washington and Lighthorse Harry Lee. It is an honor to commend these Air Force reservists and thank them for their service to the United States.

RETIREMENT OF MILTON H. HAMILTON ADMINISTRATIVE ASSISTANT TO THE SECRETARY OF THE ARMY

Mr. THURMOND. Mr. President, the Secretary of the Army has announced the retirement of a dedicated public servant, Mr. Milton H. Hamilton, Administrative Assistant to the Secretary of the Army, at the end of February. Mr. Hamilton has distinguished himself throughout his long career with the Army, especially during the last 15 years when he served as the Administrative Assistant. The Army and the Nation will miss him.

Mr. Hamilton became the Administrative Assistant to the Secretary of the Army, the Army's senior career civilian position, on March 31, 1980. The position of Administrative Assistant is established by statute and dates back to 1789 when the only other civilian position authorized for the War Office was that of Secretary of War.

As the Administrative Assistant, Mr. Hamilton has been responsible to the Secretary for the administration of the Department of the Army; served as a focal point for transitions between administrations; and, authenticated all departmental regulations and related publications. During a vacancy in the Office of the Secretary, he has had charge and custody of all records, books, and papers of the Department.

Mr. Hamilton was born June 17, 1925, in Elkins, WV. He graduated from the U.S. Military Academy in 1946 with a B.S. in military engineering. He earned an M.B.A. from Syracuse University in 1959 and an M.S. in international affairs from George Washington University in 1965. Mr. Hamilton has completed the residence requirements for a Ph.D. in business administration at American University; is a graduate of the Army War College (1965); the Federal Executive Institute (1978); and, Senior Managers in Government Program, Harvard University (1983). He has been awarded the Army's Decoration for Distinguished Civilian Service; Decoration for Exceptional Civilian Service; the Meritorious Civilian Service Award; as well as DOD's highest award, the DOD Medal for Distinguished Public Service. Mr. Hamilton has also been twice awarded the Presidential Ranks of Distinguished Executive and Meritorious Executive.

Before leaving active military service as a colonel in 1972, Mr. Hamilton served in a wide variety of command and general staff positions, to include brigade commander, comptroller, program/budget manager, researcher in personnel management, service school instructor, and politico-military policy formulator at the national level. He served in combat with the 3d Infantry Division in Korea, and the 25th Infantry Division in Vietnam.

From 1972 to 1975, Mr. Hamilton was a project manager/principal scientist with General Research Corp. in McLean, VA. In this capacity, he directed research and analyses pertaining to: organizational effectiveness and program evaluation; manpower utilization and development; resource allocations for forces and systems; national security policy; military readiness; and planning, programming, and budgeting.

Returning to Government service in December 1975, Mr. Hamilton was the principal adviser in the Department of Defense on political military economic aspects of United States relations with southern and western African countries. In May 1977, he became the Deputy Director for Programming, Office of the Chief of Staff, U.S. Army, and served in that capacity until his appointment as Administrative Assistant to the Secretary of the Army. As the Army's top civilian programmer, he had a major role in the shaping and resourcing of the Army's Future Years Defense Program which underlies the readiness of today's Army.

We honor Mr. Hamilton's selfless service, in peace and war, to the Nation and the U.S. Army. We wish him and his family Godspeed and a healthy and rewarding retirement.

THE 75TH ANNIVERSARY OF THE LEAGUE OF WOMEN VOTERS

Mr. ROCKEFELLER. Mr. President, I am proud to join my distinguished colleagues in honoring the 75th anniversary of the founding of the League of Women Voters of the United States of America this week. This organization has a tremendous record of encouraging women to be active in their communities and involved in promoting good public policy. The League of Women Voters can be very proud of its history of public education and leadership that has helped to strengthen our Government and country over the years.

I also am extremely proud that a native West Virginian and a good friend of mine, Becky Cain, is president of the league during its 75th anniversary celebration.

As we all know, the League of Women Voters is a nonpartisan political organization with 1,100 chapters and over 150,000 members and supporters around the country. Open to both women and men, the league encourages the informed and active participation of citizens in Government through education, advocacy, and organization at the local, State, and national levels.

I know how important the league is for America. I have seen how their grassroots efforts helped pass legislation such as the 1993 National Voter Registration Act, the historic motor-voter bill, which is making it easier for more Americans to register to vote and perform one of the essential acts in a democracy. Helping to enfranchise millions of Americans is a fundamental effort to strengthen the fabric of our country.

In addition, the league has launched national campaigns such as the 1992 Take Back the System Program that actively sought to increase voter confidence and involvement in the electoral system. And as we all know, the league is active at the State and local level in educating voters and getting people involved in Government.

On many occasions, I have been proud to work with league, join in their nonpartisan debates, and participate in their events in West Virginia and Washington to debate the issues.

As we think about our country and the future, I believe that Americans need organizations like the League of Women Voters more than ever to help develop the links and communication between people and public servants that are so essential for our government to be responsive and effective. The league and its members deserve our deep appreciation for their steadfast commitment to educating voters in a nonpartisan way about the tough choices and issues that we all must face and should try to resolve together.

WILLIAM LACKMAN

Mr. SPECTER. Mr. President, I cannot allow the passing of an American whose unsung contributions over 44 years have served to enhance, in ways that cannot be measured, the national security and well-being of this country. I speak of Bill Lackman.

The name Bill Lackman is not known to the American public. But in the intelligence community, his is a household name. I know Bill only from his many trips to the Senate Intelligence Committee to testify on the complex and necessary business of intelligence programs and budget. If I were asked to select one word which would best describe Bill, it would be a professional—in the finest sense of the word. Bill knew his business better than anyone and he was an articulate spokesman. It goes without saying that his wife Anne and his family will miss him. It will also go without commentary that the intelligence community and his country will miss him.

At this point, I can think of no greater tribute to Bill than to recount his career and contributions to his country.

Bill graduated from the U.S. Military Academy at West Point, NY, in 1951 and served in the U.S. Army from 1951 to 1973, rising to the rank of colonel in the Infantry. During his military career, he served combat tours in Korea and Vietnam. He served as assistant professor of Russian history at the U.S. Military Academy, and he also served as assistant professor of international relations at the U.S. Air Force Academy. His military decorations include the Silver Star, three awards of the Legion of Merit, four Bronze Stars, the Army and Air Force commendation medals, two Purple Hearts, and two awards of the Combat Infantryman's Badge.

In 1976, Bill joined the intelligence community staff and rose to become the principal spokesman for the entire national intelligence community budget. In 1986, he became deputy director of the intelligence community staff. For this service and his many contributions, Bill was awarded the National Intelligence Distinguished Service Medal in January 1993.

Bill was appointed the first Director of the Central Imagery Office by Secretary of Defense Cheney on May 22, 1992, where he pioneered many management innovations in the provision of imagery to national defense.

Bill gave unselfishly to a country he loved. His contributions can never be adequately repaid. He shall be missed.

ORDERS FOR WEDNESDAY, FEBRUARY 22, 1995

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in adjournment until the hour of 10:30 a.m, on Wednesday, February 22, 1995, that following the prayer, the journal of proceedings be deemed approved to date, no resolutions come over under the rule, the call of the calendar be dispensed with, the morning hour be deemed to have expired, and the time for the two leaders be reserved for their use later in the day; and immediately following the prayer, the Senator from Wyoming, Senator THOMAS, be recognized to read Washington's Farewell Address pursuant to the consent agreement of January 20, 1995. I further ask that immediately following the conclusion of the reading, the Senate immediately resume consideration of House Joint Resolution 1, the Constitutional Balanced Budget Amendment.

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

UNANIMOUS CONSENT AGREEMENT

Mr. DOLE. Mr. President, I further ask unanimous consent that the Senate stand in recess between the hours of 12:30 and 2:15 p.m. on Wednesday in order for the weekly party caucuses to meet.

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

PROGRAM

Mr. DOLE. Mr. President, let me thank the distinguished Democratic leader. I think we worked out an arrangement that will be accommodating to many of the desires of our Members on both sides of the aisle with reference to amendments and the scheduling problems that we have on both sides of the aisle, in some cases.

I would just state for the information of all of my colleagues, under the provisions of the agreement reached earlier, any Senator intending to offer an amendment or motion from the list must do so by 12 noon on Wednesday; also, Senators should be aware that although no further amendments will be in order after 3 p.m. on Friday, February 24, it is my intention not to have any rollcall votes on Friday, February 24th, or Monday, February 27th.

It will be my intention to stack votes ordered on Friday, February 24, to occur at 2:15 on Tuesday—it will be Friday or Monday—to occur at 2:15 on Tuesday prior to the vote on final disposition of the constitutional amendment for a balanced budget.

Mr. DASCHLE. Mr. President, I also want to commend the majority leader for cooperation over the last several hours as we have negotiated this agreement. It is a fair agreement. It gives Senators an opportunity to present their amendments.

We have two days with which to present these amendments, and I hope Senators will avail themselves of the opportunities. We will have rollcall votes throughout those two days and certainly on Tuesday. So I hope that we can maximize the use of this time, and I am sure that all Senators will take advantage of the opportunity that this accords it.

I think it is a good agreement and I hope we can get to work on Wednesday.

Mr. DOLE. Mr. President, again, I thank the democratic leaders and all others on both sides of the aisle who have been involved in working on the agreement.

ADJOURNMENT UNTIL 10:30 A.M., WEDNESDAY, FEBRUARY 22, 1995

Mr. DOLE. Mr. President, if there be no further business to come before the Senate, I now ask unanimous consent the Senate stand in adjournment until 10:30 a.m, Wednesday, February 22nd, under the provisions of H. Con. Res. 30.

There being no objection, the Senate, at 8:07 p.m., adjourned until Wednesday, February 22, 1995, at 10:30 a.m.

NOMINATIONS

Executive nominations received by the Senate February 16, 1995:

IN THE COAST GUARD

PURSUANT TO THE PROVISIONS OF 14 USC 729, THE FOLLOWING-NAMED COMMANDERS OF THE COAST GUARD RESERVE TO BE PERMANENT COMMISSIONED OFFICERS IN THE COAST GUARD RESERVE IN THE GRADE OF CAPTAIN.

To be captain

JAMES M. BEGIS
JOHN T. EGBERT III
RODNEY M. LEIS
JOHN R. SHANNONHOUSE
JAMES M. OLSEN
JOHN J. PITTA
DANIEL J. ZEDAN
DAVID L. POWELL
ROBERT W. WEST III
DANIEL V. HAGAN
ROBERT C. GRANT
JON W. MINOR

THE FOLLOWING INDIVIDUAL FOR APPOINTMENT AS A PERMANENT REGULAR COMMISSIONED OFFICER IN THE U.S. COAST GUARD IN THE GRADE OF LIEUTENANT COMMANDER:

To be lieutenant commander

LOUISE A. STEWART

IN THE AIR FORCE

THE FOLLOWING STUDENTS OF THE UNIFORMED SERVICES UNIVERSITY OF HEALTH SERVICES CLASS OF 1995, FOR APPOINTMENT IN THE REGULAR AIR FORCE IN THE GRADE OF CAPTAIN, EFFECTIVE UPON THEIR GRADUATION UNDER THE PROVISIONS OF SECTION 2114, TITLE 10, UNITED STATES CODE, IF OTHERWISE FOUND QUALIFIED, WITH DATE OF RANK TO BE DETERMINED BY THE SECRETARY OF THE AIR FORCE.

MEDICAL CORPS

To be captain

SAKET K. AMBASHT [redacted]
ERIC J. ASHMAN [redacted]
MATT A. BAPTISTA [redacted]
TODD M. BERTOCH [redacted]
JAMES E. BOYD [redacted]
THATCHER R. CARDON [redacted]
STEVEN L. CLARK [redacted]
GEORGE A. CLARKE [redacted]
JIM D. CROWLEY [redacted]
WILLIAM H. DUNN, JR. [redacted]
JEFFREY J. FREELAND [redacted]
JOHN D. HALLGREN [redacted]
DEREK G. HERBERT [redacted]
MARK A. HINTON [redacted]
JAY D. KERECMAN [redacted]
THOMAS E. KOLKEBECK [redacted]
KRISTOPHER E. KORDANA [redacted]
MICHAEL R. KOTELES [redacted]
JENNIFER L. LAPOINTE [redacted]
JESSICA T. MITCHELL [redacted]
ROBERT M. MONBERG [redacted]
ANOTHONY B. OCHOA [redacted]
STEVEN L. OLSEN [redacted]
MARK D. PACKER [redacted]
TERESA M. PAULSEN [redacted]
STEVEN E. RASMUSSEN [redacted]
ROBBY C. RIDDLE [redacted]

SCOTT A. RIISE [redacted]
DOUGLAS M. ROUSE [redacted]
ELIZABETH A. ROUSE [redacted]
CHRISTINE G. SANDAAL [redacted]
LARRY R. SCHATZ [redacted]
DARLENE P. SCHULTZ [redacted]
JON R. SHERECK [redacted]
PETER R. SILVERI [redacted]
DANIEL T. SMITH [redacted]
MICHAEL D. STEVENS [redacted]
MAUREEN J. SWEZEY [redacted]
ANTHONY A. TERRERI [redacted]
BONNIE C. VAN DER SLUYS [redacted]
CHARLES N. WEBB [redacted]
MATTHEW P. WONNACOTT [redacted]
JON B. WOODS [redacted]
RANDALL C. ZERNZACH [redacted]

IN THE ARMY

THE FOLLOWING-NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR PROMOTION IN THE RESERVE OF THE ARMY OF THE UNITED STATES, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 1220 AND 3385:

ARMY PROMOTION LIST

To be colonel

BEN W. ADAMS, JR. [redacted]
LOUIS J. ANTONETTI [redacted]
BENNIE J. COTTLE [redacted]
JAMES R. MC INTYRE [redacted]
GLEN D. ODOM [redacted]

MEDICAL CORPS

To be colonel

LEROY L. MERRING [redacted]

ARMY PROMOTION LIST

To be lieutenant colonel

MIKEL W. ANTHONY [redacted]
JACK L. DAVIS [redacted]
LAWRENCE W. KIMMEL, JR. [redacted]
MARK C. KIRKWOOD [redacted]
RICHARD D. LIGON [redacted]

IN THE MARINE CORPS

THE FOLLOWING-NAMED OFFICERS OF THE MARINE CORPS FOR PROMOTION TO THE GRADE OF MAJOR, UNDER THE PROVISIONS OF SECTIONS 642 AND 628 OF TITLE 10, UNITED STATES CODE:

To be major

DONOVAN E.V. BRYAN [redacted]
CHISTOPHER J. WAGNER [redacted]

THE FOLLOWING-NAMED NAVAL RESERVE OFFICERS TRAINING CORPS GRADUATES FOR PERMANENT APPOINTMENT TO THE GRADE OF SECOND LIEUTENANT IN THE U.S. MARINE CORPS, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTIONS 531 AND 2107:

To be second lieutenant

JONATHAN M. AADLAND [redacted]
RICHARD M. ACKERSON [redacted]
JEFFREY M. AGNON [redacted]
STEPHEN D. ALBERTS [redacted]
PATRICK E. ALLEN [redacted]
BRIAN C. ANDERSON [redacted]
GARRETT D. ANDERSON [redacted]
DOMINIC S. ARMIJO [redacted]
MIGUEL A. AVILA [redacted]
RAYMOND P. AYRES III [redacted]
MICHAEL A. BAHE [redacted]
DAVID M. BANNING [redacted]
GEOFF H. BARKER [redacted]
STEVEN K. BARRIGER [redacted]
WILLIAM J. BARTOLOMEA [redacted]
CHRISTA M. BOWDISH [redacted]
ROBERT G. BREITBIEL, JR. [redacted]
BRADLEY S. BRENNAN [redacted]
GREGORY L. BRYSON [redacted]
TOBY P. BUCHAN [redacted]
SHANE P. CARR [redacted]
JOSEPH V. CARROLL [redacted]
LARRY S. CARVER [redacted]
TIMOTHY D. CAVANAUGH [redacted]
STEVEN J. CHOJNACKI [redacted]
JOHN M. CONNER [redacted]
CHRISTIAN P. CORRY [redacted]
DEXTER R. COSTIN [redacted]
KEITH S. CRABTREE [redacted]
THOMAS A. DEAN [redacted]
JASON M. DECOTEAU [redacted]
LANLE T. DESPAIN [redacted]
JONATHAN D. DIAMOND [redacted]
MARK T. DONAR [redacted]
ELIZABETH J. DONNELLY [redacted]
SEAN M. DORSEY [redacted]
JUSTIN W. DYAL [redacted]
NATHANIEL T. EARLESS [redacted]
BRIAN W. EVANS [redacted]
BRIAN FALDETTA [redacted]
ROBERT B. FANNING [redacted]
RICKY B. FEE [redacted]
ANDREW H. FELDMAN [redacted]
RICHARD A. FERONTI [redacted]
ALEXANDER E. FLORES [redacted]
CARLETON D. FORSLING [redacted]
MICHELLE E. FRATICELLI [redacted]
JOSEPH B. FREEDLE [redacted]
NORMAN D. FREEMAN [redacted]
TODD A. FUJIMOTO [redacted]
RICHARD J. GANNON [redacted]
JOHN P. GILLIS [redacted]
MATTHEW M. GIOIA [redacted]
JASON P. GLOWACKI [redacted]
MICHAEL S. GOODWIN [redacted]
JASON T. GREEN [redacted]
WOODROW J. HALSTEAD [redacted]
CHAD HANSEN [redacted]
JESSE A. HARDIN [redacted]
DANIEL P. HARVEY [redacted]
JEFFREY H. HAURY [redacted]
EDWARD J. HEALEY [redacted]
BRUCE M. HEMPHILL [redacted]
SHAWN R. HERMLEY [redacted]
SAMUEL S. HINKSON [redacted]
JOHN D. HIOTT [redacted]
MATTHEW A. HORSLEY [redacted]
CHARLES A. HULME [redacted]
MICHELLE R. INMAN [redacted]
JASON J. JACKSON [redacted]
JIMMY L. JACKSON [redacted]
JOHN K. JARRARD [redacted]
MICHAEL G. JOHANNES [redacted]
JIMMIE J. JOHNSON [redacted]
LEE A. JOHNSON [redacted]
SAMUEL L. JOHNSON [redacted]
ESTHER F. JULICHER [redacted]
IVAN J. KANAPATHY [redacted]
PHILLIP B. KENDRO [redacted]
SCOTT M. KENFIELD [redacted]
BRIAN M. KIBEL [redacted]
JOHN R. KING [redacted]
JAMES E. KOKUSZYNSKI [redacted]
ERIC V. KRIENERT [redacted]
WILLIAM LANGENHEIM [redacted]
KRISTEN A. LASICA [redacted]
CHRISTOPHER LAVELLE [redacted]
DANNY R. LEDFORD [redacted]
MATTHEW D. LEIGEBER [redacted]
JOHN C. LEWIS [redacted]
JOHN H. LEWIS [redacted]
MELANIE J. LIVINGSTON [redacted]
CHRISTOPHER T. LOUKS [redacted]
JOHN J. LYNCH II [redacted]
PAUL D. MACKENZIE [redacted]
GIAN F. MACONE [redacted]
DEBONY L. MAFFETT [redacted]
PETER J. MAHONEY [redacted]
SEAN K. MANGAN [redacted]
PHILLIP M. MATA [redacted]
SOCRATES S. MAROUDIS [redacted]
JOHN J. MAZZARELLA [redacted]
KATIE L. MC SHEFFREY [redacted]
KEITH W. MC WHORTER [redacted]
SCOTT O. MEREDITH [redacted]
ALAN B. MILLER [redacted]
CHRISTOPHER A. MILLER [redacted]
PAUL R. MILNE [redacted]
KEITH B. MISHOE [redacted]
DARAN M. MIZELL [redacted]
MARTA J. MOLLENDICK [redacted]
ROSS A. MONTA [redacted]
CHARLES MONTGOMERY [redacted]
COBY M. MORAN [redacted]
PATRICK MORAN [redacted]
PETER J. MORENO, JR. [redacted]
CHARLES A. MORRISON [redacted]
DAVID C. MORZENTI [redacted]
JAMES E. MOSSBERG, JR. [redacted]
ROBERT G. MUCKLEROY [redacted]
JOHN F. MUNSELL [redacted]
CHRISTOPHER MYERS [redacted]
PROVIDANCE J. NAGY [redacted]
JAMES F. NALL II [redacted]
BRIAN S. NELSON [redacted]
SHAWNNA L. NILES [redacted]
JOHN T. NGUYEN [redacted]
GEORGE NUNEZ [redacted]
MICHAEL R. O'CALLAGHAN [redacted]
JOSEPH I. O'HARA [redacted]
STEPHEN OLSON [redacted]
ROBERT B. ORR [redacted]
JAMES D. PARKER [redacted]
LAURENCE PARKER [redacted]
BYRON L. PATE [redacted]
GREGG A. PEEPLES [redacted]
DONALD C. PLAISTED, JR. [redacted]
TIMOTHY B. POCHOP [redacted]
GILBERT A. POLENDO [redacted]
MICHAEL D. PORTER [redacted]
ANOOP PRAKASH [redacted]
MICHAEL J. RADER [redacted]
KARENA A. REDD [redacted]
CHRISTOPHER J. REEL [redacted]
CHESTER T. REESE [redacted]
SCOTT T. REESE [redacted]
ALBERTO J. RIVERA [redacted]
CESAR RODRIGUEZ [redacted]
BRIAN E. RUSSELL [redacted]
JAMES A. RYANS [redacted]
DAVID F. SADLIER [redacted]
TODD B. SANDERS [redacted]
JAMES P. SCHAEFER [redacted]
MARIO F. SCHWEIZER [redacted]
JIMMY SCOTT [redacted]
EDWARD J. SHEA [redacted]
BRYAN J. SHELLEBY [redacted]
LADD W. SHEPARD [redacted]
KELVIN D. SHERMAN [redacted]
BRIAN J. SHORTSLEEVE [redacted]
CHRISTOPHER C. SIMPSON [redacted]
JENNIFER L. SIMPSON [redacted]
RALPH S. SMITH [redacted]
DAMIAN L. SPOONER [redacted]
JOHN F. STANN [redacted]
CASEY L. STREETS [redacted]
GARY W. THOMASON [redacted]
MICHAEL B. THOMPSON [redacted]
PHILIP J. TREGLIA [redacted]
MATTHEW E. TUNE [redacted]
ELENA S. UMANSKY [redacted]
JOHN P. VALENCIA [redacted]
GREGORY S. VALLHONRAT [redacted]
BRIAN J. VAUGHT [redacted]
JOSE A. VERDUZCO [redacted]
DANIEL S. VERNA [redacted]
ROBERT S. VOLKERT [redacted]
STEVEN O. WALLACE [redacted]
DAVID J. WALSH [redacted]
JORDAN D. WALZER [redacted]
JEFFREY B. WARD [redacted]
MELVIN M. WARD [redacted]
ROBERT D. WARD [redacted]
TROY WARE [redacted]
MICHAEL B. WARREN [redacted]
ROBERT S. WASHINGTON [redacted]
DANIEL S. WESTON [redacted]
ADAM N. WILLIAMS [redacted]
BILLY J. WOFFORD [redacted]
MATTHEW A. WOODHEAD [redacted]
MICHAEL R. Y'BARBO [redacted]
MATTHEW W. Y'LITALO [redacted]

THE FOLLOWING-NAMED MARINE CORPS ENLISTED COMMISSIONING EDUCATION PROGRAM GRADUATES FOR PERMANENT APPOINTMENT TO THE GRADE OF SECOND LIEUTENANT IN THE U.S. MARINE CORPS, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 531:

To be second lieutenant

DARREL V. ALLEN [redacted]
TROY L. ALLEN [redacted]
JESUS ALVAREZ, JR. [redacted]
TERRANCE L. ANTONY [redacted]
KELVIN M. ARTIS [redacted]
JAMES S. BARKLOW [redacted]
LONNIE BEBERNISS [redacted]
STEVEN D. BICKFORD [redacted]
ROBERT R. BRUNKALLA [redacted]
JAMES E. BUCK [redacted]
TITUS R. BURNS [redacted]
DARREN A. CANAVAN [redacted]
FELIX CANO III [redacted]
RONALD G. CAPES [redacted]
NICK J. CHALKO [redacted]
DAVID W. CLAPP [redacted]
COREY M. COLLIER [redacted]
KEVIN G. COLLINS [redacted]
LAURA L. CORPORON [redacted]
MICHAEL DELGROSSO [redacted]
ERIC R. DENT [redacted]
EDWARD J. DEVEAU [redacted]
BARRY A. DOWDY [redacted]
THOMAS J. DUNN II [redacted]
ROBERT D. DUNSTON [redacted]
TROY J. EWART [redacted]
HAYTHAM FARAJ [redacted]
THOMAS S. FIDEL [redacted]
GEORGE Q. FINNEY II [redacted]
PAUL A. FUNK [redacted]
GILBERT O. GARCIA [redacted]
MICHAEL A. GAVRE [redacted]
DAVID GOMEZ, JR. [redacted]
DANIEL GRANADA [redacted]
TRACY D. GRAY [redacted]
JAMES C. GREENLY [redacted]
STANLEY M. HORTON [redacted]
KEVIN C. HUMMONS [redacted]
LINWOOD L. JONGEMA [redacted]
NICHOLAS E. KONICKI [redacted]
JOSEPH G. LAPAN, JR. [redacted]
ERIC J. LEHMAN [redacted]
FRANK Q. MARILAO [redacted]
ALEXANDER K. MC CRAIGHT [redacted]
GREGORY L. MC DOWELL [redacted]
JEREMY S. MC ELROY [redacted]
MANUEL A. MERINO [redacted]
ROBERT G. PALMER [redacted]
BRYAN S. PITCHFORD [redacted]
WESLEY T. PRATER [redacted]
JAMES D. PURDIE [redacted]
DAVID H. REUSCHLING [redacted]
JULIET B. RUSSELL-CLAPP [redacted]
BRENT R. RUTH [redacted]
GREGORY I. SMITH [redacted]
DAVID C. SUMMERS [redacted]
WESLEY E. TERRY [redacted]
MARK A. THIEME [redacted]
GERALD A. THOMAS [redacted]
VICTOR T. TORRICO [redacted]
RUDY J. URIBE [redacted]
CHARLES VALENCE [redacted]
MATT J. VALIQUETTE [redacted]
RICHARD W. VARACALLE [redacted]
DAVID T. WALLACE [redacted]
WALTER YATES [redacted]