SENATE—Wednesday, March 15, 1995

The Senate met at 9:30 a.m., and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Lloyd John Ogilvie, D.D., offered the following prayer:

Let us pray:

Almighty God, You have told us through the prophet Isaiah that before we call, You will answer, and while we are still speaking, You will hear. We thank You that prayer begins with You. It originates in Your heart, sweeps into our hearts, and gives us the boldness to ask for what You desire to give. Lord, may the desires of our hearts be honed by Your greater desire for us. Then Lord, grant us the desires of our hearts. Enlarge our hearts until they are capable of containing the gift of Your spirit. In communion with You, surpass our human understanding with Your gift of knowledge, our inadequate judgment with Your wisdom, and our limited expectations with Your vision. May this day be one continuous conversation with You. We ask this not just for our own peace and security, but for our responsibility of leadership. You have placed us in decisionmaking positions of authority. The margin of human error is an ever-present concern. So we yield our minds, hearts, wills, and imaginations to be channels for the flow of Your divine intelligence. Without Your help, we will hit wide of the mark; with Your power, we cannot fail.

Lord, bless the women and men of this Senate with a dynamic dialog with You for the decisive decisions of the day. As You give the day, You will show the way. Grant us wisdom, grant us power for the facing of each hour.

In Your holy name. Amen.

RESERVATION OF LEADER TIME

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

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT

The PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of H.R. 889, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 889) making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness of the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Bumpers amendment No. 330, to restrict the obligation or expenditure of funds on the NASA/Russian Cooperative MIR Program.

Kassebaum amendment No. 331 (to committee amendment beginning on page 1, line 3), to limit funding of an Executive order that would prohibit Federal contractors from hiring permanent replacements for striking workers.

The PRESIDENT pro tempore. There will now be 1 hour for debate on the Kassebaum amendment No. 331, to be equally divided between the Senator from Kansas [Mrs. KASSEBAUM] and the Senator from Massachusetts [Mr. KENNEDY].

The distinguished Senator from Kansas, Senator KASSEBAUM.

Mrs. KASSEBAUM. Mr. President, I yield 5 minutes to the Senator from Georgia [Mr. COVERDELL].

The PRESIDENT pro tempore. The distinguished Senator from Georgia is recognized.

AMENDMENT NO. 331

Mr. COVERDELL. Mr. President, I thank my colleague, the Senator from Kansas. I rise in support of her amendment.

I had an opportunity to speak to this issue just yesterday to several assembled journalists. I said one of the striking features about the issue that is before us is how it reminds us of a rather growing pattern of this administration to circumvent the legislative branch. If you think on it, this issue, which is very controversial, has been argued before this Senate repeatedly and the provision that the President is trying to put in place has been rejected here. It has not found acceptance in the people's branch of our Government. So now we find the President trying to accomplish by Executive fiat what the people's branch of Government would not do.

It reminds me of Somalia, of Haiti, of Mexico, and now striker replacement.

Time and time again we see the administration coming for acceptance to the legislative branch, the people's branch, for the impact and reflection of what the American people are arguing or are wishing for. And when that cannot be accomplished, he will just bypass it, circumvent it. I do not think this is going to set very well with the American people as they begin to focus on a pattern of moving around their interests.

I am always taken aback, still. I have been here going into the third year. I still am perplexed by a city that seems to feel that it and it alone can establish the relationships in the free marketplace of this great country. And every time they do it, every time they meddle, invariably the reaction is disruption in the marketplace and the very thing the sound bites suggest we are trying to do, to help workers, as a result is not what happens.

If you destabilize the playing field that has existed between labor and management for the last 50 years, if management has no recourse in terms of hiring a replacement worker if an extended strike takes place, then invariably you are going to have increased consumer costs, you are going to have business decisions to avoid this complexity, you will have businesses that decide this is not the place to build their business. And every time we add to the burden of management and how they build businesses, we make it harder and harder for people to work in their businesses. That is the outcome of this kind of interference in the workplace: less jobs, not more jobs—less jobs, not more protected jobs.

It has to be remembered, you cannot replace a striker today if it is a health-related issue or an environment-related issue. You can if there is an argument about wages that cannot be resolved. Only 3 percent of the work force in all these strikes have ever been replaced in this country.

Management does not want a strike. Management does not want to replace a worker. It is expensive, costly, time consuming, destabilizing.

I can see my time is about up, Mr. President. I support the amendment of the Senator from Kansas. I feel we are intervening in the free marketplace and it will be destabilizing to the work force of our country.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. INHOFE). The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield 8 minutes to the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. WELLSTONE. Mr. President, first of all, just so colleagues are clear before they cast this vote after listening to my colleague from Georgia—the Executive order does not resemble Somalia. It represents a lawful exercise of Presidential authority. The Federal Procurement Act, which was enacted by Congress in 1949, expressly authorizes the President to proscribe such policies and directives not consistent with the directives of this act as he shall deem necessary to effectuate the decisions of such act. And from Roosevelt to Johnson to Nixon to Carter to

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

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President Bush, we have seen such orders issued.

So let us just be clear as to what is at issue. Second of all, Mr. President, we are, of course, not talking about S. 55, which was on the floor last session. But again, for the record, for the people in the country, that piece of legislation which prohibited employers from permanently replacing striking workers was filibustered. It was blocked. So it did not pass.

This is an Executive order by the President which applies to situations where the Federal Government has a contract with an employer for over $100,000 worth of business and that employer permanently replaces workers. This does not cover workers who were temporary replacement workers. We are talking about permanent replacement. That is all we are focusing on. It is really a very simple proposition that we are voting on here today.

I say to my colleagues, who take another position on this issue, that I wish their characterization of labor-management relations had some relationship to reality because, if it did, I would be taking a different position in this debate. But the General Accounting Office reports that since 1985, employers have hired permanent replacements in one out of every six strikes and threatened to hire replacements in one out of every three.

Mr. President, I just simply have to tell you that all too often, what happens is either employers require major and unreasonable concessions of the union, then force people out to strike, then replace them with workers unsympathetic to the union, and then move to decertify the union. That is called union busting. And, in many ways, that is the issue that is before us because either that happens or, because the United States happens to be the only country among the advanced economic countries in the world that enables employers to carry out this practice, many other wage earners just simply are forced to live with outrageous concessions that are asked of them with sometimes very deplorable working conditions in terms of health and safety, much less wages, because they know, if they do anything about it, they will be permanently replaced.

Mr. President, the issue here is which side is the Government on? In the debate last week, while I was on the floor, I happened to remember Florence Reese, from Appalachia—which is my wife Sheila's home, in Kentucky—and her famous song, "Which Side Are You On?"

What the President's Executive order essentially says is, "While many of us feel so strongly about this, if the Government is doing business with a company where the labor-management dispute causes the permanent replacement of striking workers, we ought not to use taxpayers' money to subsidize that kind of management practice."

Which side is the Government on? Are we on the side of union busting? Are we on the side of depressing wages? Are we on the side of forcing people out on strike and then permanently replacing them? Are we on the side of unsafe working conditions? Or are we on the side of working people, wage earners, and their having some leverage and ability to bargain for themselves and, yes, if necessary, to go out on strike—though no one likes to go out on strike—so that they are just not crushed?

Mr. President, that is the issue. Should the Government use taxpayers' money to support companies which permanently replace their workers in the labor-management dispute? It is that simple. That is the issue before us. That is why so many of us have taken such strong stands.

Finally, Mr. President, I know my colleague from Massachusetts, Senator KENNEDY, has been eloquent, powerful on the floor, on this issue. I think right now, in the 104th Congress, that so much of the debate and so much of the agenda is too abstract. There are no faces. There are no people.

Now, we look at these decisions on the House side. And we are talking about in Minnesota the Low-Income Energy Assistance Program. Let me tell you that in a cold-weather State like Minnesota—and I imagine Massachusetts—this is cruel for the elderly poor, for children, to just cut that out; and going after the Summer Jobs Program. We have had the debate here on school lunches, school breakfasts, and child nutrition programs. But are we going to do more for loopholes, deductions, and more by way of capital gains tax for large corporations and wealthy people? People—we cut one place. And those people have the least amount of clout, those most vulnerable citizens, and then we skew it to the very top of the population.

That is why this debate on the Kassebaum amendment has a significance. It has to do with the heart and soul of this 104th Congress. It has to do with where we stand. It has to do with who we represent or who we do not represent.

I can just say to my colleagues that I have seen all too often—I said this before on the floor of the Senate—people forced out on strike. I have seen people permanently replaced. I have seen the devastation of families. I have seen the devastation in communities. We had testimony in the Labor and Human Resources Committee from ministers, from business people, and others who talked about the divisiveness of all of this.

Mr. President, I come to the floor because I feel a real commitment to people whom I represent. To me, one that stands out in my mind more than any other is C.F. Industries, where workers were forced out on strike who did not want to go out on strike. I do not think they would mind my saying that they had a real sense of trepidation. They did not want to go out on strike. They were worried what was going to happen to them. But the company's offer was something they could not accept. The concessions that were asked of them went sort of directly to their sense of dignity about themselves. So there they were, outside on a Sunday morning. I went out there with the president of the AFL-CIO in the pouring rain. Their children were there. People who had essentially been permanently replaced were devastated. I do not think that should be a part of what the United States of America is about.

This amendment which deals with this Executive order by the President just deals with an Executive order that is a significant step in the right direction.

Mr. President, I urge my colleagues to vote against this amendment. I think, as much as I respect my colleague from Kansas, this amendment is profoundly wrong in its impact on working people and families. I think it is profoundly wrong in terms of the message that it stands for as to what we are about. I think the Government ought to be on the side of regular people, ought to be on the side of wage earners, and ought to be on the side of working families. I think that is really the large significance of this vote.

I yield the floor.

Mrs. KASSEBAUM. Mr. President, I yield 5 minutes to the Senator from Texas [Mr. GRAMM].

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, we should invoke cloture. We should pass this amendment, and we should stop the President's effort to use Executive power to do what he could not do in Congress and what, I believe, is clearly within the jurisdiction of the legislative branch of Government.

What we are debating today is nothing more than special interest politics undertaken by the President to reward a special interest group—organized labor in America. The President is giving them something that is not in the public interest through Executive order since he was unable in the last Congress to get a very similar provision adopted into law.

Let me review very briefly what the issue is. Under current law, if I do not want to work for you, I have the right to quit. If I feel that your pay or your working conditions are unfair, I have the right not only to quit, but to join with other workers to withhold our labor.

That is my fundamental right as a free American. That is a right that, so far as I know, is supported by every single Member of the U.S. Senate. But the employer, who has put up capital and who has made an investment, also

has rights. Those rights basically are that if I refuse to work for you, or if I join other employees in denying my labor, you have a right to hire someone else.

I, as a worker, understand that I have my rights and you have your rights. Under the balanced system, which is the law of the land, we have not had any major labor unrest since the short period immediately after World War II. That is because every worker knows what his or her rights are, and every worker understands the employer's rights. With that balance of relative power in the marketplace, we have had negotiations, we have had settlements, we have had progress, and we have had labor stability. As a result, we have experienced economic growth and prosperity.

What is being proposed now is not really a labor issue, it is a freedom issue. Basically, what the President has tried to do by Executive order is that which we had previously rejected; that is, to tell employers that if an employee quits or, in conjunction with other employees, withholds his or her labor, you do not have the right to hire someone else permanently to replace that worker. That is a violation of the rights of Americans who have put up their capital and who have made investments.

In my opinion, this is a freedom issue. And if you believe in freedom, you ought to be for this amendment.

So there are three issues. First, the President has tried, by Executive order, to do what he could not do through the legislative process. We ought to stop him because it is a violation of the implicit principle of separation of powers.

Second, the President is trying fundamentally to change labor law in a way that is not only unfair but in a way that will clearly result in more labor unrest. As a result, we will have more strikes than we have had in the last quarter century.

Finally, we ought to stop the President's special interest power grab, because this is a freedom issue. If someone proposed on the floor of the Senate that we stop workers from exercising their legitimate right to withhold their labor, I believe that every Member of the Senate would rise to his or her feet and denounce that effort. How can it be right to denounce that abridgment of freedom and yet not denounce the abridgment of freedom that results from telling an employer, who saved and worked and put up his capital, that he cannot hire someone to take the place of a worker who voluntarily refuses to work? I think that is the issue.

I hope my colleagues will vote for cloture and vote for this amendment.

Mr. HEFLIN. Mr. President, with regards to the Kassebaum amendment concerning striker replacement issues and the Executive order to which it pertains, I oppose the amendment. When this issue has arisen in the past I have supported substantial modifications to the striker replacement bill, including mandatory arbitration. These modifications would have substantially reduced strikes. Given my reservations, I have spent a good deal of time studying the Executive order. It is important to note that the provisions established by this order are much narrower in scope than striker replacement proposals made in the past and very limited in the number of businesses that would be affected.

From the outset and before I go any further, let me point out that the Kassebaum amendment violates the rules of the Senate which prohibit legislating on an appropriations bill. The procedure in the Senate is to pass legislative authorization or prohibition legislation and to deal with the matter of appropriations separately. The Kassebaum amendment clearly violates these rules.

Next, the underlying issue before the Senate is a supplemental defense appropriations bill. I do not think that bill ought to be jeopardized by a nongermane issue that can be brought up through the regular legislative process.

In reference to the Executive order, there are two points that I think should be made. The first is that the order in question does not require that Federal contractors who permanently replace workers be barred from holding contracts with the Federal Government. The order only gives the Secretary of Labor permission to consider terminating contracts with companies who permanently fire lawfully striking employees. Even if the Secretary does decide to terminate the contractor on this basis, it takes only an objection from the head of the involved Government agency to have the contract reinstated.

There is also the issue of cost to the Government and ultimately to the taxpayers. We should realize that it is expensive for companies to hire replacement workers. For a business to change employees quickly costs a great deal of money. Considering how often we have seen some companies overcharge the Government in the past, it is completely reasonable to expect that the costs of hiring these replacement workers will be passed on to the Government and ultimately the taxpayers.

Mr. MOYNIHAN. Mr. President, the fundamental right of American workers to strike was guaranteed over a half century ago with the enactment of the National Labor Relations Act of 1935. Section 13 of the NLRA states:

> Nothing in this act, except as specifically provided herein, shall be construed so as to either interfere with, or impede, or in any way diminish the right to strike, or to affect the limitations or qualifications on that right.

As a former Assistant of Labor under Presidents Kennedy and Johnson, I am disappointed that we find ourselves having to debate this issue at all. The amendment of the Senator from Kansas would prohibit the use of appropriated funds for implementation of President Clinton's Executive Order 12954, which provides simply that the Federal Government will not do business with contractors that hire permanent replacement workers.

Yet the hiring of permanent replacement workers directly contravenes the right to strike. A worker does not have any meaningful right to withhold his or her labor if his or her employer hires a permanent replacement worker.

The President issued a lawful Executive order on March 8. The legal authority for this order has been fully documented in a careful memorandum of law written by Assistant Attorney General Walter Dellinger. The memorandum has already been discussed on the floor during this debate, and was made part of the RECORD by the Senator from Massachusetts.

We ought not be in the business of gutting this Executive order through an amendment to an appropriations bill. It is regrettable that this amendment has not been withdrawn. Its proponents failed to invoke cloture earlier today, and it is time we move on.

The opponents of the amendment have no desire to prolong debate on the DOD supplemental appropriations bill. We would prefer that the amendment be withdrawn so that the Senate can complete its work on the underlying legislation.

But it should be remembered that the antistriker replacement legislation, of which I have been a cosponsor since 1990, was repeatedly the subject of filibusters by our colleagues on the other side of the aisle. S. 55, the Metzenbaum antistriker replacement bill in the 103d Congress, got 53 votes for cloture last year. The Senate would have passed the bill last year had an up or down vote been permitted.

Fortunately, we still have Members in this Senate who can be counted on to fight for the rights of the American worker. The ranking member of the Labor and Human Resources Committee, Senator KENNEDY, deserves thanks and congratulations for his outstanding leadership on this issue. He has been on the floor for many hours, making his argument eloquently and forcefully—as only the Senator from Massachusetts can. I join him in opposing the amendment of the Senator from Kansas.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER (Mr. COVERDELL). The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I yield myself 7 minutes.

Mr. President, many of us here in the U.S. Senate that are opposed to the amendment of the Senator from Kansas believe that we ought to be working on the defense appropriations bill

rather than on this amendment. I think it is important to understand who is really delaying the U.S. Senate from taking action.

Many of us who are opposed to this amendment feel that the national interest and national security would be served by moving forward on the defense appropriations bill. But our Republican colleagues do not apparently share that view and that is why we are where we are today.

Last week, the President issued an Executive order barring the award of Federal contracts to companies that permanently replace striking workers. The ink was not even dry on the Executive order and the effort was made here in the U.S. Senate to block the Executive order. And that is why we are where we are today, instead of completing action on the defense appropriations bill. Those of us on this side of the aisle are prepared, even though we are required to go through a cloture motion, to go on to the underlying measure and see that it is acted on and acted on expeditiously.

I was interested a moment ago when my colleague from Texas said that what the amendment we are debating is about is the issue of freedom. I thought we disposed of that argument during the debate last week with the very profound and eloquent words of our friend and colleague from West Virginia, who talking about what real life is all about for working people—not the technicalities of Presidential power to issue Executive orders, but what real workers were facing at an important time in history, in terms of the mines of West Virginia.

I can still remember those words he recalled being told to the miners: "Clean up your place or you are going to lose your job." Sure, you had freedom not to have that job. You also had freedom not to feed your child; you had freedom not to pay your mortgage; you had freedom not to live in a home. You had that freedom because if you did not clean up your place at the end of a hard day's work, you had somebody else that was prepared to fill in. That is what we are talking about here. We are talking about the real experiences of working people.

I want to take a couple of minutes of the time of the Senate to talk about who we are protecting here today—the people who my colleague from Texas described as special interests. These are the kind of people that we on this side of the aisle are interested in protecting and that I am glad to stand with.

We are protecting Joyce Moore, who is married with three children. She worked at a laundry and also as a nurse's aide in a nursing home in Cincinnati, OH, for 13 years and was forced out on strike and subsequently permanently replaced. She was making $6.77 an hour. As she said,

It ain't about money; basically, it is about respect. There is a lack of respect in there. I hate that we are all on strike because I enjoy getting up every morning and going to my job. I enjoy being around the residents, taking care of them. But we want a 3-year contract and a better health plan and a pension plan. Folks get sick and they need a health plan. When you have been there as long as I have, you deserve a pension plan.

But when Joyce Moore went on strike to get that respect, she was permanently replaced. That special interest was making $6.77 an hour. We are interested in protecting her from being permanently replaced, so that she can provide for a family.

Jenette Hillman, 52 years old, worked at the nursing home as a rehabilitation aide for 25 years, and was making $7.25 an hour before she was forced out on strike February 22 and permanently replaced 3 weeks later. She raised six sons. Now she is surviving only because one of those sons has moved back in with the family.

Bernadette Marion, making $5.30 an hour as a nursing assistant, barely enough to take care of her four daughters, after being out on strike—she was permanently replaced and is living on a dwindling savings and a tax refund check.

These are the real people that are being affected the unfair employer tactic of permanently replacing workers who exercise their legal right to strike.

Make no mistake about it, this is the opening skirmish in a larger battle that is now unfolding in the Congress over the rights of working men and women across the country. What is at stake in this battle is nothing less than the standard of living for working families.

Our Republican friends aim their opening salvo at a measure that is about simple justice for American workers. Under our national labor laws, it is illegal to fire a worker for exercising the right to strike. But because of a court-created loophole—not a legislatively created loophole; the loophole was not enacted by the Congress of the United States; it was a footnote on a court decision—because of the court-created loophole, workers who strike can be permanently replaced, which amounts to the same thing.

President Clinton was right to act to close that unfair loophole. And I am proud to stand with him in defense of that action.

Working families, Mr. President, are hurting. They have suffered a 20-year decline in real wages. Hourly pay is falling compared to other countries. The gap between the top 10 percent of wage earners and bottom 10 percent is wider in our country than in any other industrial nation. Yet, the new Republican majority, through this amendment and numerous other measures that are working their way through Congress, are advancing an agenda that is, in effect, an assault on working families. This attempt to block the Executive order on striker replacement is just one example of how this assault is being carried out, but it is an important one. So I want to take a few moments to talk about that this morning.

It is not just accidental, Mr. President, that what we have seen over the period of the past weeks—and it was illustrated in the excellent article in the Washington Post today by Mr. OBEY—is an attack on the legitimate interests and rights of working men and women to be able to protect their wages and to try and advance the interests of themselves and their families.

We have the actions which are being taken by the House of Representatives to basically undermine the School Lunch Program where working families' children go to school, to undermine the college assistance programs and loan programs by which working families are able to have their children go to the fine colleges and universities that exist in all of our States. Sixty-seven percent of the young people in my State of Massachusetts need some kind of help and assistance to go on to college. But what is the Republican leadership in the House of Representatives saying? We are to cut student aid programs and make hard-working families spend more to finance the cost of a college education.

It is an assault on the children who are going to the high schools, it is an assault on the teenagers who are trying to go to college, and it is a continued assault——

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

Mr. KENNEDY. I yield myself 3 more minutes.

It is a continued assault by those who refuse to give a living wage to people who are trying to work.

That is what this is about. You can talk about the scope of Presidential power to issue this Executive order—and we have put into the RECORD the Justice Department's justification for it, which is well supported—and you can talk about whether the President is really right to do this as a matter of social policy.

But I will tell you, those arguments would have a lot more credibility if those on the other side were prepared to say we are willing to support an increase in the minimum wage for workers in this country who are prepared to work 40 hours a week, 52 weeks a year. But, no, they say, we are opposed to that too. Come on. Come on, Mr. President. What is this battle all about? Come on. You have to be honest when you are talking to the American people. You have to be straightforward about what this is about.

My Republican colleagues say you are wrong Senator, this is just an issue about whether the President had the

proper legal authority to issue this Executive order. But at the same time they are saying,

No, Senator, we are not for enacting an increase in the minimum wage. No, no. You are quite right, we are for cutting back on school lunch programs for kids that are going to high school. Yes, we want to raise the cost of sending your children to the college and university. But we are not really assaulting working families. On, no, we are really for working families. Why do you get so excited out here on the floor of the U.S. Senate?

And only yesterday, in the Ways and Means Committee, they give tax breaks to the wealthiest individuals and corporations in the country by voting to lower the capital gains tax and effectively eliminating the minimum tax on corporations.

"No," they say, "it is just a coincidence that we are providing all these breaks and benefits to the rich at the same time we are making all these cuts in programs for working families."

Come on, Mr. President. This is the first major issue we have dealt with on the floor in the U.S. Senate this year that directly affects the working families of this country, and we are not going to be rolled over and stampeded on it. We are not going to be rolled over and stampeded on it.

The President is right to do this. He is right to issue this Executive order, not just from a fairness point of view and a social compact point of view, he is right to do it in terms of his responsibility as the Chief Executive to ensure that we are going to get good quality products for the Defense Department, that we are going to make sure that those plane engines that are going into the F-15's, F-16's, and F-18's are good engines, made in my own State at General Electric by workers who have worked there for 25 and 30 years. We are not going to have to take the chance of having some replacement workers in there trying to fulfill a contract and not being able to produce a good, quality product. We are going to make sure that those runways that are being built are going to be good runways for those planes. We are going to ensure that the housing that is going to house our personnel in the military is going to be of good quality.

I do not know what is the reason for this assault on all these people making barely above the minimum wage. If that isn't bad enough, the Republicans are saying "We have other good news for you, Senator, in terms of those construction workers. We are going to take away the Davis-Bacon Act, that guarantees prevailing wages on federally funded construction projects." We are talking about men and women in the construction industry making an average of $27,000 a year—$27,000 a year. One of the first priorities of the Contract With America is to undermine their ability to make prevailing wages in one of the most dangerous occupations in this country, and that is construction work.

The PRESIDING OFFICER. The Chair advises the Senator that his time has expired.

Mr. KENNEDY. I yield myself 2 more minutes.

And we are going to repeal the Davis-Bacon Act and diminish their ability to provide for their families.

What is it about working families that Republicans have it in for them? Why is it that our Republican leadership in the House of Representatives and here today on the floor of the U.S. Senate, virtually in lockstep, wants to deprive them of some legitimate rights? What is it about these working families? What is it about their children? What is it about their children that we want to cut back in terms of Medicaid? What in the world have they done, except be the backbone of this country?

Make no mistake about it, this is the first battle, Mr. President, and we are not going to let this stampede that may have gone over in the House of Representatives run roughshod here in the U.S. Senate.

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

How much time do I have?

The PRESIDING OFFICER. The Senator has 11 minutes.

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I yield 5 minutes to the Senator from Mississippi [Mr. LOTT].

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Thank you, Mr. President. And I thank the Senator from Kansas for yielding me this time.

I think it is time, maybe, we calmed down a little bit, stopped shouting, and talk about what is really involved here.

This is not about——

Mr. KENNEDY. Will the Senator yield?

Mr. LOTT. I will not yield. I have been sitting here listening to the Senator, and I have a chance here now to correct the RECORD a little bit.

This is not about the Contract With America. This is not about Davis-Bacon. This is not about all the other extraneous matters we are talking about.

What we are talking about here is an opportunity for the Senators to vote to stop the filibuster so that we can talk about the substance of the amendment of the Senator from Kansas, Senator KASSEBAUM. So I urge the Senators to vote to invoke cloture.

Last Thursday, 57 Senators voted to stop President Clinton from unlawfully usurping congressional authority to regulate labor-management relations. The week before that, the President issued an Executive order which sought to overturn congressional and judicial policies that have stood for nearly 60 years. In so doing, the President claimed authority to defy Congress and the Constitution by rewriting Federal labor laws. The vast majority of the Senate has rejected this unlawful exercise of power, and has affirmed that the Executive order is bad policy and bad law.

Despite Thursday's vote, a handful of Senators from the other side of the aisle is filibustering this bill in an attempt to protect President Clinton's Executive order. The other side of the aisle has even objected to temporarily setting aside the Kassebaum amendment, so the Senate might proceed on other amendments to the defense supplemental appropriations bill.

I point out that the defense supplemental appropriations bill, requested by the administration, has now been on the floor of the Senate for 5 days. And so the routine continues, Mr. President. We spent weeks on the balanced budget amendment. We spent weeks on the uncontroversial unfunded mandates bill. We spent several days on congressional coverage. Everything is to be dragged out in the Senate; everything is to be slowed down. Sooner or later, the Senate is going to have to face up to taking action on the legislation that is pending before it.

And now a minority of Democratic Senators is so committed to giving away congressional authority to the President that they are willing to halt Senate action on an emergency bill the administration has requested the Senate to pass immediately.

And what is this filibuster being used to do? Is it being used to defend the ability of Congress to regulate labor-management relations? No, that is not happening. Is it being used to implement a Supreme Court ruling? No, Mr. President, this filibuster is being undertaken to protect an Executive action that contravenes the will of both Congress and the Courts.

President Clinton's Executive order would bar Federal contractors from hiring permanent replacements for striking workers. Under the order, the Secretary of Labor will determine whether "an organizational unit of a Federal contractor" has "permanently replaced lawfully striking workers." He may then instruct Federal agencies to cancel existing contracts. The contractor can also be debarred from future contracts for the duration of the labor dispute. This Executive order, effective immediately, applies to companies with Federal contracts in excess of $100,000.

This Executive order is seriously flawed on both policy and legal grounds, and it is a direct challenge to congressional authority.

Several times, Congress has tried to act in this area without success. And so now, they have gone to the Executive

order to get done what the Congress would not approve and get action in an area where the Supreme Court does not even agree with their action.

This Executive order seeks to assert that as a matter of law, the hiring of permanent replacements adversely affects the Federal Government. Specifically, it states that the use of replacements lengthens strikes, broadens disputes, and shifts the balance in the collective bargaining relationship. As the lengthy debates in the House and Senate have shown, quite the contrary is true:

The Executive order will result in more strikes, inflationary wage settlements and a shift in the balance of power in favor of unions.

This was the conclusion of the Carter administration in 1977, when it rejected a limited ban on permanent replacements as part of labor law reform. Indeed, the Canadian Province of Quebec has experienced more strikes and longer strikes since it outlawed the use of any striker replacements—temporary or permanent.

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

Mr. LOTT. Mr. President, I ask unanimous consent for an additional minute.

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

Mr. LOTT. The President has delegated to the Secretary of Labor the decision of how far this order really goes. That is one of the things that really worries me.

This employer right is essential to maintaining balance in labor relations.

The right has always been recognized as the necessary counterweight to the unrestrained right to strike guaranteed by this Nation's labor laws. Because the risks are high if either side engages in economic warfare against the other, neither side exercises its rights and powers except over major issues. The Executive order abolishes this congressionally and judicially crafted balance.

LEGAL CONSIDERATIONS

The fact that many, many days have been devoted to the issue in recent years should leave no doubt that this is a legislative issue. Any Executive order that touches on this same issue is an infringement on the separation of powers. This order goes far beyond mere procurement policy and regulates private labor relations and restricts private rights guaranteed under the laws crafted by Congress.

It is argued that other Presidents have regulated labor relations through Executive orders. None of those orders, however, amount to the usurpation of congressional authority as does this action of President Clinton. President Reagan's order firing the striking air traffic controllers was based upon his constitutional duty to enforce the law. President Bush's order requiring their Beck rights simply required that workers be informed of their rights under the law. Finally, the Bush Executive order barring union-only agreements on Federal construction projects was consistent with the procurement authority of the Government as consistent with the procurement authority of the Government as declared in the Supreme Court's Boston Harbor decision. It should be noted, however, that this Executive order was never challenged in court.

Not merely the authority of the President is at issue. The Executive order raises numerous practical issues which would embroil the executive branch in legal quagmires for years. Consider the following:

The President has delegated to the Secretary of Labor the decision of how far this order really goes.

Robert Reich and his successors would decide whether "an organizational unit of a Federal contractor" has used permanent replacements. He is empowered in section 11 to define this term in regulations. At this point, we do not know whether the ban applies to employees working exclusively on Government projects, plants, or site-wide, to all operations whether a division or subsidiary. This vagueness should render the order void on its face.

The Department of Labor is unqualified to make determinations as to the legality of actions under the Federal labor statutes.

That expertise is housed in the National Labor Relations Board and the National Mediation Board. Using the procurement power of the President, the Secretary is empowered to address such legal issues as what is a lawful strike and who are unit employees. The Labor Department has had absolutely no involvement until now in interpreting these laws.

The order applies to all lawful work stoppages, whether or not a union is involved.

Two or more nonunion workers are free to walk off the job, giving little or no reason except to say that they are protesting terms or conditions of employment. Under current law, nonunion protests of this nature are relatively infrequent because of the countervailing employer right to hire permanent replacements. Federal contractors which exercise their legal right to use replacements in the face of such extortionist tactics do so at their peril.

CONCLUSION

So, Mr. President, it is clear that President Clinton's Executive order is bad policy and bad law which usurps congressional power and contravenes our Nation's courts.

In conclusion, I think that what we are really talking about here, Mr. President, is jobs, and what will happen if these strikes go on indefinitely and the companies do not have an opportunity to get replacement workers. What option will the company have if they cannot reach a negotiated agreement? What will happen is, they will wind up going out of business and the people will lose their jobs, and other people who would like to have those jobs would not have them either. We clearly should vote to invoke cloture and allow a full debate to occur on the Kassebaum amendment.

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

The PRESIDING OFFICER. Just over 11 minutes on your side.

Mr. KENNEDY. Mr. President, I yield 6 minutes to the Senator from Iowa.

Mr. HARKIN. I find the argument just made by the minority whip most intriguing. He is talking about a filibuster.

Mr. President, something is wrong here. It was the Republican side, for the last two Congresses, that filibustered the striker replacement bill. What is going on here? Surely, the Senator from Mississippi understands that it was their side that filibustered in the last two Congresses the striker replacement bill. That legislation passed the House, came to the Senate, and it was the Republicans who filibustered the bill, not the Democrats. We are not filibustering this bill.

We will have a vote on the underlying bill. For the last two Congresses, the Republicans would not permit the striker replacement bill to come up for a vote, and in both of those Congresses we had the majority votes to pass it. One Congress we had 57 votes; last year we had 53 votes. It was the Republicans who filibustered, not the Democrats. I want to set that record straight. The Senator from Mississippi is playing loose with the history of this bill. I see him smiling over there, and he knows exactly what I am talking about.

Mr. President, another Senator from the other side, the Senator from Texas [Mr. GRAMM] spoke on this issue. He equated workers exercising their legal right to strike to quitting. He says this issue is about people having a right to quit and employers having a right to hire people to replace them.

The Senator from Texas apparently believes good labor-management relations consist of workers taking what they are given, and not complaining. If the workers' salary and benefits and paid holidays are cut, because that means investors could make a nickel more dividend, and if they then go out on strike, that company can consider those workers as having quit, and permanently replace them.

But in reality, Mr. President, good labor-management relations means both sides are willing to talk. When we have a company like Bridgestone/Firestone, a wholly owned Japanese company operating in this country that refuses to sit down and negotiate in good faith with the workers, leaving them no other option but to go out on strike,

then it cannot be the workers' fault. They are willing to negotiate.

This issue shows some fundamental differences between Senators on each side of the aisle. First, to listen to the Senator from Texas [Mr. GRAMM] and perhaps the Senator from Mississippi, they would just as soon see no unions. I think they would be happy to abolish unions if they could.

Second, they really believe that if a person works for someone they have to take what they get, no questions asked. If you produce more, and you then ask for higher wages, an employer can dismiss you an any time—you can work 20 years, and if they want, they get rid of you and throw you out the door.

I think that Senator KENNEDY is right. What this is about is whether or not we will have decent management-worker relationships in this country, or whether we will take the path the Republicans want to take, and tell workers they do not count for anything, that a worker in this country is like a piece of machinery. Use them up, depreciate them down, and they throw them out the back door when they can get another worker cheaper.

Mr. President, sometimes I wish that the Republican side would just quit messing around, and just go out and propose a law to ban strikes entirely? Better than that, they could ban negotiations, ban collective bargaining, because we really do not have collective bargaining any longer. The only thing that a worker can bring to the table in collective bargaining is his or her labor. And if they have no right to withhold that labor then the cards are stacked against them. Then only the employers have the power.

So I wish the Republicans would just go ahead and offer a law, an amendment to ban strikes and to ban collective bargaining. It would be honest, anyway, on their part. It would not be this sham that we are operating under now: A right to strike today is only a right to be permanently replaced. A right to be permanently replaced means you have no power in collective bargaining, and thus collective bargaining in this country is indeed a sham.

Every cutrate cutthroat employer knows they can break a union if they are willing to play hardball and ruin the lives of people who have made their company what it is. Unfortunately, the small minority of union busters drag down the rest of their industries in order to compete. Even responsible companies have to follow suit in the race to cut costs and salaries and cut workers' dignities.

I mentioned Bridgestone/Firestone. Other tire companies in this country—Goodyear, Dunlop, and Uniroyal—reached agreements. They had negotiations. Some of them went out on strike, but then they negotiated. They reached an agreement. But this one company, Bridgestone/Firestone, refused to negotiate even after the workers had increased their productivity to all-time record highs, even after the workers agreed in the 1980's to take over $7 an hour in wage and benefit cuts, and yet when it came time for collective bargaining to renew the contract, the company said, "Nope, you take what we offer or that is the end of it."

So, the workers went out on strike. Now, Bridgestone can win this, if they can bust the union and they hire permanent replacements. They have actually said it in letters, "You are permanently replaced."

If they can do that, then that will drag down Goodyear because the board of directors will say, "How can we let them undercut us? We have to compete." And so will Dunlop, and so will Uniroyal, and it drags down the whole industry.

So what the Republicans are proposing to do with this amendment offered——

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

Mr. KENNEDY. Mr. President, I yield 1 minute.

Mr. HARKIN. What they are proposing to do on the Republican side is to reward the worst companies: Those companies that will not negotiate in good faith and bargain with their workers; those companies that will drag down the other companies. That is the effect of their amendment.

This amendment is counterproductive. We need more organized labor, not less, to compete in international markets. We are the most productive country in the world, and it is because we have had good labor-management relations working together, to increase productivity on the world market. Unions boosted productivity from 17 to 22 percent in construction, and a study of 20 manufacturing industries showed that unionized workers were from one-fifth to nearly one-quarter more productive than their nonunion counterparts.

When I hear the statements coming from the other side of the aisle—and what I hear is, "Let's break down this labor-management relations we have had, let's break down collective bargaining"—the next thing I expect to hear is, "Let's reintroduce child labor, if you want to compete with other countries that employ child labor." Well, why not?

Workers have no more rights in this country. Workers have no rights to stick up for their dignity, to demand better wages, hours, and conditions of employment. I hope that the Senate will speak loudly and clearly. The President has acted correctly, and he acted within the confines of the law, in issuing that Executive order. We ought to uphold it for the good of America.

Mrs. KASSEBAUM. Mr. President, I would like to yield 5 minutes to the Senator from Oklahoma.

Mr. NICKLES. Mr. President, first I wish to compliment the Senator from Kansas for her amendment. I hope that my colleagues will vote with her on this amendment. I think it is important.

I note at the conclusion of the statement of my friend from Iowa that the President acted within the confines of law. Let me just state the facts. President Clinton issued an Executive order because he could not pass a law. President Clinton introduces a bill, that has been introduced a couple of times—I guess both years since he has been President—trying to get it passed, but he has not been successful. He has tried but he did not get a bill to become law. And so the President is trying to do by Executive order what he could not do legislatively. Even in spite of the fact that he had a Democrat-controlled House and Senate, he was not successful because Congress did not agree.

I think Congress is right in not agreeing. Now I am looking at the Executive order, and very clearly, if one reads this Executive order—and I know it has been put into the RECORD; if it has not, I will ask unanimous consent to put it in the RECORD—but one needs to read this to find out this is law. This is an Executive order where the President is trying to legislate.

I read in the Constitution—it is interesting, we have had a lot of discussion on the Constitution lately—but very clearly in article I, section 1, it says:

> All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

We did not elect the President to be issuing Executive orders in defiance of Congress. Congress did not pass this bill. Congress did not pass it because we did not think it was right. I happen to agree within Congress' decision. I think this is a mistake.

I look at the power that he has vested in the Secretary of Labor: The Secretary of Labor shall determine everything. The Secretary of Labor gets to determine the bargaining, he can object to a termination of a contract, he may debar the contractor. We are giving the Secretary of Labor the right to debar a contractor. Take, for example, the Senator from Georgia, or the Senator from Virginia, if you take a big contractor—maybe it is Newport News—building aircraft carriers, and maybe there is a small strike with a little union that is upset with one particular division which may affect less than 1 percent of their employees. But if there is a strike, is Newport News and their owner, I guess Tenneco, debarred from all Federal contracts? I asked that question before, and really that is to be determined by the Secretary of Labor.

This Executive order is written with a blank check: "The meaning of the term organizational unit of the Federal contractors shall be defined in regulations that shall be issued by the Secretary of Labor." My point being, this is terrible legislation, and the President does not have a right to legislate. He does not have the right. He is exceeding his powers. I am confident that if we do not succeed on the Kassebaum——

Mr. HARKIN. Will the Senator yield?

Mr. NICKLES. No. Let me finish my statement. I have limited time.

The President exceeded his power. I will state I am very confident that, if we are not successful with this amendment, it will be tested in court and this Executive order will be thrown out on constitutional grounds. I am very confident of that fact. But we should stop it now. The President is playing politics. He is trying to appease a special interest group. I think it is unfortunate.

What about the substance of it? I heard my colleague make the statement, "Well, the people who are pushing this amendment are just against organized labor." That is not true. I think the people should have the right to organize. If people want to strike, if they do not want to work, they should have that right as well.

Likewise, employers have to have the right to hire replacement workers. If they cannot do that, they cannot keep the doors open. In many cases, you might be a critical subassembly of a particular part that has to happen to make this entire unit come together on time and on budget, and if an employer cannot hire replacement workers to make that happen, then they could be in violation of the original terms of that contract. They could lose the whole contract. The entire country, if you are talking about a Government contract, could end up paying an enormous amount for not being on time and complying with the terms of the contract.

This is enormous power the President is trying to delegate to the Secretary of Labor. It is a mistake. Congress has refused to do this. Congress has refused to pass it, I believe correctly so. The President in trying to circumvent Congress, I think, greatly exceeds his authority, his power, and I hope my colleagues will agree with Senator KASSEBAUM and vote for cloture.

I yield the floor.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, I will just take leader time and not take any time reserved for the distinguished Senator from Massachusetts.

Let me make four very important, but simple, points.

First of all, the President has every right to issue this Executive order. The precedent set by virtually every one of his predecessors makes that point loudly and clearly. President Bush, President Carter, President Nixon, President Johnson, President Truman, President Roosevelt—they all issued Executive orders having to do with important national priorities, and they did so without anyone challenging their right to make those choices. Obviously, they may have been in significant disagreement, but the fact is they made those Executive orders with the clear understanding that it was within their constitutional right to do so.

That is what this President is doing as well. The President is simply saying, "Look, if you want to do business with the Federal Government, you simply cannot replace striking workers who are conducting a legitimate strike with replacement workers." That is all he is saying.

I do not think that is too much to ask. Obviously, given the extraordinary difficulty working families are having today, the need to assure balance in the workplace is all this issue is about. Giving workers the right to strike, the right to maintain balance in a working relationship with their employers, has been something guaranteed under the National Labor Relations Act for 60 years.

The second point is that this is simply an issue of fairness. The right to strike—the right to ensure that your grievances can be heard in a meaningful way—is a longstanding right of workers, and one which must be protected. They must continue to have the right to strike, and this Executive order simply says that we are going to have that guarantee in writing, at least as far as Government contracts are concerned. The President has made it very clear that working families are a priority in this country.

My third point, Mr. President, is this: as the distinguished Senator from Massachusetts has said, this is the first in what will be a series of very critical votes this Congress that directly affect working families. What happens on this vote will send a clear message about what the Congress is going to do and the position it will take with regard to a number of these issues in the future.

If they lose the longstanding balance that has existed between labor and management, if they lose a fundamental right guaranteed all workers, I do not know that it bodes very well for other issues that will be pending. There are those who suggest we eliminate the minimum wage. There are those who suggest we eliminate the Davis-Bacon Act. They have suggested a number of attacks on the rights of working families, and certainly this is the first opportunity we have to defend those rights. I hope that everyone understands the critical nature of this vote. It goes beyond simply a question of filibusters. It goes beyond a question of procedure on the Senate floor. It goes to the very heart of why we are here defending the rights of workers at times as important as this.

The fourth point, Mr. President, is one that I hope everyone can appreciate. As we go through the final moments of this debate, we must remember that the question of whether or not the rights that have been reaffirmed in this Executive order are respected is of fundamental importance to our relationship with the President.

The President must make decisions with regard to executive branch policy. He has made a very important decision to respect the rights of working families. I think it is imperative that we respect his authority to do so. That is all we are saying here, that this President, as other Presidents have done, has made a decision with regard to working families that, in our view, ought to be upheld and ought to be respected.

So, Mr. President, in a couple of minutes, we are going to be casting a vote that goes beyond procedure, a vote that goes beyond simply a motion to invoke cloture. It goes to the very heart of whether working families are going to have the right to maintain the balance in the workplace that we all recognize is important to them and to this country.

So I hope we can sustain the necessary votes to defeat cloture this morning and send a clear message to working families that the Senate is on the side of families, on the side of working people, on the side of maintaining the balance between labor and management that we have recognized for the last 60 years.

I yield the floor.

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

Mrs. KASSEBAUM. Mr. President, how much time is remaining?

The PRESIDING OFFICER. Just over 9 minutes on the Senator's side.

Mrs. KASSEBAUM. I would like to yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, if I may just restate what this amendment is about. It is an amendment which would bar any Federal funds from being spent to implement the Executive order that was issued by the President last week.

That Executive order would effectively prohibit Federal contractors from exercising their legal right to hire permanent replacement workers—a right that has been the law of the land for 60 years.

Mr. President, we have heard a lot about this debate being one thing or another—an assault on working families, an assault on children. I believe, Mr. President, and perhaps I am naive in thinking so, that this vote should not be viewed as a test of the President's leadership, nor should it be

viewed as a test of Republican clout. I hope that it would not be viewed as a vote for labor or a vote for business.

I wish that this amendment would be taken for what it is. No one wants to see workers dismissed gratuitously and replaced by permanent replacement workers. That is not what is at issue either. This is not the beginning of a series of assaults on working class families. This is a debate on an Executive order issued by the President which effectively changes labor law in a significant way.

What this debate is all about, in my mind—and I think it is an important point—is the separation of powers between Congress and the executive branch. It is about whether our national labor policy should be determined by the President rather than by an act of Congress.

The question at stake is whether we are prepared to allow the President to overturn 60 years of established labor law with the stroke of a pen.

We can debate this issue at another time. We have debated it before, and I am sure we will again. There are those who suggest we may be able to find some compromises that can bring all sides together. But what the current law has done in over 60 years is to provide the balance to which the Democratic leader spoke. It has provided a balance between labor and management, and that should be preserved.

It has been mentioned that there were other Executive orders which were undertaken, and we have debated this before. Just to reiterate, however, no previous Executive order by President Bush or President Reagan went this far in contradicting both the law and the will of Congress.

President Reagan's order banned illegally striking air traffic controllers from Federal employment. This was well within his rights and was not contrary to existing law. President Bush's order on Beck was merely enforcing existing law. President Bush's order on prehire contracts was not preceded by extensive debate and defeat by Congress, as has been the case with striker replacement legislation. He may well have exceeded his authority on that Executive order on prehire contracts, but it was never an order that was challenged by the courts or challenged in Congress.

I think we are seeing here that under this Executive order Federal contractors will effectively be barred from exercising a longstanding legal right—just as labor has the right to strike—that all other companies are permitted to do under existing labor law.

Regardless of which side we might take on the issue of striker replacements, we should all be concerned, Mr. President, about the precedent this Executive order would set for future Presidents.

What if a new administration decided to debar any contractor whose workers decided to go on strike? Would we feel the same way about an Executive order that infringed on the equally longstanding right to strike?

It has also been argued that this Executive order will have only a limited impact, that perhaps only a dozen companies would be affected. Mr. President, the Federal Government contracts for close to 180 billion dollars' worth of goods and services. Many defense contractors would be affected, and that is why it is fitting this is added as a debate to the defense supplemental bill. This order will potentially affect tens of thousands of companies.

The PRESIDING OFFICER. The Senator's 5 minutes has expired.

Mrs. KASSEBAUM. I yield myself 2 additional minutes.

The Defense Department alone has contracts of value greater than $100,000 with over 20,000 different companies. This Executive order would cover Federal construction projects, potentially colleges and universities with Federal research contracts, hospitals and health care providers that contract with the Federal Government. It is very unclear as to what exactly this Executive order might apply. As was pointed out by the Senator from Mississippi and the Senator from Oklahoma, the Secretary of Labor has a great deal of discretion under this Executive order to decide when it may or may not apply.

Over 30 years ago, the Supreme Court overturned President Truman's attempt to seize control of the steel mills by Executive order. I believe Justice Black's opinion in the Youngstown case is relevant here. He said:

> In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad.

I believe the President has exceeded his authority here by attempting to make the law, dictating the terms of our national labor policy, by means of the Executive order in direct contravention of current law.

Congress makes the law, not the President, and we should not relinquish our role in setting national labor policy by allowing this Executive order to stand. I urge my colleagues to support cloture in order to reassert the authority of the Congress and to bring this debate to a close.

I yield the floor, Mr. President.

The PRESIDING OFFICER. The Chair recognizes the majority leader.

Mr. DOLE. I yield to the Senator from Massachusetts.

Mr. KENNEDY addressed the Chair.

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

Mr. KENNEDY. How much time remains, Mr. President?

The PRESIDING OFFICER. Just over 4 minutes.

Mr. KENNEDY. I yield myself 3 minutes and then whatever time I will yield back, to let the majority leader have the final word.

Mr. President, I thank the Senator from Kansas for both her explanation and the justification for her amendment. Over the period of the last several days, we have tried to go through the circumstances of the Youngstown case and distinguish the executive authority that President Truman attempted to assert in that case and the executive authority that President Clinton is exercising with regard to this order, and I think we have made that case in a very compelling way. I think anyone who reads through the RECORD would find the analysis persuasive. I respect the fact that Senator KASSEBAUM does not believe this is really about broader public policy issues. But I must take issue with her in that conclusion.

We are not debating on the floor of the Senate the issue of what we are going to do about increasing the minimum wage.

My Republican colleague have not proposed even a sense-of-the-Senate resolution to say, for instance, that working families are falling further and further behind; that we think work ought to be adequately compensated; that we think work ought to be recognized; that we think any American who works 40 hours a week 52 a weeks a year ought to receive a decent wage. Not even a sense-of-the-Senate resolution to say perhaps we are not going to address this on this particular bill, but we are prepared to work to protect the future of working families; we are prepared to work to protect their interests in terms of their children who might need a summer job or their small children who might need a school lunch; we are prepared to speak up about the needs of working families. Nothing to say we differ with you on this Executive order, but we are for working families. And that is what this debate is really about.

What we are voting on takes place against the background of what has happened to family incomes since 1980, and the fact that the only real growth in family incomes that has taken place is among the families at the top—the wealthiest individuals in this country.

That is the background of what has happened to the income of working families over the past 20 years, and now we are debating against this background a measure that is going to further attack the legitimate rights of working people who are hard-working, who are trying to make it, but whose incomes have been held down over the last two decades. Those are the people who are going to be affected by the President's Executive order which my Republican colleagues are trying to block.

We have illustrated in the course of this debate the kinds of people who will be adversely impacted if the Senator's amendment is adopted.

The PRESIDING OFFICER. The Chair advises the Senator his 3 minutes have expired.

Mr. KENNEDY. Mr. President, therefore, it is my hope that the motion to invoke cloture would not pass, that the amendment itself would be withdrawn and that we would go back to further consideration of the very important underlying defense appropriations bill.

I thank the Chair.

The PRESIDING OFFICER. The Chair recognizes the majority leader.

Mr. DOLE. Mr. President, how much time is remaining?

The PRESIDING OFFICER. Just over 2 minutes.

Mr. DOLE. Mr. President, let me just lay it out cold. This is all about politics. It has nothing to do with workers or anybody else.

Last week, President Clinton kicked off his 1996 reelection campaign by signing an Executive order that would prohibit Federal contractors from hiring permanent replacement workers during economic strikes.

Despite all the talk about fostering fairness in the Federal workplace, the Executive order is a transparent effort on the President's part to shore up a political base that he believes is vital to his own reelection chances.

During the past several years, Congress has considered, and repeatedly rejected, the so-called striker-replacement bill. That is why the President is setting a dangerous precedent if he believes he can revive this defeated legislation simply by issuing an executive order.

It is the responsibility of Congress, not the administration, to write the laws governing labor-management relations in this country.

So, Mr. President, I urge my colleagues to support this motion to invoke cloture. The amendment offered by my friend and colleague from Kansas, Senator KASSEBAUM, will help restore the careful balance—that is what we want—a careful balance between labor and management that has been the hallmark of our system of collective bargaining for more than 60 years.

The President's misguided directive is a politically inspired attempt to do an end run around the legislative process. I do not believe it should go unchallenged.

I yield the floor.

CLOTURE MOTION

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on amendment No. 331 to the committee amendment to H.R. 889, the supplemental appropriations bill:

Hank Brown, Nancy Landon Kassebaum, John Ashcroft, Jon Kyl, Lauch Faircloth, Don Nickles, Strom Thurmond, Dan Coats, Judd Gregg, Slade Gorton, Bob Dole, Chuck Grassley, Craig Thomas, Conrad Burns, Trent Lott, Mike DeWine, Pete Domenici.

CALL OF THE ROLL

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

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the Kassebaum amendment No. 331 shall be brought to a close?

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

The legislative clerk called the roll.

Mr. PELL. Mr. President, on this vote, I have a pair with the distinguished Senator from Washington [Mrs. MURRAY]. If she were present and voting, she would vote "nay." If I were at liberty to vote, I would vote "aye." Therefore, I withhold my vote.

Mr. LOTT. I announce that the Senator from Vermont [Mr. JEFFORDS] is necessarily absent.

Mr. FORD. I announce that the Senator from Washington [Mrs. MURRAY] is necessarily absent.

On this vote, the Senator from Rhode Island [Mr. PELL] is paired with the Senator from Washington [Mrs. MURRAY].

If present and voting, the Senator from Washington would vote "nay" and the Senator from Rhode Island would vote "aye."

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

The yeas and nays resulted—yeas 58, nays 39, as follows:

[Rollcall Vote No. 103 Leg.]

YEAS—58

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

NAYS—39

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

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Pell, for

NOT VOTING—2

Jeffords Murray

The PRESIDING OFFICER. On this vote, the yeas are 58, the nays are 39. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to.

UNFUNDED MANDATE REFORM ACT OF 1995—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will now vote on the conference report accompanying S. 1, which the clerk will report.

The bill clerk read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1) to curb the practice of imposing unfunded Federal mandates on States and local governments; to strengthen the partnership between the Federal Government and State, local and tribal governments; to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate funding, in a manner that may displace other essential governmental priorities; and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations; and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The Senate resumed consideration of the conference report.

SECTION 105

Mr. KOHL. Mr. President, I invite the chairman of the Budget Committee to engage in a colloquy with me on section 105 of the conference report on S. 1, the Unfunded Mandates Reform Act of 1995.

During consideration of S. 1 before the full Senate, I offered an amendment which makes clear that nothing in this legislation denies Federal funding to States, local, or tribal governments because they are already complying with all or part of a Federal mandate. That amendment is now section 105 of the bill.

The conferees modified my language by stating that my amendment made

reference to any mandates that are funded pursuant to section 425(a)(2) of the Congressional Budget and Impoundment Control Act of 1974, as added by section 101 of this act.

However, the report language accompanying S. 1 refers to section 425(b)(2).

I ask the distinguished Senator from New Mexico, is this reference in the conference report incorrect?

Mr. DOMENICI. Yes; the Senator is correct. The report language inadvertently refers to section 425(b)(2) when it should have been referring to section 425(a)(2). I appreciate the Senator from Wisconsin bringing this to the Senate's attention and it is my hope that this colloquy sets the record straight on the intent of the conferees on this language.

Mr. LAUTENBERG. Mr. President, when the Senate considered the unfunded mandates bill earlier this year, I voted against it. I am prepared to vote against the final version of that bill now. My concerns about S. 1 were not addressed in conference and, in fact, one could argue that bill comes back to us in worse shape then it left.

The conference made two substantive changes in the bill. First, judicial review has been added to an already unwieldy process and, second, the threshold above which CBO must provide cost estimates for private sector unfunded mandates has been reduced from $100 to $50 million.

These changes only reinforce my criticism of S. 1 as passed by the Senate in January: The procedural hurdles created by this legislation will only add to the arsenal of dilatory tactics which already have the ability to nuke necessary legislation and destroy public faith in the Congress.

Last year, I supported legislation that would have addressed the problem of unfunded mandates in an appropriate and effective manner. That bill, S. 993, would have required Congress to think carefully and critically about the mandates we were about to impose upon State and local governments. We would have to acknowledge the magnitude of the burden before we passed legislation. Congress could no longer hide behind ignorance. I believe this bipartisan effort would have remedied the problem of the Federal Government imposing mandates without thorough consideration of the financial burdens already faced by other levels of government.

The pending legislation, however, goes well beyond that. Not only is S. 1 procedurally flawed, it also enshrines the misguided principle and the unjustified presumption that the Federal Government should not impose requirements on the States unless it pays them to carry out the mandate. Supporters of the bill will respond that a simple majority can waive the requirements of this bill; however, the politics of such a waiver make this an unlikely occurrence. Clearly, the presumption is that unfunded mandates are inherently bad. I don't agree with that premise.

Many in Washington seem to have forgotten that State and local governments benefit from a clean environment and a healthy work force. I believe it is the Federal Government's responsibility to act when State and local government don't want to spend the money to prevent pollution or to immunize children. We should be there to stop gun-running across State lines or the spread of HIV-contaminated blood. We have a role in fighting the flood of illegal immigrants across our borders or the flow of people across State lines as a result of benefit shopping.

I am proud to represent a State which has some of the toughest environmental laws in the country. New Jersey cares for its disabled. We have tough gun control laws and occupational safety regulations. But these strengths could become a disadvantage to us if Federal standards are weakened or eliminated. I'll provide an example which was only too true for my State just a few years ago.

In the late 1980's, hundreds of millions of dollars were lost to New Jersey's economy because of another State's negligence. Raw sewage and medical waste originating from a neighboring State washed up on our beaches. This well-publicized problem not only tarnished my State's reputation—tourism is our largest employer—it cost us millions to clean it up. Federal Government intervention was necessary. An unfunded mandate was imposed upon the polluting State, but it was a necessary mandate and I believe it was proper that it was largely unfunded.

Today we are institutionalizing a dangerous precedent: unless the Federal Government pays, States do not have to comply with Federal standards. Many States will have no incentive to try to prevent transborder pollution. Why should a State worry about its neighbors when it could spend that money on its own constituents. Would enough U.S. Senators look with sympathy on those States who are victims of another's pollution so that they would waive the requirements created under this legislation? I hope so, but I have enough doubts that I must vote against this conference report.

Why has the Federal Government set standards to prevent States from cutting off food stamps to children or eliminating aid to legal immigrants? Because we know that some States, but for the Federal standards, would do exactly that. We created these standards because we did not want the kind of country where kids in one State would be denied nutritional assistance while the children of another jurisdiction received the benefits of such aid. We did not want a society that would cause some citizens to be disadvantaged merely because they had the misfortune of being born or raised in a State which did not place the same priority on pollution prevention or on caring for poor children.

Mr. President, we do need to deal with the problem created when one level of government shifts the cost of programs to another level of government. But we have to do so in a way which is consistent with both the Federal structure of our society and the compassion which powers us as a people. I do not believe this bill is consistent with those characteristics of our country. And I fear that it is simply a precursor of efforts to develop no-strings block grants which could, in the name of flexibility, destroy the ability of all Americans—wherever they live—to count on their Government to provide certain levels of services and meet certain standards of conduct.

For me, then, this is just the first step in what I suspect will be a long but ultimately triumphant fight to preserve the Federal nature of our system and the national character of the American experience.

Ms. MOSELEY-BRAUN. Mr. President, when I came to the Senate 2 years ago, I was surprised to discover that there was almost no discussion about the impact of mandates imposed by the Federal Government on State and local governments. Yet, today we are voting to implement legislation that shows that Congress promises to curb the practice of imposing Federal mandates on State and local governments without advance, complete disclosure of the impact of those mandates. As a strong supporter of this legislation, I am happy that we were able to come together to pass this long needed legislation.

S. 1 has achieved an important balance—a balance between the benefits of mandates and their costs. We have also achieved an important balance between the Federal, State, and local governments' roles in the writing of Federal regulations to implement legislation. Creating a mechanism that will help ensure that the voice of State and local governments is heard in Washington before legislation is enacted is both sound policy, and something that has long been needed.

S. 1 will make Federal officials more accountable. The Federal Government has foisted too many of the costs of Federal mandates on State and local governments for too long. Asking the Federal Government to make its decisions with good information—with the best information we can get on the State and local governments that will have to live by those decisions—should not be controversial. Rather, it is the way decisions should always have been made, and the way decisions should always be made in the future.

S. 1 requires the congressional committees to report on the costs and benefits anticipated from any Federal mandates contained in the bills they report to the Senate for action, including the effects of the mandate on health and safety, and the protection of the environment.

S. 1 has also achieved a better balance between the Federal, State, and local governments' roles in the writing of Federal regulations to implement legislation. Now State and local governments are partners to the Federal Government in writing these implementing regulations. Mandates impact big cities and small communities differently, yet rarely are regulations written to be sensitive to those differences. S. 1 requires that special outreach efforts be made to ensure that the voices of all State and local governments are heard.

S. 1 is an important step in the right direction. It creates equilibrium between the Federal Government and State and local governments. Now agencies will be required to estimate the costs of new rules to governments and industries and also analyze the effect of new rules on the U.S. economy, employment, and international competitiveness.

To further increase the Federal Government's accountability, State and local governments will now be allowed to challenge whether or not Federal agencies have completed required cost-benefit analysis. As State and local governments have to live by those decisions, it is right that Federal officials are held accountable for their analysis. However, the purpose of the bill was not to have courts second guess the Congressional Budget Office's attempts at analysis, which are often done quickly to satisfy numerous requests, but to redress failures of an agency to prepare written statements of mandate cost estimates.

S. 1, however is not a repudiation of the whole idea of mandates. The mandates that the Federal Government used to make real progress in civil rights and our treatment of the disabled, for example, were essential to our progress as a nation, and as a people. I applaud the fact that S. 1 recognizes how essential those mandates were and are, and that under the terms of the bill, future civil rights legislation which builds on this tradition will be exempt from S. 1.

S. 1 is necessary not because mandates are wrong in principle. The real reason it passed is because of the budgetary shell game that was played in the 1980's. The 1980's were a time when many domestic programs were slashed, with mandates pushing the responsibilities onto hard-pressed State and local governments. I was in the Illinois House when President Reagan introduced the New Federalism. It was supposed to redefine the relationship among Federal, State, and local governments. What it really did was to make large cuts in Federal taxes, and push off the responsibilities of providing necessary services to State and local governments—without sending the money. The net result of that exercise in fiscal subterfuge was an explosion of Federal debt from only about $1 trillion in 1980 to closing in on $5 trillion now.

S. 1 is designed to ensure that the kind of budget fraud we saw in the 1980's won't be repeated in the remainder of the 1990's, or in the next century. S. 1 cannot undo the mistakes made in the 1980's. What it can do, and what we must do, is help ensure that we don't repeat those mistakes. Now Congress will make informed decisions that give the interests of State and local governments the attention and consideration that they deserve.

S. 1 had strong bipartisan support when it passed the Senate on January 27, 1995, with a vote of 86–10. It also had strong support in the last Congress, when the Democrats controlled both the House and the Senate. S. 1 has strong support from Democratic mayors such as Mayor Richard Daley of Chicago, and from other Democratic and Republican mayors across the country. Governor Edgar of Illinois wrote me supporting S. 1, and numerous county boards in Illinois also wrote in support of this legislation. It is clear that unfunded mandates have consumed an increasing share of State and local budgets, and that it is time for a change.

We are all in this together, Mr. President. The Federal Government, State governments, and local governments, are all trying to meet their responsibilities to the American people. S. 1 will promote cooperation between the various levels of government, and make it easier to address the problems that the American people elected us all to solve.

I want to conclude my remarks by congratulating my colleague from Idaho, Senator KEMPTHORNE, and my colleague from Ohio, Senator GLENN, for their leadership in crafting this legislation. I am pleased that we have the opportunity today to enact this important and meaningful reform.

Mr. DORGAN. Mr. President, I rise to discuss the conference report on S. 1, the Unfunded Mandate Reform Act of 1995. It is great pleasure to speak on the floor about a conference report on this bill, because it means we have come a long way.

I remember when Senator DOMENICI and I introduced our own bill on unfunded mandates in the fall of 1993. I have been working to rein in Federal mandates ever since.

I want to start by thanking the ranking member of the Governmental Affairs Committee, Senator GLENN. Senator GLENN had been a leader in mandate reform long before this issue was popular. Under his leadership, the committee held three hearings on this bill before our markup last year. One of those was a field hearing that I chaired in Minot, ND. And of course, we had our joint hearing with the Budget Committee in January.

I would also like to salute Senator KEMPTHORNE for his hard work on this bill. I knew it was his top priority when we both joined the Senate 2 years ago. And his efforts have today borne fruit with the adoption of this conference report on S. 1.

CURBING UNFUNDED MANDATES

Mr. President, S. 1 has a simple premise—that the Federal Government should not impose financial mandates on State and local governments without adequate consideration of those mandates, and that we should try our best to provide funding for those mandates.

Much of this bill matches closely S. 1592, the Fiscal Accountability and Intergovernmental Reform Act, or FAIR Act, which Senator DOMENICI and I introduced in the last Congress. S. 1 would require that the Congressional Budget Office review legislation for the costs that mandates would impose on State, local, and tribal Governments. If a bill is not analyzed by CBO, a point of order could lie against the bill. S. 1 would also require regulatory review of proposed rulemakings proposed by agencies in the executive branch. This is a vital step because Congress cannot always anticipate how a regulation will be interpreted. S. 1 would closely parallel the regulatory review Executive orders issued by President Clinton. I am pleased to see these two principles of my own mandate relief bill at the heart of S. 1.

During my work on mandate relief, I have heard from State and local officials in North Dakota about the costs that Federal mandates impose. Examples of especially burdensome mandates include cleanup responsibilities under Superfund. The city of Minot is entangled in a wrangle with potentially responsible parties over cleanup costs for old Minot landfill. The Minot landfill, used between 1962 and 1970, is now a Superfund site. The city of Minot has been working to clean up that site since 1986. To date, Minot has spent $873,000 in order to comply with environmental mandates.

Water testing mandates can also be unreasonable—Sherwood, ND, population 286, must spend $2,000 annually—half its budget—to test its water supply. Even small communities must have clean drinking water. But they should also have flexibility in abiding by burdensome mandates. And they certainly are entitled to know how burdensome a bill could turn out to be.

PRIVATE SECTOR ANALYSIS

Another part of our society that needs notice of and information on costly mandates is the private sector. I

am very pleased that the conferees have retained an amendment on this subject that I offered in markup last year. My amendment would require that the CBO analyze mandates on the private sector. The requirement is not as strict as that for analysis of intergovernmental mandates—if CBO cannot reasonably make an estimate of a private sector mandate, the bill would create no point of order—but the argument is the same.

My point in offering this amendment was simply that there is no reason not to analyze costs on the private sector if we do the analysis for the public sector. To pretend we need to have CBO analyze the impact of public sector mandates, while skipping over the private sector, is to violate elementary economics. The private sector is three or four times bigger than the public sector. If we should assess the impact of unfunded mandates on local governments we surely should assess the impact on our Nation's businesses. The private sector is the foundation on which we build the budgets of the Federal Government and the State and local governments.

I know some of my colleagues are concerned about analyzing private sector mandates. However, the analysis required by my amendment is no great mystery. We already examine the impact of paperwork on the private sector. Federal agencies must calculate the hours required to fill out paper. The Internal Revenue Service performs analysis of tax legislation and possible effects on the private sector. The Joint Tax Committee performs the same function for proposed legislation.

The Office of Management and Budget's Office of Information and Regulatory Affairs has a regulatory review program that oversees the development of all Federal regulations. President Clinton's Executive Order 12866—Regulatory Planning and Review—requires agencies to conduct analysis of costs to the private sector of proposed regulations. The Office of Management and Budget therefore has developed a reservoir of knowledge on the impact of public laws.

Federal agencies have long experience in analyzing the costs to the private sector of relevant legislation and regulation. USDA studies the impacts of laws on our Nation's farmers. The Commerce Department's Bureau of Economic Analysis reviews economic impacts on the private sector. Our trade agencies study the economic impact of trade policies. EPA has calculated that the costs of environmental mandates to the private sector has risen from $16.2 billion in 1972 to an estimated $76.1 billion in 1995—constant 1986 dollars.

And the duties that S. 1 would impose on the Congressional Budget Office are not new. The CBO has estimated private sector effects of complicated legislation—NAFTA and two proposed health care reform bills are outstanding examples.

So, Mr. President, the analysis of private sector costs is not rocket science. And this information will be cheap at the price. The CBO has a running start, and can use its knowledge base from existing analyses and models. This conference report authorizes $4.5 million a year for the CBO for this mandate review analysis work to begin.

I predict that CBO review will pay for itself many times over by enabling the Congress to avoid burdening businesses with ill-considered mandates. I would like to thank the conferees for retaining my private sector amendment in this bill.

OTHER AMENDMENTS

Let me also briefly mention two other amendments of mine that the Senate added to this bill. A number of North Dakotans have been particularly irked by the requirement that Federal building projects be built according to metric measurements rather than English ones. This is increasing the cost of medical staff housing being built on an Indian reservation in my State. Fortunately, the Indian Health Service has now agreed to drop this costly and unworkable requirement, which would have delayed staffing for an Indian hospital.

However, as a policy matter I think we need to suspend this mandate now, study its costs, and decide whether we really need it. I offered an amendment to do that on the floor, and after some discussion the Senate passed that amendment. I am pleased that the conferees have retained that amendment in the conference report.

Lastly, title III of the conference report retains my suggestion that we not set up a new commission to study Federal mandates but rather assign that task to the Advisory Commission on Intergovernmental Relations [ACIR]. ACIR has the knowledge, experience, trust and network to get this study done and do it well. I did not understand why we needed a new commission when this Congress has been working hard to cut boards and commissions. I am glad the conferees have taken my point and have provided that ACIR shall do the studying. I look forward to working with the Senator from Idaho, the Senator from Ohio, and other interested Senators to ensure that the ACIR receives the funding that this bill authorizes for both this fiscal year and next.

Mr. President, let me just conclude by saying that I am pleased that the long unfunded mandates debate has finally come to fruition. I would thank Senators GLENN and KEMPTHORNE for their leadership on this issue, and for their willingness to hear out my concerns with this bill and make changes. I think our consideration of this bill on the floor improved it markedly, and I appreciated the opportunity to help in that effort.

This bill makes a real and positive change in the relationship between the Federal Government and State, local, and tribal governments. I hope the House will pass S. 1 tomorrow, and I look forward to the President's signing this bill very soon.

Mr. LEVIN. Mr. President, I will be voting in opposition to the conference report to S. 1, because the problems I had with the bill as it passed the Senate have not been resolved or abated in the conference report. I had hoped to be able to support legislation this year to address the unfunded mandates problem of State, local, and tribal governments. I was a cosponsor of last year's bill, S. 993, which was wholeheartedly endorsed by all the organizations representing majors, Governors, State legislators, county officials, and other local elected officials. Last year's bill would have forced Congress to estimate the costs of Federal mandates and authorize appropriations to the level of the estimated costs. In the words of the State and local officials last year, it was a tough, important, meaningful bill.

Having served on the Detroit City Council for many years in the 1970's, I am well aware of the problems and constraints Federal mandates place on local officials. My first Senate campaign in 1978 was based on my desire to make the Federal bureaucrats more sensitive to local concerns. And I know these problems continue and that Congress simply hasn't paid enough attention to the costs we impose on State and local governments. Yet, I did not support S. 1 as it passed the Senate, and I cannot support the conference report.

In some respects, S. 1 simply goes too far; in other respects, it promises more than it can deliver. It goes too far in taking CBO cost estimates and locking them in for at least 5 years as the level at which we are expected to fund State and local governments. While these cost estimates may be useful for us in assessing the costs and benefits of legislating in a particular area, they are far too unreliable to serve as the basis for a mandated level of appropriations. An effort was made to address this concern when Senator BYRD offered an amendment to require agencies to notify Congress when the level of appropriations falls short of the CBO cost estimate. That was an improvement; but it wasn't enough, because absent our enactment of another law in response to that notice, the mandate at issue would expire. S. 1, therefore, ends up requiring that we legislate twice on the very same issues—once when we appropriate at a level less than the estimated cost of the mandate and once again to affirm that prior appropriations amount.

S. 1 is inadequate in that it fails to address what I believe will be the real

life concerns of State, local, and tribal governments in the next 10 years as we face scarce Federal resources. The problem won't be so much the number of mandates we place on State and local governments; it will be the fact that we will be pulling out Federal funds and assistance used to address problems that won't go away when the Federal money does. We will be cutting funds for education, the homeless, community development, you name it, and State and local governments will be left to solve the problems with their own resources. S. 1 does not address that situation.

Another problem with S. 1 is the inherent unfairness in the bill's treatment between the public and private sector. S. 1 requires us to overcome a point of order if we don't pay for a Federal intergovernmental mandate, but it doesn't create a similar point of order for private sector mandates. There is a presumption created thereby that we should fund the mandate or not apply it to the public sector. This is particularly troubling when the State, local, or tribal government is acting in the same capacity as a private sector entity. S. 1 could put private entities at a competitive disadvantage relative to State, local, and tribal governments that operate the same kind of businesses.

S. 1 also has the potential of causing havoc in the legislative process and aiding in the very gridlock we are all so desperate to avoid. It's very important that we require an analysis of the impact of costs on State and local governments and the private sector before a committee reports a bill to the full Senate for consideration. That's what the hearing process is supposed to be about. The public is supposed to let us know just what the consequences of our proposals could be. And, it's very important that the requirement for a cost analysis be enforced by saying that a point of order will lie against a bill that doesn't have that cost analysis. But to go to the next step and say that an often problematical cost estimate will now become the actual cost—that what CBO estimates will be the cost to State and local governments for each year of the authorization, moves from being a cost estimate to an assertion of actual costs and that that level of costs should be funded—that is an unreasonable approach. And the mechanisms used to enforce that approach could cause endless delays and tie up the legislative process.

For these reasons, Mr. President, I will vote against the conference report. I do want to commend, however, Senator GLENN and Senator KEMPTHORNE in their successful effort on this bill. Setting aside our differing opinions on the final outcome, I think these two gentleman have conducted themselves in a remarkably able fashion with good humor and a strong sense of fairness. I particularly appreciate Senator GLENN's efforts to be responsive to my concerns, and I congratulate him on accomplishing passage of this bill. The State and local officials have a great friend and supporter in the senior Senator from Ohio.

The PRESIDING OFFICER (Mr. KEMPTHORNE). The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

The result was announced—yeas 91, nays 9, as follows:

[Rollcall Vote No. 104 Leg.]

YEAS—91

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

NAYS—9

Boxer	Byrd	Levin
Bradley	Lautenberg	Lieberman
Bumpers	Leahy	Sarbanes

So the conference report was agreed to.

Mr. GLENN. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

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

The motion to lay on the table was agreed to.

UNANIMOUS-CONSENT AGREEMENT

Mr. GLENN. Mr. President, I ask unanimous consent that we be permitted time to submit the final report of the Senate Task Force on Funding Disaster Relief, which Senator BOND and I were commissioned to do last year. And I ask that the pending business be set aside so we can present that report.

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

SENATE DISASTER RELIEF TASK FORCE REPORT

Mr. GLENN. Mr. President, I am very pleased at this time, along with my friend and colleague from Missouri, Mr. BOND, as cochairs to lay before the Senate the Final Report of the Senate Task Force on Funding Disaster Relief. The task force was established pursuant to a sense-of-the-Senate resolution contained in Public Law 103-211, the emergency supplemental appropriations relief bill for victims of the Northridge, CA, earthquake.

I think I can speak for Senator BOND when I say that our sense of accomplishment in presenting this report is somewhat tempered by events past and present, in that we have just marked the solemn 1-year anniversary of the devastating California earthquake. For all the good that has happened in the past year, thanks to selfless efforts by friends, neighbors, charities and, yes, Government bureaucrats of all stripes, we know that for so many their lives have been irrevocably changed.

We also share the grief and shock of the Japanese people who had a tragedy of their own, the horrendous Kobe earthquake. We know the character of the Japanese people, and given some time and help—and we are glad President Clinton and the able Director of the Federal Emergency Management Agency [FEMA], James Lee Witt, have offered some of our technical expertise—we know the Japanese will soon be on their feet again.

These catastrophes—and need I mention the terribly destructive floods which recently rained down on California—underscore the importance of having an integrated and comprehensive emergency management system, and we are making great progress toward that goal today.

Our task force was commissioned to look at Federal disaster assistance programs, funding and effectiveness, possible program and policy modifications, budgetary and funding options, and the role of State, local, and other service providers.

The report covers a spectrum of issues on how we can best ensure that Federal assistance will always be there when needed and how our disaster response system might be made more efficient and more cost-effective. Given the enormity of this project, Senator BOND and I decided to enlist the resources of congressional entities such as the Congressional Budget Office [CBO], the Library of Congress, and, in particular, the General Accounting Office [GAO], which we tasked to coordinate and take the lead working with our staff on the preparation of this study.

The end product, I believe, is a testament to the professional work and collaboration of all of these different groups and bodies. Many individuals labored long and hard, and we in the Senate owe them a debt of gratitude.

One of the more striking aspects we found was the lack of comprehensive Government-wide data on Federal disaster expenditures. I had thought going

in this would be readily available. We found it was not. While most agencies can produce statistics for a particular disaster or annual spending, the number of persons assisted and estimated benefits, these have not been systematically collected across Government—until now.

GAO has totaled up how much we have spent across the board between 1977 through 1993. In doing so, they examined our disaster planning, mitigation response, and recovery programs, and these programs I would like to describe in just a little bit more detail.

Our disaster preparedness and mitigation programs consist chiefly of FEMA grants and assistance for fire suppression, floodplain management, earthquake and hurricane vulnerability; flood control and coastal erosion works under the Army Corps of Engineers; NOAA's severe weather tracking programs; U.S.G.S. earthquake and volcanic reduction programs, and; coastal zone management activities through the Department of Commerce.

In the area of Federal disaster response and recovery programs, we are dealing primarily with FEMA's individual and public assistance grants, temporary housing, community disaster loans, and unemployment benefits; Small Business Administration loans; repairing crucial roadways through the Department of Transportation; aid for the restoration of school facilities by the Department of Education; disaster recovery grants by the Economic Development Administration; emergency disaster assistance loans, payments and food stamps administered by the Department of Agriculture, and; the Army Corps' emergency water supply operations and flood control and coastal works repair.

To state the obvious, our emergency management system is far, far more complex than most people realize. It involves quite a number of Government agencies.

I should note that these figures do not include FEMA's mission assignment requests of other agencies to provide specific types of assistance, depending on the situation and the need.

There is a pervasive cynicism in our land today that derides Government's ability to deliver efficient and effective services and to return taxpayer dollars in a meaningful way to those who sent them to Washington in the first place. In short, to touch people's lives when there is a desperate need.

What I just listed does that and more. We may talk about cutting Government, but these programs I feel are real, they are vital, and they are indispensable.

If in times of major emergencies we do not provide this assistance, then who will? I spent many days on the floor managing the minority side for the unfunded mandates bill and agree with much of what is said by States and localities regarding Federal mandates. But what we, the Feds, have spent in helping States and our citizens prepare for, respond to, and recover from disasters has never really been quantified until today.

This report shows that from fiscal years 1977 through 1993, Federal agencies obligated almost $120 billion for emergency management programs—$120 billion in constant 1993 dollars for emergency management programs.

Most of which, about $87 billion, was for post-disaster recovery assistance. Over $64 billion, 54 percent of the total, was in the form of either grants to disaster victims and communities or expenses from disaster-related activities and response. Some $55 billion, 46 percent of the total, consisted of various disaster recovery loans made by FEMA, SBA, or the Farmers Home Administration.

Since a large portion of the loans will ultimately be repaid, the entire loan amount is not necessarily a Federal cost, though costs are incurred through subsidized interest rates and when loans are forgiven or are written off.

(Mr. THOMAS assumed the chair.)

Mr. GLENN. For example, during this same timeframe, the Farmers Home Administration [FmHA] obligated over $34 billion for disaster emergency loans and wrote off about $7.5 billion. That is not too bad in a situation like this, I do not think.

To sum up, we have spent directly over $64 billion between fiscal years 1977 and 1993 and some $55 billion indirectly through low-cost Government loans.

While this data is the best we have to date, it is not exhaustive. It excludes what we have spent to repair or rebuild damaged Federal Government facilities, which we do not currently track. It also does not include costs incurred by the Federal Government through subsidies and disaster insurance programs.

During this timeframe, we spent about $10 billion on the Federal Crop Insurance Program and almost $3 billion in costs through FEMA's National Flood Insurance Program.

Last year, Congress did change both of these programs to make them more cost-effective, to minimize potential losses but still provide protection from these tragic events at a reasonable cost.

We soon will consider another supplemental bill to pay for additional costs from the Northridge earthquake. I know this is something my distinguished co-chair will be holding a hearing on, I believe tomorrow, in the HUD-VA Subcommittee on Appropriations, and particularly how we are going to pay for this request. That is a tough one.

As our communities continue to grow, so do our potential risks and liabilities. We need to see if there are better ways to prepare financially for such catastrophic events.

Increasingly, the debates on disaster relief aid and where the money comes from have grown rather contentious, and that is understandable.

Since these measures are deemed "emergencies," they have not been subject to budget caps requiring program offsets, so they add to the deficit.

Also, these bills have become too often the proverbial Christmas trees for items that may have little or no bearing on our disaster response efforts.

In other words, people know this legislation is going to go through, it is going to pass in some form, so whatever their pet program is, with the Senate's lack of germaneness rules, it can be brought out and attached. It is something I think we ought to correct in Senate rules and procedures sometime in the future.

But anyway, this tendency to treat some of these emergency bills as Christmas trees has attracted heightened scrutiny and distracts us and the public from our purpose at hand, which is to help fellow citizens in their time of need.

The report we are releasing today proposes several funding and budgetary options for consideration of the Senate.

By changing current procedures, these options could reduce the use of emergency supplementals and lower total Federal spending—but at a price, making it harder to provide such aid.

Our mission with this report was not one of coming up with one firm, solid recommendation. It was to lay out options for the Senate's consideration. It was to define problems, how we have dealt with these things in the past, and what options we have for dealing with them in the future.

Each of these options is more fully described in an appendix to my statement, which I ask unanimous consent be included at the completion of my remarks, Mr. President.

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

(See exhibit 1.)

Mr. GLENN. Each of these options has its own advantages and disadvantages, and there probably is no clean, pure and simple magic bullet because, for one reason, we do not have clean and simple disasters out there so we can plan for them in advance like we might prefer to do.

There are five basic options:

First, tighten the criteria for using the emergency safety valve of the Budget Enforcement Act.

In other words, setting a threshold on what is categorized as truly emergency spending. This could mean that States don't always request Federal funding on things that normally, in times past, could and should have been taken care of by the local community or the county or the State government.

Second, fund disaster programs at historic average levels.

Third, establishing a rainy day fund to cover future disaster expenses for Federal disaster relief.

Fourth, eliminate the emergency safety valve and cut other spending to offset the cost of disaster assistance.

Fifth, allow funding only for emergencies in any supplemental containing an emergency designation.

Those are five options.

With increasing budgetary constraints, these approaches deserve serious consideration. I know Senator BOND is going to be on the hot seat grappling with these issues on his appropriations subcommittee, particularly what the implications are if his subcommittee accounts will have to absorb much of the current supplemental request. In other words, what is going to get cut if it all has to come out of his subcommittee accounts. I do not think it right that this should happen, but that is one of the things he has to deal with—whether these funds will come out of veterans programs, out of the space station, or out of low-income housing, all of which are covered under his subcommittee.

And those are going to be tough decisions.

I hope he would not have to make those decisions from within just the confines of that budget restriction, and that we could make separate funds available for emergency consideration. Being forced to change the rules in the middle of the game is a very serious policy change and one we should not adopt lightly.

Another area I wish to address is the rise in the number of Presidentially declared disasters.

In 1988, just 7 years ago, we had 17 declared disasters, but in 1993 there were 58.

Now, whether that is the result of Mother Nature becoming more testy or whether it is classifying more types of events as declared national disasters than in the past, or more generous Presidents—or a combination of all of these things—remains to be seen. But as the report suggests, we might want to examine setting very explicit and objective criteria for Presidential disaster declarations.

I also want to note two integral components of our emergency management system. We depend on the States and localities—the emergency managers, the firefighters, the rescue squads and, sometimes, the National Guard—to be the primary responders in times of difficulty, times of disaster. And that is as it has been in the past.

We do not want it to be that every time some disaster occurs, the Federal Government is called in to do everything rather than having State and local people be mainly responsible themselves. The efforts of these primary responders, the emergency managers, the firefighters, rescue squads and, sometimes, the Guard are augmented through the good work of charitable organizations like the American Red Cross, the Salvation Army, and many other worthy religious, church, and professional groups.

Locally, they provide what historically has been the way in this country of ours, and that is that neighbors take care of neighbors, locals take care of locals, States take care of their own situation as much as possible and only call on the Federal Government to supplement their efforts when things are basically out of control.

Now, our report highlights their special role and the enormous contributions made by thousands of dedicated volunteers. But we, the Federal Government, need to supplement their efforts where disasters get beyond the resources of local communities.

By and large, this system has worked well for the vast majority of disasters. It is only when we have a truly catastrophic disaster, one that is beyond the capabilities of these entities, that the Federal Government enters the picture in any significant way.

It is not to say, however, there is no room for improvement. A section of our study looks at how Federal assistance to States, localities and individuals is being spent. The short answer is: We really do not know. We must do a better job in overseeing what results we are getting for our money, whether the funds are being used effectively, and if program objectives are being met.

Further, I was also struck by the sheer number of Federal disaster programs we currently have spread across many agencies. I think it is imperative we begin to look at whether any of these are redundant or duplicative, can be done more efficiently, or organized differently. Can they be streamlined or consolidated to maximize resources and increase their efficiency? In a time of budget constraints, a thorough review of the mission, the management and organization of these various agency programs is long overdue.

We must also remember that our disaster response system is, in fact, a partnership which is, indeed, a hallmark of our federal system.

I know that some States take these matters quite seriously but others, perhaps, less so. As States have been faced with their own fiscal constraints, too often their emergency management programs get cut to the bone with the assumption: "Why bother; the Feds will come to the rescue." That is the wrong attitude.

Our own position is shaky enough. We must ensure that the States are doing their part to uphold their end of the bargain.

I think it is telling that before this study took shape, neither FEMA nor the States had an idea of what the States were spending or getting for their emergency management and related programs. And thanks to this effort, FEMA is now working with the National Emergency Managers Association [NEMA] to do just that. I think it is critical to know exactly how the States shape up in this regard.

The report also suggests a number of ideas to improve Federal-State coordination such as: adopting performance standards; providing incentives for planning and mitigation; cost-sharing reductions for those not up to par; more frequent exercises and training, and; very importantly, I believe, post disaster analysis to learn what worked, what did not, were the money and resources well spent. In short, to determine lessons learned after each disaster.

We should work with the States to implement these approaches, and FEMA is now beginning to do that. We also must make sure FEMA itself has the capabilities to effectively manage and oversee this effort so we will better know how well or how poorly the States are doing their job.

So, again, I wish to recommend to my colleagues they take a look at our task force report. I thank all those who have devoted their time and effort to putting it together.

In particular, GAO did an outstanding job in supervising and coordinating this effort. It is a job well done. And I already have asked unanimous consent the appendix be printed in the RECORD.

I want to close by giving full credit to my cochair in this effort, Senator BOND. After the election of last fall, when the leadership in the Senate changed, we sort of changed roles on this a bit. He took a major role from there on in putting this whole thing together and has done a superb job. I compliment him for his efforts in this regard, for leading this effort. It has been a pleasure to work with him on it.

We have made a report that does not solve all of our problems, but under his leadership, and working with him, I think we have been able to put together a report that is the most definitive report ever on disaster relief assistance, the Federal role, its historical connotations, and to provide some suggestions for the Senate's guidance of how we should deal with this in the future.

It has been a pleasure to deal with Senator BOND on this. I know he will submit our report on this officially. I yield the floor.

EXHIBIT 1

APPENDIX—TASK FORCE BUDGETARY AND FUNDING OPTIONS

I. TIGHTEN CRITERIA FOR USING THE EMERGENCY SAFETY VALVE OF THE BUDGET ENFORCEMENT ACT (BEA)

This option would require Congress and the President to issue specific, written justifications for designating appropriations as emergencies to escape funding constraints. Such

formal criteria could impose a higher threshold that funding measures would have to hurdle to avoid the disciplines of the BEA. How high the threshold would be raised—and how much savings might result—is an open question. But such written justifications would provide Members more information and would presumably give those opposing such funding a more defined target.

II. FUND DISASTER PROGRAMS AT HISTORIC AVERAGE LEVELS

This alternative would require appropriations for FEMA, SBA disaster loans, and other disaster programs to be made in regular appropriations bills in amounts equal to an historic average or expected funding need for each program before the emergency designation could be used for supplemental funds. In theory, this should increase regular appropriations for such programs and lower the amounts of emergency supplementals.

Currently, the appropriation request for FEMA is loosely based on an historic average, which was calculated years ago and excludes the costs of major disasters. FEMA's regular appropriation was $292 million in 1994. Had the 10-year average of about $645 million been appropriated, the size of FEMA supplementals would have been about $350 million smaller. If the appropriations caps were unchanged—meaning spending in other programs was reduced to accommodate this—the Federal deficit would have been $350 million less.

It should be noted that, since 1993, firefighting programs of the Forest Service and the Department of the Interior have been funded based on a 10-year moving average. These programs also have the authority to borrow from other accounts. Since this practice was begun, no supplementals for these activities have been necessary.

On the other hand, unobligated balances could accumulate in the program accounts during some periods. If they grew large enough, it would be awfully tempting to lower the threshold of what is really a disaster, be more generous in our response, or to raid it for other purposes.

Of course, setting strict definitions of eligible disasters and developing procedures that would isolate this account money could be part of any legislative package to carry out this option.

III. ESTABLISHING A RAINY DAY FUND TO COVER FUTURE DISASTER EXPENSES FOR FEDERAL DISASTER RELIEF

This approach would create a so-called rainy day fund, or reserve account, financed by cutting other discretionary spending, by raising new taxes, or a combination of both.

Annual payments to the fund could be made until some desired balance is reached. Spending from this account could be subject to appropriation at the whenever the need arose. Unlike the previous option—where the executive branch could obligate accumulated account funds on their own—this approach would allow Congress to retain the discretion over using this money.

This option would cause disaster relief to be paid for up front—either by spending cuts or higher taxes—rather than borrowing and increasing the deficit, as we do now. But again, there could be some temptation—particularly in times of fewer, less costly disasters—for Members to be more generous than envisioned in utilizing any large, accumulated balances in this account.

IV. ELIMINATE THE EMERGENCY SAFETY VALVE AND CUT OTHER SPENDING TO OFFSET THE COST OF DISASTER ASSISTANCE

This alternative would remove the emergency safety valve provided for in the Budget Enforcement Act. Disaster assistance would be paid for by reducing other spending, thereby lowering the Federal deficit.

One version of this option would require that current year spending be reduced. Another approach would mandate that discretionary caps be reduced in future years to offset the increase in current year spending.

Under both these scenarios, if there is any unnecessary or excess relief now provided, it would be far less likely to occur in this modified pay-as-you-go procedure. Of course, as spending caps grow increasingly tighter, finding the programs to cut to accommodate the variable needs of disaster relief is going to be all the more difficult.

V. ALLOW FUNDING ONLY FOR EMERGENCIES IN ANY SUPPLEMENTAL CONTAINING AN EMERGENCY DESIGNATION

This option would establish a new point of order in the House and Senate against considering any bill or joint resolution containing an emergency appropriation if it also provides an appropriation for any other nonemergency activity. While not directly addressing disaster assistance funding, it seeks to eliminate the "Christmas tree" addons.

Opponents of this change could argue there is a longstanding practice of considering supplemental funding needs en masse, and this would be akin to requiring separate votes on provisions of regular appropriations bills.

Whether or not this approach would actually reduce the deficit is also open. Nonemergency items in supplementals must be estimated to have no net effect on the deficit, since there is no room left under the spending caps. So some would contend that while the policy might change, the Federal deficit likely would not.

The PRESIDING OFFICER (Mr. ASHCROFT). The Senator from Missouri.

Mr. BOND. Mr. President, I express my sincere thanks to my good friend and colleague from Ohio, Senator GLENN. On this as on other matters he has been very easy to work with. I appreciate the tremendous efforts he and his staff put in and the great leadership he showed on this task force.

ORDER FOR PRINTING OF REPORT

Mr. BOND. Mr. President, I now ask unanimous consent on behalf of myself and Senator GLENN that the report of the Senate Bipartisan Task Force on Funding Disaster Relief be printed as a Senate document. In addition to the usual number of copies, I also ask an additional 300 copies be printed for the use of the Senate. As noted, the task force was established by Public Law 103-211 in February 1994. Subsequently Senator GLENN and I were named cochairs of the task force.

I understand this request has been cleared on both sides of the aisle.

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

Mr. BOND. Mr. President, I have already said how much I appreciate the opportunity to work with Senator GLENN. He has shown great dedication and concern about disaster declarations and how we provide assistance. I think he has given, in his remarks, an excellent overview of the contents of this report. I join him in commending the GAO, CRS, and the other agencies that worked on this, as well as the members of the task force and their staffs. As my colleagues can see, this is no small task. The information was very difficult to compile. It had not been done before. I believe it is a useful effort and I commend it to my colleagues. The good news is you do not have to read the whole thing. There is an executive summary so you can see what we are talking about.

I also want to highlight the comments that Senator GLENN made about the Red Cross, the Salvation Army, the National Guard, the other organizations, individual volunteers, and the State and local governments that respond in these disasters.

I have had more experience than I want in dealing with disasters as Governor of Missouri. I found that out of the hardship, death, injury, damage, and widespread devastation that nature frequently visits on our country comes a tremendous human response that is probably one of the most gratifying and encouraging things one can see in a disaster. I also appreciate Senator GLENN's comments about the funding difficulties that Senator MIKULSKI, my ranking member, and I on the Veterans' Administration, HUD and Independent Agencies Subcommittees on Appropriations will face if we have to make cuts solely in our subcommittee in order to handle the disaster implications. This is something we do need to address because in no subcommittee in Appropriations is there a great deal of slack to cover the costs of major disasters.

Let me share just briefly some of my observations. There are a couple of points I want to highlight about this report. As most of my colleagues will remember, nearly 2 years ago the Midwest experienced one of the worst floods in the Nation's history. It was deemed a 500-year flood in some areas. We in Missouri saw firsthand the devastating power of Mother Nature. Families were forced out of homes. Businesses and infrastructure, in some cases whole communities, were under water. Over the 3-month period of June to August 1993, northern and central Missouri received over 24 inches of rain. We thought that was a lot of rain. North of us, in east central Iowa, they dwarfed us with over 38 inches of rain.

The Missouri and Mississippi Rivers crested and fell, crested and fell, and then crested again. When the waters finally receded, because the ground was so saturated it took weeks, not days, before people could begin the nasty, dirty business of cleaning up. If you never had to be in an area of cleaning up after a major flood, you cannot really appreciate how difficult and how unpleasant a task that is. Needless to say, the damage which resulted was extraordinary, and efforts to repair roads, levees, airports, and communities are continuing in some areas even today.

It was with this experience still fresh in my mind that I accepted with pleasure the opportunity to serve as cochair, with my friend Senator GLENN, and accepted the responsibilities for the Senate's Bipartisan Task Force on Funding Disaster Relief last February.

As a former Governor who saw several disasters during my two terms as well as a 500-year flood, I was very pleased to be given the opportunity to take on the task of reviewing the Federal Government's disaster relief programs and policies. Our task force was asked to do several things: review the history of disaster relief and its funding; evaluate the types and amounts of Federal financial assistance provided to individuals as well as State and local governments; review the relationship between funding disaster relief and our budget enforcement rules; and report our findings, options, and any recommendations. As mentioned earlier, this proved to be an immense task and one which could not have been done without the massive amount of work done by the professionals at GAO, CBO, and CRS, who teamed up to put together this first-ever comprehensive review.

Our colleagues in Congress have been concerned, and rightfully so, that the cost of disaster assistance was growing exponentially while at the same time the temptation to declare anything and everything a disaster in order to get out from under the budget caps was also increasing. Thus, after seeing the sixth large supplemental moving through the Senate, our colleagues decided the time had come to take a longer look at our disaster programs. This report is the result of that decision, and tomorrow I plan to hold a hearing with the Federal Emergency Management Agency [FEMA], and a panel composed of GAO, CBO, and CRS, to begin exploring where we go from here.

Several of our report's findings are worth highlighting. First, the actual amount obligated by the Federal Government on disaster assistance, as has already been stated, from fiscal year 1977 to fiscal year 1993 has been, in constant 1993 dollars, $120 billion.

The distinguished occupant of the Chair, who served as Governor of Missouri, was on the receiving end of some of that assistance. I know he and our other colleagues around the country know how important that assistance can be.

Of this figure, $55 billion are in the form of loans, with $34.5 billion originating from the Farmers Home Administration and nearly $21 billion from the Small Business Administration.

The other major expenditures have been $16 billion from the U.S. Department of Agriculture for crop losses, $25 billion from the Corps of Engineers for hazard mitigation efforts, and $10 billion for FEMA's disaster recovery programs.

But of interest to many of my colleagues is the number of disasters since 1988. That year there were 17 disasters with a total cost of $2.2 billion.

In fiscal year 1989 there were 29 disasters; fiscal year 1990, 35; fiscal year 1991, 39; fiscal year 1992, 48; and by fiscal year 1993, there were 58 disasters at a cost of $6.6 billion. And then last year, not included in this report's totals, an $8.4 billion supplemental appropriations was agreed to. As I speak, we have pending before the Veterans Administration, HUD, and Independent Agencies Subcommittee of the Appropriations Committee a fiscal year 1995 supplemental request for an additional $6.7 billion FEMA request. As has been said in many other instances, that begins to mount up to real money.

Mr. President, I believe this report will serve as a very useful tool in two basic ways. First, it reminds our colleagues of the costs which have been occurring as a result of natural disasters and our responses to them; second, that we need to get everyone to take a second look at how we have been evaluating the successes or failures of our disaster responses.

For the past few years, we have been concentrating on improving the speed of response and the timeliness of the payments—how fast we can shovel the money out the door. For the most part, there have been dramatic improvements. We can really shovel it out the door quickly. However, it is about time that we look to see how the money is being spent. Senator GLENN has already referred to that. It is not just the fact that we shovel it out in a timely fashion. Where does it go and what does it do? I think that his comments are right on target. And this will be the subject of the hearing we will be holding tomorrow to begin to explore how this money is actually spent. Where does it go when it is shoveled out the door?

I invite my colleague, or others who are interested, to sit in or to have a staff member sit in as we begin to explore where the money goes, what it does, and if it is the kind of expenditure that we really need to make.

In the past 5 years, Congress, through FEMA alone, has provided $12 billion in emergency relief. We now are faced with another request by FEMA of $6.7 billion for this year. It should be obvious to everyone, as I think it is obvious to me, that in the budget climate we face, we must address these escalating costs to ensure that the billions we are spending is spent wisely.

I hope that this report will jump start the effort. I ask our colleagues to review at least the executive summary of the report so that they will have an idea of how we are spending billions and billions of dollars—$120 billion since fiscal year 1977. That is a significant amount of money, and one which we should take care to assure we are spending properly.

Mr. President, that concludes my remarks. I yield the floor.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, I want to say once again what a great job Senator BOND did on this report. I think that is exactly what the Senate had in mind when they asked us to do this. I congratulate him. We worked on it very closely together.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT

Mr. GLENN. Mr. President, I ask that the Senate return to regular order.

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

The Senate continued with the consideration of the bill.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I am grateful for the attention that our colleagues gave to our presentation earlier this morning on the issues at stake concerning the amendment before the Senate. Now, we will have some additional time during the course of the day to discuss these issues before we have another Senate vote on this matter tomorrow.

During the course of the morning, there was an effort by my Republican colleagues to characterize the amendment by the Senator from Kansas that is before the Senate as being a rather limited measure that simply addresses a serious question about the authority, the power of the President to issue the Executive order.

I mentioned briefly before the vote that I thought what was really at stake in this debate before the Senate was really a broader issue than just the issue of whether the President has the authority to issue the Executive order which the amendment of the Senator from Kansas seeks to repeal. As I have stated, it is the President's judgment that implementation of this Executive order is in the Nation's interest and also in the interest of the American taxpayer, based upon the fact that the use of permanent replacements results in many instances in a diminution in the quality of work performed and the ability to perform on time. The President, based on legislative authority provided by the Congress, was acting within his power in issuing that Executive order.

But the point I was trying to make earlier was that the broader issue at stake is really the standard of living

for working families, and what the impact of Senator KASSEBAUM's amendment would be on a significant segment of working families in this country.

I was pointing out that if you look at the period from 1979 to 1993, what you find, as shown on this chart—which is based upon data from the Department of Commerce—what you find is that it is the top tier of families that have done exceedingly well during this period of time. They are the ones whose incomes have been rising steadily and at significant levels.

I think all of us welcome the fact that those families are doing well and that there is increased opportunity for the very top-income families in this country, and that those that are just below the very top have also seen a significant increase in their income. But this chart also reflects the disturbing fact that the majority—60 percent—of American families outside of this top 40 percent, have actually fallen behind in terms of real family income over this same period of time.

It is important to underscore that we are talking about family income, because what we saw during the period of the 1980's is not just a single member of the family working, supporting the family, but wives coming into the work force in record numbers and contributing their earnings to the family income. Even with the increased number of family members in the work force, we still have 60 percent of the families falling further and further behind those in the very top income brackets. That is the reality. That is what is happening out there.

It is relevant to note that at the same time that this decline in the incomes of the majority of families has been happening, there has been a dramatic and significant increase in the use of permanent striker replacements. Employers have used permanent replacements to displace well-paid workers and replace them with workers hired at significantly reduced wages. And even the original wages of those workers who have been permanently replaced were in many cases of a very modest nature. As I pointed out earlier today, in many instances, workers who have been permanently replaced were earning not much more than the minimum wage to start with—earning $6 and $7 or $8 an hour. Those are the workers whom we are talking about out here on the floor of the U.S. Senate—the workers who some of our Republican colleagues suggest are some kind of special interest group.

The people the President's Executive order seeks to protect from exploitation are people that are ready to work, that do work and have worked all of their lives. They are prepared to continue to work for $7 or $8 an hour, and they are being displaced by permanent striker replacements who are being paid lower wages. The result is that there has been a significant diminution in income for a great number of workers.

Mr. President, if you were to go back and look at what has happened to the incomes of working families since 1950, you would find that during the period from 1950 through the end of the 1970's, you would find that the incomes of families in all of these income groups moved up together, and that families at the top in the middle and at the bottom all enjoyed about the same level of income growth. The whole country was increasing its standard of living. All families were moving up together, all participating in the benefits of economic expansion. But that is not what has happened since 1980. That is not what is taking place in the America of today. That is something that we should be very conscious of, as we are considering the President's Executive Order, which is responsive, in small part, to this phenomenon.

This second chart shows what has happened to those workers who are trying to provide for themselves and their families and are getting paid the minimum wage.

The principle behind the minimum wage, which was first enacted into law in the 1930's, was that work ought to be rewarded, that men and women in our country who are willing to work ought to be able to earn enough to provide for their children, ought to be able to put a roof over the heads of their families and put food on the table and maintain some degree of self-respect and dignity. That is a fundamental principle that has been supported by Republicans and Democrats alike, Mr. President.

Here on this chart reflecting the real value of the minimum wage, where we see a bump here in the purchasing power of the minimum wage, this was a result of legislation being signed into law by a Republican President, George Bush, providing for an increase in the minimum wage of 45 cents an hour per year for 2 years, in 1990 and 1991. And now we can see on the chart that since that time, inflation has eaten away at the real value of the minimum wage, and it is virtually back to where it was prior to the time President Bush signed that last increase into law.

What many of us have been arguing is that if we had then a Democratic Congress, a Democratic Senate, and a Republican President and we could work together in order to enact an increase in the minimum wage, then now when we have a Republican House and Senate and a Democratic President, we ought to be able to again work together to enact another increase.

This chart, Mr. President, shows the real value of the minimum wage in terms of constant dollars. This reflects that the minimum wage is currently at $4.25 an hour, in 1995 dollars. That is where it is today. And this shows where the minimum was in terms of real dollars at other periods of time going back to 1965, then 1975, when the minimum wage was worth $5.82 in today's dollars. What we are really seeing is a dramatic decline in the value of the minimum wage in terms of its purchasing power for families. A full-time worker today working year-round at the minimum wage would make only $8,500 a year.

Both of these two charts are important in showing what is really happening out there in the work force in the United States of America; and that is, that far too many individuals who are working hard trying to provide for their families are falling further and further and further and further behind.

That is why I find it so disturbing that first issue directly affecting working families that we have considered on the Senate floor in this Congress—now that we have finished consideration of the unfunded mandate issue and the balanced budget amendment—should be a measure whose effect would be to ensure further diminution of workers' bargaining power in their dealings with employers.

We heard earlier—and I respect my friend and colleague, Senator KASSEBAUM—that in her view, her amendment is not really about the broader issues of working people. But I must say that it is difficult for me to accept that that is not what this amendment is really about. If the proponents of this amendment are so concerned about the scope of the executive power of the President—whether the President has the legal authority to issue such an order, whether he has the power to do it—that they felt they had to go ahead and address it on the defense appropriations bill, you might hope that they would still say look, OK, we have done the unfunded mandates bill and we have had a full debate on the issue of the balanced budget amendment, and we feel we must go ahead and address this issue of the President's executive authority on the defense appropriations bill. But we want you to know that we are concerned about what is happening to real workers and therefore we are proposing a sense of the Senate resolution to say that we are prepared to support an increase in the minimum wage, or we want to do something else for working families; we want to do something in terms of education for working families, or something for the children of working families in terms of their day care coverage. If that is what our Republican colleagues were saying, that would be great. But that is not the case.

Instead, we see cutbacks being recommended in day care, even though only about 5 to 6 percent of day care needs are being attended to at current spending levels. We are seeing cutbacks in the school lunch program and cutbacks in the summer jobs program. The Congress was not even in session 3

months before it eliminated the jobs programs for young people, not only for this summer but next summer as well. We are in that much of a hurry. The House of Representatives is voting to eliminate that summer jobs program, and they are also in the process now in the Labor/HHS appropriations subcommittee of cutting back the loan programs for working families. I do not know how it is in other Members' States, but in my State close to 70 percent of the young people that want to improve themselves and improve their lives and their abilities by attending college need some kind of student loan assistance. Well, we are raising the cost of that assistance between 25 and 30 percent under the proposal that is being acted on over in the House.

The people getting hurt are the sons and daughters of families in this group in here on this chart; not so much the families up here in the upper income brackets because they can afford the universities, they can pay the tuition on their own. It is these families in this area on the chart, the ones that are falling further behind that say, I know I have not been able to make it, but, by God, my daughter or my son has worked hard, has done well in school, has been a good student, and wants to go on to college or to the university. And with these cuts we are saying: No, your son or daughter can not go to college unless you are going to pay out of your pocket another $3,500 to $4,500 over what it now costs in terms of interest on their student loan. That is effectively what the impact of these cuts is going to be on working families.

So, Mr. President, the idea that somehow these matters are unrelated in terms of our priorities misses me.

I did not even mention, when I was talking about the increase in the interest costs on student loans for working families the fact that even if they were going to pay that extra average $3,500 and have that indebtedness and they were able to get to the school or college, our Republican colleagues want to eliminate the work-study program. That affects 70,000 young people in my own State. I do not know how it is in other States.

And who are these students? By definition you do not qualify for work-study unless you are in this area shown on this chart—unless your family is in this income bracket. So we are not only going to raise the cost of the education, we are going to make it even more complicated and difficult for you to participate in a work-study program to help you get some additional income as a result of working.

This is about working. We hear a great deal from our Republican colleagues about people that are not working. This debate is about Americans who are working, playing by the rules and working, and their futures. And that is why it is so important and why it is appropriate that the Senate really understand exactly where we are and what we are about.

We have had a long discussion about the steel mill seizure, about the scope of Presidential powers. We went through last week the various executive powers that exist inherently and those which do not. We went through the particular legislation which grants the President specific powers with respect to Federal procurement and the references that have been made to that in the excellent memoranda that was provided by Attorney General Reno. We have gone into considerable detail about exactly who was affected and impacted by the practice of permanently replacing striking workers.

And then we had a review for the Senate of the public policy issues in question, about why this Executive order makes eminently good sense in terms of the President's responsibility to oversee procurement by Federal agencies.

We heard a great deal around here some years ago, and I think many of us joined in the sense of outrage when we heard about the costs of ashtrays being $200 to $300, toilet seats at $1,500, $1,800, the abuses in terms of procurement policy, primarily in the Defense Department, but in other agencies as well. We have heard those stories and all of us are appalled by them.

Now we have a President that is trying to do something about making sure that the taxpayer is going to get a dollar's value for a dollar invested by making sure that the contracts are going to be delivered and delivered on time and that there is going to be good quality in terms of the purchases that are made primarily in the areas of defense and weapons and weapons systems and those contracts that are related to national security, but in other areas as well.

We have taken some time, although I intend to take a little more time later on this afternoon, to give examples of how productivity and quality have been adversely affected when permanent striker replacements were hired—what happens when because of the replacement workers' lack of skills and experience, of the conflict that exists in the plant and factory, the quality and efficiency of work is impaired.

The President has taken notice of that and we will share those experiences with the Senate. He understands it and says: "Look, on this issue, I'm going to side with the taxpayers to make sure that we are going to get a good product on time with good quality from skilled craftsmen and women in this country. I am not going to take a chance in the areas of national security to get an inferior product, either for our defense or in the other areas of procurement. And, also, I am going to make it very clear that we are not going to give companies like Diamond Walnut Company, for example, that have hired permanent replacements, additional financial incentives for sales overseas that result in millions of dollars of profit for them at taxpayers' expense. We are not going to reward companies that treat their workers this harshly."

So, Mr. President, these are some of the points that we will have a chance to develop further during the course of the discussion and debate.

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

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

HEALTH CARE

Mr. SIMON. Mr. President, before I comment on the Kassebaum amendment that is before us, let me comment on a hearing I just came from that Senator KASSEBAUM and Senator JEFFORDS have chaired, on the whole question of health care and where we are going.

The last few witnesses commented on the whole question of ERISA's assumption of responsibilities that prohibits States from moving ahead to have health care coverage for all their people.

Frankly, we cannot have it both ways. The American people are, more and more, demanding some kind of health care protection. I had three town meetings a week ago Saturday in Illinois. One man got up at one town meeting and said, "I am 59 years old, I have had a heart attack, I cannot get health insurance that I can afford. What is going to happen to me?" When he said it, it started triggering others getting up, standing up, telling their stories.

Every other Western industrialized nation protects all their people. We are the only one that does not. If that is a conscious decision we want to make, not to protect all of our citizens—and incidentally the number now is about 41 million that are unprotected and the projections that were made in the hearing yesterday are that will go to 50 million 5 years from now. We have gone from 67 percent of employers covering their people in 1980, down close to 50 percent now. The problem is getting worse.

But if the Federal Government is unwilling to act, we, at least, have to be willing to let North Carolina and Illinois and other States that want to protect all their citizens act. We can set it up in such a way that companies that are engaged in interstate commerce that protect their employees will be exempt by the State so we do not present a problem for business.

But we cannot have it both ways. There are just too many people who are hurting. Mr. President, 50 million people in 5 years means one out of five Americans—really more than that, because those over 65 are already covered through Medicare. But more than one out of five Americans are without health care coverage. That is just not the kind of choice we can make. The people in the gallery up there, one out of five are not covered. No one wants to volunteer for that.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 331

Mr. SIMON. Mr. President, let me talk about the other issue that is before us and that is striker replacement. In every Western industrialized nation with four exceptions permanent striker replacement is illegal. The exceptions are Great Britain, Hong Kong, Singapore, and the United States.

We have by tradition not done that. The Presiding Officer used to be in business in North Carolina. I used to be in business in Illinois. And we operate within certain traditions in addition to the law, and those traditions we have generally followed. We are starting to move away from those traditions and I think that is not a healthy thing. One of the reasons that is happening is because such a small percentage of our work force is organized. When you exclude Government employees, only 11.8 percent of working men and women in the United States belong to unions. That is far lower than Canada, which is around 35 percent; Western Europe 40 to 90 percent; Japan somewhat similar.

George Shultz, who was both Secretary of State and Secretary of Labor under Republican administrations, made a speech not too long ago in which he said we have an unhealthy amount of our working force that belongs to unions, because we are not getting some of the factors there that we ought to have.

One of the things that is happening as a result of that is our wages are not going up. When wages do not go up then corporations and employers do not buy labor-saving devices, so we become less productive per man-hour. Today the United States, in manufacturing pay per hour, we are $14.77. France is $15.23; Canada is $16.02; Italy, $16.41; Austria, $17.01; Netherlands, $17.85; Denmark, $18.60; Belgium, $18.94; Finland, $20.76; Switzerland, $20.83; Sweden, $20.93; Germany, $21.53; Norway, $21.86.

I can remember, back in 1986 we were still at the top of the heap. That is not that long ago. And the Presiding Officer will forgive me for saying he is old enough to remember, along with me, when there was a huge gap between the United States and the other countries. I can remember serving in Germany in the Army from 1951 to 1953 when the average German was just really struggling. I do not know what their percentage of U.S. wages at that point was. But it must have been one-fifth or one-seventh of the wages of the United States.

I mention all of this simply to suggest that what we need in this area of labor-management relations is balance. I do not think the President's action takes away any of our prerogatives. The President's action does not pass what we turned down here, Senate Resolution 55, striker replacement. That called for a major overhaul of our labor-management relations. The President's action simply says, if you are going to have a Federal contract, you cannot have permanent striker replacements. I think that makes sense in labor-management relations. I think it also makes sense in terms of quality of product. If anyone thinks that permanent striker replacements provide the same quality of work as a former employee, take a look at baseball today. Striker replacements are not the same quality as those who played for the major leagues.

So I think it makes sense from the viewpoint of quality product that we buy. I think it makes sense from the viewpoint of labor-management relations.

I hope that—we have had one cloture vote and we are going to have at least one more—we continue to prevent the passage of the Kassebaum amendment. Again, my belief is that what we need is a careful balance between labor and management. I think things have moved somewhat out of balance.

I would add I also am a great believer in labor and management working together much more. The Germans have what they called mitbestimmung, where there is a labor representative on a corporate board who is there except when they talk about labor-management relations. Then he or she absents himself or herself. The advantage of that is they get to know the problems of the corporation and the corporation gets to understand the viewpoint of labor. I think we should not wait until we are near time for contracts to expire and then all of a sudden we sit down and start working together.

So my hope is that we will continue to block the passage of this amendment and that we can move ahead in a constructive direction, not only on this issue but on many other issues in labor-management relations.

Mr. President, I do not see anyone else seeking the floor right now. If so I question the presence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

AFFIRMATIVE ACTION

Mr. DOLE. Mr. President, to his credit, President Clinton has initiated a long-overdue review of all Federal affirmative action laws.

After nearly 30 years of government-sanctioned quotas, timetables, set-asides, and other racial preferences, the American people sense all too clearly that the race-counting game has gone too far. The President is responding to these pressures, and his review could not have come at a more propitious time.

But first things first. As the President conducts his review, he should also revisit some of the misguided affirmative action policies of his own administration.

For starters, he should take a few moments to read the Justice Department's brief in the Piscataway Board of Education case, which is now pending before the Third Circuit Court of Appeals.

In Piscataway, the Justice Department has taken the position that, when an employer is laying off employees, an individual American can legally be fired from her job because of her race. That is right: Our Nation's top law enforcement agency says that it is perfectly legal, as a way to achieve work force diversity, to tell a person that she can no longer keep her job because she happens to have the wrong skin color.

This is an insidious position—one that goes beyond current law and one that the President should emphatically reject.

I note that he had a little meeting as reported in the Washington Post last night with a number of people. I hope they discussed the Piscataway case, and I hope the President might respond to this Piscataway case.

The bottom line is that the President's affirmative action review cannot have credibility if the affirmative action policies of his own administration are fundamentally flawed. Correcting these policies, not reviewing old ones, should be the President's first priority.

With that said, let's remember that to raise questions about affirmative action is not to challenge our anti-discrimination laws. Discrimination is illegal. Those who discriminate ought to be punished. And those who are individual victims of illegal discrimination have every right to receive the remedial relief they deserve.

Unfortunately, America is not the color-blind society we would all like it to be. Discrimination continues to be an undeniable part of American life.

But fighting discrimination should never become an excuse for abandoning

the color-blind ideal. Expanding opportunity should never be used to justify dividing Americans by race, by gender, by ethnic background.

Race-preferential policies, no matter how well-intentioned, demean individual accomplishment. They ignore individual character. And they are absolutely poisonous to race relations in our great country.

You cannot cure the evil of discrimination with more discrimination.

Mr. President, last December, I asked the Congressional Research Service to provide me with a list of every Federal law and regulation that grants a preference to individuals on the basis of race, sex, national origin, or ethnic background. Frankly, I was surprised to learn that such a list had never been compiled before, which, I suppose, speaks volumes about how delicate this issue can be.

Earlier this year, the CRS responded to my request with a list of more than 160 preference laws, ranging from Federal procurement regulations, to the RTC's bank-ownership policies, to the Department of Transportation's contracting rules. Even NASA has gotten into the act, earmarking 8 percent of the total value of its contracts each year to minority-owned and female-owned firms on the theory that these firms are presumptively disadvantaged. They may not be disadvantaged at all.

As a follow-up to the CRS report, I have written to my colleagues, Senators BOND and KASSEBAUM, requesting hearings on the most prominent programs identified in the report—the Small Business Administration's section 8(A) program and Executive order 11246, which has been interpreted to require Federal contractors to adopt timetables and goals in minority- and female-hiring.

These hearings, I expect, will demonstrate that there are other, more equitable ways to expand opportunity, without resorting to policies that grant preferences to individuals simply because they happen to be members of certain groups. And unless the hearings produce some powerful evidence to the contrary, it is my judgment that the section 8(a) program should be repealed outright.

The hearings also provide us with the opportunity to rediscover the original purpose of Executive Order 11246. As signed by President Johnson, the Executive order required Government contractors to agree,

> * * * not to discriminate against any employee or applicant for employment because of race, creed, color, or national origin * * * [and] to take affirmative action to ensure that applicants are employed * * * without regard to their race, creed, color, or national origin.

In other words, Executive Order 11246 defined affirmative action to mean "non-discrimination."

I believe in nondiscrimination. Everybody in this body should believe in nondiscrimination against race, color—and you can add disability to that list, too.

There was no mention of timetables or goals. No mention of racial preferences. These concepts were later grafted onto the Executive order not by Congress, but by regulation, the work of Federal bureaucrats.

At a minimum, we should restore the original purpose of Executive order 11246: to ensure that Federal contractors do not discriminate. And if they do, they should be punished. However, if the Executive order continues to be used, and misused, as a hammer to force contractors to adopt race-based hiring practices, then it, too, should be repealed.

In fact, I intend to introduce legislation later this year that will force the Federal Government to live up to the color-blind ideal by prohibiting it from granting preferential treatment to any person, simply because of his or her membership in a certain favored group.

I might add, when I got this CRS study, we made it available to the White House. There has been a story about it. They asked for it and we were happy to give it to the White House. It saved duplication. We would be happy to work with the White House and anybody else. And we will be working with Representative J.C. WATTS of Oklahoma on overall legislation, maybe at some later date.

Of course, the Government should fight discrimination where it exists, but, at the same time, it should be color-blind, race-neutral, both in theory and in practice.

Mr. President, I am hopeful about America. And I am optimistic, as we head into the 21st century, that the American experiment will continue to be a model of self-government and a source of hope for millions the world over.

But leadership also requires a sense of common purpose. We cannot continue to lead the world, if we are divided here at home.

Yes, we should celebrate our own differences. Yes, we should take pride in our own rich ethnic heritage. It is a source of great strength in America.

But, at the same time, we should not devalue the common bonds that define us as Americans. Too often, we speak in terms of a hyphenated identity: it is Italian-Americans, German-Americans, African-Americans, Irish-Americans, and not just "Americans." We are all just Americans.

Historian Arthur Schlesinger, Jr., probably put it best when he warned, and I quote:

> Instead of a nation composed of individuals making their own unhampered choices, America increasingly sees itself as composed of groups more or less ineradicable in their ethnic character. The multiethnic dogma abandons historic purposes, replacing assimilation by fragmentation, integration by separatism. It belittles unum and glorifies pluribus.

So, Mr. President, the coming debate over affirmative action will be much more than just a debate over reverse discrimination. It will be a debate that focuses us to answer a fundamental question: What kind of country do we want America to be?

Do we work toward a color-blind society? I hope so. A society that judges people by their talents, their sense of honor, their hopes and dreams, as individuals? Or do we continue down the path of group rights, group entitlements—special rights for some—judging people not by their character or intellect, but by something irrelevant: the color of their skin? Maybe it will extend to disabilities or something else.

America has always been a melting pot. But it should never become a place where race and ethnicity exclusively define who we are, how we think, and what we are supposed to believe.

Mr. President, I ask unanimous consent that my letters to Senators BOND and KASSEBAUM be printed in the RECORD, along with the report prepared by the Congressional Research Service.

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

U.S. SENATE,
OFFICE OF THE MAJORITY LEADER,
Washington, DC, March 2, 1995.

Hon. NANCY LANDON KASSEBAUM,
Chairman, Committee on Labor and Human Resources, U.S. Senate, Washington, DC.

DEAR NANCY: As part of our review of federal affirmative action policies, I am writing to request that you, as Chairman of the Labor and Human Resources Committee, convene hearings on Executive Order 11246. In a recent report prepared at my request, the Congressional Research Service has identified Executive Order 11246 among those federal programs that grant preferences to individuals on the basis of race, sex, national origin, or ethnic background.

Executive Order 11246 was initiated by President Johnson in 1965. The Executive Order states, in part, that "[i]t is the policy of the Government of the United States to provide equal opportunity in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, creed, color, or national origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each executive department and agency."

As administered by the Department of Labor's Office of Federal Contract Compliance Programs, Executive Order 11246 requires most federal contractors to file written "affirmative action" plans with the federal government. These plans must include minority- and female-hiring "goals" and "timetables."

In my view, hearings should seek to answer the following questions: What was the original purpose of Executive Order 11246? Has this purpose been fulfilled over the years through the Executive Order's implementation? Has Executive Order 11246 operated to discriminate on the basis of race, ethnicity, or gender? Are there other, more equitable, ways to expand opportunity for all Americans, without resorting to strategies that rely on providing preferences for individuals simply because they belong to certain groups?

The bottom line is that no federal program should be immune from Congressional scrutiny.

Nancy, thank you for your prompt attention to this important matter. I look forward to hearing from you at your earliest convenience.

Sincerely,

BOB DOLE.

U.S. SENATE,
OFFICE OF THE MAJORITY LEADER,
Washington, DC, March 2, 1995.

Hon. CHRISTOPHER BOND,
Chairman, Committee on Small Business, U.S. Senate, Washington, DC.

DEAR KIT: As part of our review of federal affirmative action policies, I am writing to request that you, as Chairman of the Small Business Committee, convene hearings on the programs authorized by Sections 8(a) and 8(d) of the Small Business Act. In a recent report prepared at my request, the Congressional Research Service has identified these programs as programs that grant preferences to individuals on the basis of race, sex, national origin, or ethnic background.

As you may know, applicants for certification under Section 8(a) must demonstrate that they are either "socially disadvantaged" or that they "have been subjected to racial or ethnic prejudice or cultural bias because of their identities as members of groups without regard to their individual qualities." The Small Business Administration "presumes," absent contrary evidence, that small business owned and operated by members of certain racial and ethnic groups are "socially disadvantaged."

Section 8(d) requires prime contractors on major federal contracts to negotiate a "subcontracting plan" that includes "percentage goals" for the utilization of small socially- and economically-disadvantaged firms. To implement this policy, each prime contract must contain a clause stating that "[t]he contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities, or any other individual found to be disadvantaged by the [Small Business] Administration pursuant to section 8(a) . . . (emphasis added)."

In my view, hearings should seek to answer the following questions: What were the original purposes of the Section 8(a) and Section 8(d) programs? Have these purposes been fulfilled? Should the federal government be in the business of "presuming" that members of certain racial and ethnic groups are "socially disadvantaged?" Have these programs operated to discriminate on the basis of race or ethnic background? Are there other, more equitable, ways to expand opportunity for all Americans, without resorting to strategies that rely on providing preferences for individuals simply because they belong to certain groups?

The bottom line is that no federal program should be immune from Congressional scrutiny.

Kit, thank you for your prompt attention to this important matter. I look forward to hearing from you at your earliest convenience.

Sincerely,

BOB DOLE.

CONGRESSIONAL RESEARCH SERVICE,
Washington, DC, February 17, 1995.

To: Honorable Robert Dole.
From: American Law Division.
Subject: Compilation and overview of Federal laws and regulations establishing affirmative action goals or other preference based on race, gender, or ethnicity.

This is in response to your request, by letter dated December 22, 1994, for "a comprehensive list of every federal statute, regulation, program, and executive order that grants a preference to individuals on the basis of race, sex, national origin, or ethnic background. Preferences include, but are not limited to, timetables, goals, set-asides, and quotas."

To compile the list of federal legal authorities contained in this memorandum, several searches on LEXIS/NEXIS and WESTLAW legal databases were undertaken utilizing a variety of search strategies which incorporated legal terminology most frequently associated with federal affirmative action and minority set-aside programs. This yielded citations to several hundred statutory and regulatory programs which we then examined individually to determine whether they appeared to be of the nature described in your inquiry. The compilation of laws included in this memorandum reflects our efforts to be as "comprehensive" as possible, in accordance with your instructions. Consequently, we have included any statute, regulation, or executive order uncovered by our research which appears, in any manner, to prefer or consider race, gender, or ethnicity as factors in federal employment or the allocation of federal contracts or grants to individuals or institutions.[1] Several laws and regulations directed to "socially and economically disadvantaged" individuals and institutions are included because, as explained infra, that term has been defined administratively and by statute to presumptively apply to specific racial and ethnic minorities. As a background for understanding operation of the numerous listed federal laws and regulations, more extensive discussion is devoted at various points to the development of major "affirmative action" programs in federal grant, contract, and employment law.

FEDERAL GRANT AND PROCUREMENT LAW

Federal efforts to increase minority and female participation in contracting, federally assisted programs, and employment have been a major aspect of civil rights enforcement for more than three decades. Congress and the Executive Branch have crafted a wide range of federal laws and regulations authorizing, either directly or by judicial or administrative interpretation, race or gender "conscious" strategies in relation to jobs, housing, education, voting rights, and governmental contracting. The historical model for federal laws and regulations establishing minority participation "goals" may be found in Executive Orders which since the early 1960's have imposed affirmative minority hiring and employment requirements on federally financed construction projects and in connection with other large federal contracts. Presently, Executive Order 11246 as administered by the Office of Federal Contract Compliance Programs (OFCCP) requires that all employers with federal contracts in excess of $50,000.00 must file written affirmative action plans with the government. These are to include minority and female hiring goals and timetables to which the contractor must commit it's "good faith" efforts. Similar affirmative action measures relating to federal government employment were enacted as part of the Equal Employment Opportunity Act Amendment of 1972[2] and the 1978 Civil Service Reform Act.[3]

Affirmative action for minority entrepreneurs soon became a focus of efforts by the Small Business Administration (SBA) and other federal agencies to assist "socially and economically disadvantaged" small businesses under a variety of federal programs. Increasingly, an "affirmative action" model, in the form of participation "goals" or "set-asides" for members of racial or ethnic minorities, and businesses owned or controlled by these or other "disadvantaged" persons, found legislative expression in a wide range of federal programs.

The Small Business Act, as amended, provides the statutory prototype for a host of federal programs to increase minority and female participation as contractors or subcontractors on federally funded projects. First, the "Minority Small Business and Capital Ownership Development," or §8(a) program authorizes the Small Business Administration (SBA) to enter into all kinds of construction, supply, and service contracts with other federal departments and agencies. The SBA acts as a prime contractor and then "subcontracts" the performance of these contracts to small business concerns owned and controlled by "socially and economically disadvantaged" individuals, Indian Tribes or Hawaiian Native Organizations.[4]

Applicants for §8(a) certification must demonstrate "socially disadvantaged" status or that they "have been subjected to racial or ethnic prejudice or cultural bias because of their identities as members of groups without regard to their individual qualities."[5] The Small Business Administration "presumes," absent contrary evidence, that small businesses owned and operated by members of certain groups—including Blacks, Hispanics, Native Americans, and Asian Pacific Americans—are socially disadvantaged.[6] Any individual not a member of one of these groups must "establish his/her individual social disadvantage on the basis of clear and convincing evidence" in order to qualify for §8(a) certification. The §8(a) applicant must, in addition, show that "economic disadvantage" has diminished its capital and credit opportunities, thereby limiting its ability to compete with other firms in the open market.[7]

The "Minority Small Business Subcontracting Program" authorized by §8(d) of the Small Business Act codified the presumption of disadvantaged status for minority group members that applied by SBA regulation under the §8(a) program.[8] Prime contractors on major federal contracts are obliged by §8(d) to maximize minority participation and to negotiate a "subcontracting plan" with the procuring agency which includes "percentage goals" for utilization of small socially and economically disadvantaged firms. To implement this policy, a clause required for inclusion in each such prime contract states that "[t]he contractors shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to §8(a) . . ." Accordingly, SBA has discretion in designating a firm or individual as socially and economically disadvantaged for purposes of both the §8(a) and §8(d) programs in conformity with specified criteria.[9]

Footnotes at end of memorandum.

These obligations, first codified in 1978 as an amendment to the SBA, were augmented a decade later by the Business Opportunity Development Reform Act of 1988.[10] Congress there directed the President to set annual, government-wide procurement goals of at least 20% for small businesses and 5% for disadvantaged businesses, as defined by the SBA. Simultaneously, federal agencies were required to continue to adopt their own goals, compatible with the government-wide goals, in an effort to create "maximum practicable opportunity" for small disadvantaged businesses to sell their goods and services to the government. The goals may be waived where not practicable due to unavailability of disadvantaged business enterprises (DBEs) in the relevant area and other factors.[11] While the statutory definition of DBE includes a racial component, in terms of presumptive eligibility, it is not restricted to racial minorities but also includes persons subjected to "ethnic prejudice or cultural bias."[12] It also excludes businesses owned or controlled by persons who, regardless of race, are "not truly socially and/or economically disadvantaged."[13] Federal Acquisition Act amendments adopted in 1994 amended the 5% minority procurement goal, and the minority subcontracting requirements in §8(d), to specifically include "small business concerns owned and controlled by women" in addition to "socially and economically disadvantaged individuals."[14]

In addition, Congress has frequently adopted "set-asides" or other forms of statutory preference for "socially and economically disadvantaged" firms and individuals, following the definitions of the Small Business Act, or by designating minority groups and women as part of specific grant or contract authorization programs. Thus, targeted funding, in various forms, and minority or disadvantaged business set-asides or preferences have been included in major authorization or appropriation measures for agriculture, communications, defense, education, public works, transportation, foreign relations, energy and water development, banking, scientific research and space exploration, and other purposes. Other federal laws appear to authorize some consideration of race or gender to enhance the participation of minorities and women in federal programs or employment but without directly mandating preferential goals or set-asides.

The following statutes, regulations, and executive orders governing federal contracts and grant programs are, to the extent possible, grouped according to agency and subject matter.

Federal Acquisitions Regulations—General

48 C.F.R. §19.001(b) (1994): "Individuals who certify that they are members of named groups (Black Americans, Hispanic Americans, Native American, Asian-Pacific Americans, Subcontinent-Asian Americans) are to be considered socially and economically disadvantaged" for purposes of "Socioeconomic Programs" under the Federal Acquisitions Regulation (FAR).

48 C.F.R. §19.704 (1994): FAR requirement that "[s]eparate percentage goals for using small business concerns and small disadvantaged business concerns as subcontractors" be included in small disadvantaged business subcontracting plans.

48 C.F.R. §19.706(c)(2) (1994): FAR subcontracting assistance program states that "[v]arious approaches may be used in the development of small and small disadvantaged business concerns subcontracting incentives. They can take many forms, from a fully qualified schedule of payments based on actual subcontract achievement to an award fee approach employing subjective evaluation criteria. . . The incentive should not reward the contractor for results other than those that are attributable to the contractor's efforts under the incentive subcontracting program." See also §19.705-1 (monetary incentives for exceeding goals).

48 C.F.R. §§52.219-8, 52.219-9 (1994): Prescribe clauses for inclusion in federal prime and subcontract which require, inter alia, "[g]oal, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business concerns and small disadvantaged business concerns as subcontractors."

Agriculture

7 U.S.C.S. §3154(c): The Secretary of Agriculture is authorized "to set aside a portion of funds" appropriated for certain research on the production and marketing of alcohols and industrial hydrocarbons for grants to colleges and universities to achieve "the objective of full participation of minority groups."

7 C.F.R. §225.6(g)(xi) (1994): Food service management companies participating in the Summer Food Service Program must submit with appropriate state agency a registration which is to include "a statement as to whether the organization is a minority business enterprise" managed and controlled by "Blacks, Hispanics, American Indians, Alaskan Natives, Oriental and Aleuts. . . "

7 C.F.R. §246.13(g) (1994): Financial management system maintained by state agencies participating in Special Supplemental Food Program for Women, Infants and Children are "encouraged" to use minority- and women-owned banks.

7 C.F.R. §272.4(b) (1994): Bilingual program information and certification, and interpreters must be provided in certain low income areas with specified percentages of non-English speaking minority households under Food Stamp and Food Distribution Program.

7 C.F.R. §1940.968(k)(3) (1994): States participating in certain rural economic development programs are "encouraged to use minority banks (a bank which is owned by at least 50 percent minority group members) for the deposit and disbursement of funds."

7 C.F.R. §1942.17(p)(3)(iii) (1994): Applicants for certain FmHA community facilities loans are "encouraged to use minority banks (a bank which is owned by at least 50 percent minority group members) for the deposit and disbursement of funds."

7 C.F.R. §1942.472(c) (1994): Grantees of certain rural housing and community development technical assistance and training grants are "encouraged to use minority banks (a bank which is owned by at least 50 percent minority group members) for the deposit and disbursement of funds."

7 C.F.R. §1944.526(a)(2)(i)(D) (1994): Preapplication process for Technical and Supervisory Assistance Grant program considers in determining applicant's eligibility "the estimated number of low income and low income minority families the applicant will assist in obtaining affordable adequate housing."

7 C.F.R. §1944.671(b) (1994): Equal Opportunity and outreach requirements applicable to FmHA Housing Preservation Grants program state that "[a]s a measure of compliance, the percentage of the individuals served by the HPG grantee should be in proportion to the percentages of the population of the service area by race/national origin."

7 C.F.R. §§3015.13, 3016.21(h) (1994): "Consistent with the national goal of expanding opportunities for minority business enterprises, recipients and subrecipients" of federal financial assistance administered by the Department of Agriculture "are encouraged to use minority and women-owned banks. Upon request, awarding agencies will furnish a listing of minority and women-owned banks to recipients."

7 C.F.R. 3051 Appendix A (1994): OMB Circular A-133, Audits of Institutions of Higher Education and Other Nonprofit Institutions. "11. Small and Minority Audit Firms. Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this circular." See also OMB Circular A-128 (.19) (Uniform Audit Requirements for State and Local Governments), 29 C.f.R. part 96 Appendix A (1994).

7 C.F.R. §§3403.1, 3403.2 (1994): USDA regulations implementing small business innovation grants program which as one of its goals is to "foster and encourage minority and disadvantaged in technological innovation." For purposes of this program "minority and disadvantaged individual is defined as a member of any of the following groups: Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, or Subcontinent Asian Americans."

48 C.F.R. §§419.201-72(a), 419.202-71(a) (1994): The Department of Agriculture small disadvantaged business regulations state that "[t]he Department is required . . . to establish fiscal year goals for the procurement preference programs" and mandate "[establishing aggressive minority and women-owned business goals based on the annual review of advance acquisition plans."

48 C.F.R. §422.804-2 (1994): Affirmative action program provision relating to the Department of Agriculture which states that "each contracting office awarding non-exempt construction contracts maintains a current listing of covered geographical areas subject to affirmative action requirements specifying goals for minorities and women in covered construction."

48 C.F.R. §452.215-71 (1994): Department of Agriculture instructions for the preparation of technical and cost or pricing proposals state that the contract offeror "[i]ndicate what positive efforts your company will take to implement the concepts of equal employment under the proposed contract" and state the extent of minority enterprise participation "goals the contractor has set in the past five (5) years and his actual performance against these goals."

Banking

12 U.S.C.S. §1441a(r-w): Provides for various incentives, including "preference points" on proposals and minority capital assistance programs, to preserve and expand bank ownership by minorities and women; authorizes establishment of Resolution Trust Corporation guidelines to achieve parity in distribution of RTC contracts, and "reasonable goals" for subcontracting, to minority and women-owned businesses and firms; and provides a "[m]inority preference in acquisition of institutions in predominantly minority neighborhoods."[15]

12 U.S.C.S. §1823(f)(12): Authorizes Federal Deposit Insurance Corporation (FDIC) approval of minority-controlled bank acquisitions by minority-controlled holding companies without regard to asset size.

12 U.S.C.S. §2219c: Requires that "all institutions of the Farm Credit System with more than 20 employees shall establish and maintain an affirmative action program plan

that applies the affirmative action standards otherwise applied to contractors of the Federal Government."

12 U.S.C.S. §2907: Any donation or sale on favorable terms of bank branch in minority neighborhood to minority or women-owned depository institution shall be a factor in determining the seller or donor institution's compliance with the Community Reinvestment Act.

12 C.F.R. §4.63 (1994): Establishes Contracting Outreach Program for the Office of Comptroller of the Currency to "ensure that minority and women-owned businesses have the opportunity to participate, to the maximum extent possible, in contracts awarded by the OCC." "Minority means any African American, Native American . . ., Hispanic American, Asian-Pacific American, or Subcontinent-Asian American."

12 C.F.R. Part 361, §§361.2, 361.10 (1994): Federal Deposit Insurance Corporation "Minority and Women Outreach Program" states "policy of the FDIC that minorities and women and entities owned by minorities and women shall have maximum practicable opportunity to participate in [FDIC] contracts" and requires prime contractors "to carry out the FDIC minority and women-owned business contracting policy in the awarding of subcontracts to the fullest extent, consistent with the efficient performance of the awarded contract." For this purpose "minority" means "any Black American, Native American Indian, Hispanic American, or Asian American."

12 C.F.R. §§517.5, 517.7 (1994): The Minority, Women, and individuals with Disabilities Outreach Program of the Office of Thrift Supervision (OTS) defines "[o]utreach activities" to include "identification and registration of minority-, women-owned (small and large) businesses" and "[m]onitoring proposed purchases to assure that OTS contracting staff understand and actively promote the outreach program." Contract awarded guidelines state that "[t]he OTS Outreach Program Advocate shall work to facilitate the maximum participation of minority and women-owned . . . businesses . . . in the OTS procurement of goods and services."

12 C.F.R. Part 1507 (1994): Minority and Women Contracting Outreach Program of the Thrift Depositor Protection Oversight Board requires the Board's staff to formulate guidelines providing opportunities, "to the maximum extent possible, for the inclusion of minorities and women," and entities owned by them, in the performance of Board contracts; to undertake specified outreach activities; and to report periodically on minority and women-owned business participation in the contracting process, and as subcontractors on Board contracts. "Minority" means "Black American, Native American, Hispanic American, or Asian American."

12 C.F.R. Part 1617 (1994): Minority and Women Outreach and Contracting Program of the Resolution Trust Corporation (RTC) describes a variety of outreach activities (§1617.11); provides procedures for certification of minority and women-owned businesses (§1617.13); provides "incentives" and "bonus considerations" to RTC prime contractors "who demonstrate a commitment to subcontract at least 25 percent or more of the work" to minority or women-owned firms (§1617.30); and "reserves the right to award a contract directly to a MWOB either by technical competition or by con-competitive award." "Technical and cost bonus points" may be awarded to contractors with an "eligible subcontracting plan" for women and minorities (§1617.60). A special outreach program is provided to promote participation of minority and women-owned law firms in RTC legal services contracting (§1617.90).

13 C.F.R. §§317.19(b), 317.35 (1994): "No grant shall be made . . . for any project" under the Local Public Works Capital Development and Investment Program "unless at least 10 percent of the amount of such grant will be expended for contracts with and/or supplies from minority business enterprises." All applications for assistance must contain certification to that effect. "Minority group member means a citizen of the United States who is Negro, Spanish-speaking, Oriental, Indian, Eskimo, or Aleut." (13 C.F.R. 317.2).

Commerce

Executive Order 11625 (1971): Directs the Secretary of Commerce "[w]ith the participation of other Federal departments and agencies . . . [t]o develop comprehensive plans and specific program goals for the minority enterprise program; establish regular performance monitoring and reporting systems to assure that goals are being achieved; and evaluate the impact of Federal support in achieving the objectives established by the order." *See also* Executive Order 12138 (Women-owned Business Enterprise Program).

15 C.F.R. §24.21(h) (1994): Grantees and subgrantees of certain grants and cooperative agreements to state and local government "are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members)."

15 C.F.R. §917.11(d) (1994): A "factor considered" in the approval of proposals under the Sea Grant Matched Funding Program "will be the potential of the proposed program to stimulate interest in marine related careers among those individuals, for example, minorities, women, and the handicapped whose previous background or training might not have generated such an interest."

15 C.F.R. §2301.3 (1994): The National Telecommunications and Information Administration of the Department of Commerce, in administering the Public Telecommunications Facilities Program, "will give special consideration to applications that foster ownership and control of, operation of, and participation in public telecommunications entities by minorities and women."

48 C.F.R. §1319.7003(a) (1994): Directs contracting officers of the Commerce Department to "provide assistance to prime contractors to identify potential women-owned small businesses. Such assistance is intended to aid prime contractors in placing a fair proportion of subcontracts with women-owned businesses."

Communications

47 U.S.C.S. §309(j)(4)(D): In radio licensing proceedings, the Federal Communications Commission is directed to prescribe regulations to "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences, and other procedures."

47 C.F.R. §73.3555(d)(2)(ii) (1994): Federal Communications Commission (FCC) multiple ownership rules provide exemption for "minority-controlled" broadcast facilities from certain restrictions on the granting or transfer of commercial TV broadcast stations which result in an aggregate national audience exceeding twenty-five percent. "*Minority* means Black, Hispanic, American Indian, Alaska Native, Asian and Pacific Islander." (*italics* in original).

47 C.F.R. §76.977 (a), (b), (e) (1994): Minority and educational programming used in lieu of deregulated commercial leased access capacity. "A cable operator required by this section to designate channel capacity for commercial use pursuant to 47 U.S.C. 532 may use any such channel for the provision of programming from a qualified minority programming source . . . whether or not such source is affiliated with cable operator." "Qualified minority programming source" means a source "that devotes substantially all of its programming to coverage of minority viewpoints, or to programming directed at members of minority groups, and which is over 50 percent minority-owned." "Minority" includes "Blacks, Hispanics, American Indians, Alaskan Natives, Asians, and Pacific Islanders."

68 F.C.C. 2d 381, 411–412 (1978): FCC policy awards a quality enhancement credit for minority ownership and participation in station management in the comparative licensing process. When faced with mutually exclusive applications for the same broadcast channel, the FCC initiates a proceeding to compare the merits of the competing applicants based on specific factors including: diversification of control of mass media communications, full time participation in station management by owners, proposed program service, past broadcast record, efficient use of frequency, and character of the applicant. Under the FCC's preferred policy, ownership and active participation in station management by members of a minority group are considered a plus to be weighed in with the other comparative factors.

68 F.C.C. 2d 983 (1978): FCC "Distress Sale" Policy. Under this policy, existing licensees in jeopardy of having their licenses revoked or whose licenses have been designated for a renewal hearing are given the option of selling the license to a minority-owned or controlled firm for up to seventy-five percent of fair market value. The minority-assignee must meet the basic qualifications necessary to hold a license under FCC regulations and must be approved by the FCC before the transfer is consummated.

Defense

10 U.S.C.S. §2196(j)(8): Selection criteria for manufacturing engineering grant program established by the Secretary of Defense require proposal by applicant "to achieve a significant level of participation by women, members of minority groups, and individuals with disabilities through active recruitment of students from among such persons."

10 U.S.C.S. §2323: Establishes a goal of awarding five percent of the total value of Department of Defense procurement, research and development, military construction, and operation and maintenance contracts to "socially and economically disadvantaged individuals," historically black colleges and universities, and minority institutions in each of the fiscal years from 1987 to 2000. This requirement was extended to contracting activities of the Coast Guard and the National Aeronautics and Space Administration by §7105 of the Federal Acquisition Act of 1994, P.L. 103–355, 108 Stat. 3243, 3369 (1994) which also added a requirement that "[t]o the extent practicable," the head of each of these agencies is to "maximize the number of minority small business concerns, historically Black colleges and universities, and minority institutions participating in the program."

P.L. 103-335, 108 Stat. 2259, 2652, §8127(a) (1994): "in entering into contracts with private entities to carry out environmental restoration and remediation of Kaho'olawe Island, Hawaii, and the waters surrounding that island, the Secretary of the Navy shall, to the maximum extent practicable, give a preference to small business concerns and small disadvantaged business concerns located in the State of Hawaii. In giving the preference, the Secretary shall give especial preference to businesses owned by Native Hawaiians."

32 C.F.R. §3321(h) (1994): Department of Defense (DOD) Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments "encourage" DOD grantees and subgrantees to use minority banks at least 50% owned by minority group members.

48 C.F.R. §205.207(d)(iv) (1994): States that "[f]or acquisition being considered for historically black college and university and minority institution set-aside, "the proposed contract "is being considered as a 100 percent set-aside for historically black colleges and universities (HBCUs) and minority institutions (MIs), as defined by the clause at §252.226-7000 of the Defense Acquisition Regulation Supplement."

48 C.F.R. Part 219, §219.000 (1994): DOD regulation which implements "goal" in 10 U.S.C. 2323 to "[a]ward five percent of contract and subcontract dollars to small disadvantaged business (SDB) concerns, historically black colleges and universities (HBCUs), and minority institutions (MIs)." Specific requirements include data collection and reporting (§219.202-5); eligibility criteria for program participation (§219.703); subcontracting plan goals for SDB concerns and institutions (§219.704); reviewing the subcontracting plan (§219.705-4); solicitation provisions and contract clauses (§219.708); and evaluation preference for small disadvantaged business concerns ("by adding a factor of ten percent to the price of all offers") (§219.7002). See also 48 C.F.R. §226.7000 (implements the historically black college and university and minority institution provisions of 10 U.S.C. §2323; §252.219-7005) (small business and small disadvantaged business subcontracting plan on DOD contracts); §252.219.7005 (incentive for subcontracting with small businesses, small disadvantaged businesses, historically black colleges and universities, and minority institutions); §252.219-7006 (notice of evaluation preference for small disadvantaged business concerns); and §252.226-7000 (notice of historically black college or university and minority institution set-aside).

48 C.F.R. Chapter 2 Appendix I (1994): Pilot Mentor-Protege Program is to "provide incentives to major DOD contractors, performing under at least one active approved subcontracting plan negotiated with DOD or other Federal agencies, to assist small disadvantaged businesses (SDBs) in enhancing their capabilities to satisfy DoD and other contract and subcontract requirements."

Education

20 U.S.C.S. §1047: Authorizes grants and contracts by the Department of Education (ED) with "historically black colleges and universit[ies]" and other institutions of higher education serving a "high percentage of minority students" for the purpose of strengthening their library and information science programs, and establishing fellowships and traineeships for that purpose.[16]

20 U.S.C.S. §1063b: Authorizes ED grants to specified postgraduate institutions "determined by the Secretary [of Education] to be making substantial contributions to the legal, medical, dental, veterinary, or other graduate education opportunities for Black Americans."

20 U.S.C.S. §1069f(c): Reservation of 25% of the excess of certain educational appropriations for allocation "among eligible institutions at which at least 60 percent of the students are African Americans, Hispanic Americans, Native Americans, Asian Americans, Native Americans, Native Hawaiians, or Pacific Islanders, or any combination thereof."

20 U.S.C.S. §1070a-41: "Priority" in selection for Model Program Community Partnership and Counseling Grants given to program proposals "directed at areas which have a high proportion of minority, limited English proficiency, economically disadvantaged, disabled, nontraditional, or at-risk students . . ."

20 U.S.C.S. §1112d(d): "Special consideration" to be given "historically Black colleges and universities" and to institutions having at least 50% minority enrollment in making grants for teacher training and placement.

20 U.S.C.S. §1132b-2: In awarding facilities improvement grants, the ED Secretary or each State higher education agency "shall give priority to institutions of higher education that serve large numbers or percentages of minority or disadvantaged students."

20 U.S.C.S. §1134e: In making grants for post-graduate study, the ED Secretary shall "consider the need to prepare a larger number of women and individuals from minority groups, especially from among such groups which have been traditionally underepresented in professional and academic careers," and shall accord a "priority" for awards to "individuals from minority groups and women" pursuing study in specified professional and career fields.

20 U.S.C.S. §1134s: The ED Secretary "shall carry out a program to assist minority, low-income, or educationally disadvantaged college students" to pursue a degree and career in law through an annual grant or contract.

20 U.S.C.S. §§1135c, 1135d: The ED Secretary shall "carry out a program of making grants to institutions of higher education that are designed to provide and improve support programs for minority students enrolled in science and engineering programs as institutions with a significant minority enrollment (at least 10 percent)." Eligibility for such grants is limited to "minority institutions" (minority enrollment in excess of 50%) or other public or private nonprofit institutions with at least 10 percent minority enrollment.

20 U.S.C.S. §1409(j)(2): The ED Secretary "shall develop a plan for providing outreach services" to historically Black colleges and universities, other higher educational institutions with at least 25% minority student enrollment, and "underrepresented populations" in order to "increase the participation of such entities" in competitions for certain grants, contracts, and cooperative agreements.

20 U.S.C.S. §1431(a)(3): "Priority consideration" for fellowships and traineeships in special education and related services shall be given to "individuals from disadvantaged backgrounds, including minority and individuals with disabilities who are under represented in the teaching profession or in the specialization in which they are being trained."

20 U.S.C.S. §2986(b): A portion of state allotment of critical skills improvement funds to be distributed for various purposes, including "recruitment or retraining of minority teachers to become mathematics and science teachers."

20 U.S.C.S. §3156(a): Program to assist local educational agencies "which have significant percentages of minority students" to conduct "alternative curriculum" schools which "reflect a minority composition of at least 50 percent" and contribute to school desegregation efforts.

20 U.S.C.S. §3916: Fifteen percent of National Science Foundation funds available for science and engineering education is to be allocated to faculty exchange and other programs involving higher educational institutions with "an enrollment which includes a substantial percentage of students who are members of a minority group."

20 U.S.C.S. §5205(d): No less than 10 percent of Eisenhower Exchange Fellowship Program funds "shall be available only for participation by individuals who are representative of United States minority populations."

20 U.S.C.S. §6031(c)(5): ED "shall establish and maintain initiatives and programs to increase the participation" of "researchers who are women, African-American, Hispanic, American Indian and Alaskan Native, or other ethnic minorities" in the activities of various authorized educational institutes.

42 U.S.C.S. §292g(d)(3): For a three-year period beginning on October 13, 1992, historically black colleges and universities are exempted from provision rendering certain institutions ineligible for student loan program based on high loan default rate.

42 U.S.C.S. §293a: "Special consideration" in scholarship grant program to be given "health profession schools that have enrollments of under represented minorities above the national average for health profession schools."

42 U.S.C.S. §293b(3): Institutional eligibility for faculty fellowship program based on "ability to . . . identify, recruit and select individuals from under represented minorities in the health profession" with potential for teaching and educational administration.

42 U.S.C.S. §1862d: At least 12 percent of amounts appropriated for the Academic Research Facilities Modernization Program shall be reserved for historically Black colleges and universities and other institutions which enroll a substantial percentage of Black American, Hispanic American, or Native American students.

34 C.F.R. §7412 (1994): Department of Education (ED) Uniform Administrative Requirements for Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations "encourage" ED grantees and subgrantees to use minority-owned banks. See also 34 C.F.R. §80.21(h)(1994).

34 C.F.R. §318.11(a)(15), (16) (1994): Includes "[t]raining minorities and individuals with disabilities" and "minority institutions" among several optional funding priorities under special education training program.

34 C.F.R. §461.33(a)(2)(ii) (1994): "[P]articular emphasis" placed on training "minority" adult educators under one aspect of adult education demonstration grant program.

34 C.F.R. Part 607, §607.2(b) (1994): An institution of higher education is eligible to receive a grant under the Strengthening Institutions Program even if it does not satisfy certain other generally applicable state authorization or accreditation requirements if its student enrollment consists of specified percentages of designated minority groups.

34 C.F.R. Parts 608, 609 (1994): "the Strengthening Historically Black Colleges and Universities Program [HBCU] provides

grants to Historically Black Colleges and Universities to assist these institutions in establishing and strengthening their physical plants, academic resources and student services so that they may continue to participate in fulfilling the goal of equality of educational opportunity." (§608.1).

34 C.F.R. §637.1 (1994): "the Minority Science Improvement Program is designed to effect long-range improvement in science education at predominantly minority institutions and to increase the flow of under represented ethnic minorities, particularly minority women, into scientific careers."

34 C.F.R. §641.1 (1994): "The Faculty Development Fellowship Program provides grants to institutions of higher education, consortia of institutions, and consortia of institutions and nonprofit organizations to fund fellowships for individuals from underrepresented minority groups to enter or continue in the higher education professorate."

Energy

42 U.S.C.S. §7141: The Secretary of Energy "may provide financial assistance in the form of loans to any minority business enterprise under such rules as he shall prescribe to assist such enterprises in participating fully in research, development, demonstration, and contract activities of the Department to the extent he considers appropriate."

42 U.S.C.S. §13556: Provides that "[t]o the extent practicable, the head of each agency shall provide that the obligation of not less than 10 percent of the total combined amounts obligated for contracts and subcontracts by each agency" under the Energy Policy Act of 1992 "shall be expended with" socially and economically disadvantaged small businesses, historically Black colleges or universities, or college and universities with more than 20 percent Hispanic or Native American enrollment.

P.L. 103-160, 107 Stat. 1547, 1956, §3159 (1993): Provides, as a "goal," that 5 percent of the combined total of funds obligated by the Department of Energy for purposes of carrying out national security programs for fiscal years 1994 through 2000 be allocated to contracts and subcontracts with socially and economically disadvantaged small businesses, historically black colleges and universities, and minority institutions.

10 C.F.R. §600.3 (1994): "Socially and economically disadvantaged" firm or individual, for purposes of Department of Energy (DOE) financial assistance rules, is defined to include "Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and other specified minorities, or any other individual found to be disadvantaged by the Small Business Administration under §8(a) of the Small Business Act."

10 C.F.R. §799.2, 799.7 (1994): A requirement of DOE loan guarantee program for waste projects that "the borrower agree to take positive efforts to maximize the utilization of small and disadvantaged business concerns in connection with the project . . ." For this purpose, "[d]isadvantaged business concern means a concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals" as defined by the Small Business Act.

10 C.F.R. Part 800, §800.003 (1994): Under DOE regulations setting forth policies and procedures for the award and administration of loans to minority small business enterprises, "[a]n individual who is a citizen of the United States and who is a Negro, Puerto Rican, American Indian, Eskimo, Oriental, and Aleut, or is a Spanish speaking individual of Spanish descent, is a member of a 'minority' . . ."

10 C.F.R. §1040.101(b)(1), (2) (1994): Under DOE regulations prohibiting discrimination in federally assisted programs, the agency is to select recipients for compliance reviews based, among other factors, on "[t]he relative disparity between the percentage of minorities, women, or handicapped persons, in the relevant labor market, and the percentage of minorities, women, or handicapped persons, employed by the recipient" or "in the population receiving program benefits."

Environment

P.L. 101-549, 104 Stat. 2399, 2708, §1001 (1990): "In providing for any research relating to the requirements of the amendments made by the Clean Air Act Amendments of 1990 which uses funds of the Environmental Protection Agency, the Administrator of the Environmental Protection Agency shall, to the extent practicable, require that not less than 10 percent of total Federal funding for such research will be made available to disadvantaged business concerns," defined to mean any concern with 51% of the stock owned by Black Americans, Hispanic Americans, Native Americans, Asian Americans, Women or Disabled Americans.

40 C.F.R. §33.240 (1994): Environmental Protection Agency (EPA) procurement requirements provide that "[i]t is EPA policy to award a fair share of subagreements to small, minority, and women's businesses. The recipient must take affirmative steps to assure that small, minority, and women's businesses are used when possible as sources of supplies, construction, and services."

40 C.F.R. §35.936-7 (1994): Grantees of EPA state and local assistance grants "shall make positive efforts to use small business and minority owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for subagreements to be performed using Federal grant funds." See also 40 C.F.R. Part 35 APPENDIX C-1 (14.) (consulting engineering agreement).

40 C.F.R. §35.3145(d) (1994); State Water Pollution Control Revolving Fund requirement "for the participation of minority and women owned businesses (MBE/WBEs) will apply to assistance in an amount equaling the grant. To attain compliance with MBE/WBE requirements, the [regional administrator] will negotiate an overall 'fair share' objective with the State for MBE/WBE participation on these SRF funded activities. A fair share objective should be based on the amount of the capitalization grant award or other State established goals." See also 40 C.F.R. §35.4066(g) (1994) (grants for technical assistance).

40 C.F.R. §35.6580 (1994): Recipients under Cooperative Agreements and Superfund State Contracts for Superfund Response Actions "must comply with six steps . . . to insure that MBEs, WBEs, and small businesses are used whenever possible as sources of supplies, construction, and services," including establishment of "an annual 'fair share' objective for MBE and WBE use."

General Services Administration

41 C.F.R. §§105-71.121(j), 105-72.302(j) (1994): General Services Administration (GSA) Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments "encourage" recipients to use minority-owned and women-owned banks.

41 C.F.R. §105-72.504(b) (1994):[17] All recipients of GSA grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations are to establish written procurement procedures to provide for "positive efforts . . . to utilize small businesses, minority-owned businesses, and women's business enterprises, whenever possible" and to ensure that such businesses "are utilized to the fullest extent practicable."

48 C.F.R. §552.219-9 (1994): Small business subcontracting plan prescribed for General Service Administration contracts requires "[g]oals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business concerns, small disadvantaged business concerns and, if an individual contract is involved, women-owned small business concerns as subcontractors."

Health and Human Services

42 U.S.C.S. §3027: State plans for grant program on aging "shall provide assurances that special efforts will be made to provide technical assistance to minority providers of services."

42 U.S.C.S. §3035d: Provides that the Assistant HHS Secretary "shall carry out, directly or through grants or contracts, special training programs and technical assistance designed to improve services to minorities" under the Older Americans Act.

42 C.F.R. §52c.2 (1994): Minority Biomedical Research Support Program makes grants to higher educational institutions with 50 percent or other "significant proportion" of ethnic minority enrollment.

42 C.F.R. §62.57(h) (1994): Among factors considered in making certain State loan repayment grants to State applicants is "[t]he extent to which special consideration will be extended to medically underserved areas with large minority populations."

42 C.F.R. §64a.105(d)(2) (1994): "Preferred service" for purposes of obligated service requirement for mental health traineeships includes service in any public or private nonprofit entity serving 50 percent or more specified racial or ethnic minorities.

45 C.F.R. §§74.12(h), 92.21(h), 602.21(h) (1994): Department of Health and Human Services (HHS) general administration requirements "encourage" grantees and subgrantees to use minority banks at least 50% owned by minority group members. Similar provisions may be found at 45 C.F.R. §§1050.13, 1157.21, 1174.21, 1183.21, and 1234.21.

45 C.F.R. §1010.30-2(c)(1),(2) (1994): Civil rights program requirements of Community Service Act grantees provide that the Office of Human Rights will consider when selecting for compliance reviews "[t]he relative disparities between the percentage of eligible minority or female populations, if appropriate, receiving program benefits and the percentage of eligible minorities or females, if appropriate, in the eligible population."

48 C.F.R. §319.705-4(d)(1)(ii) (1994): HHS small disadvantaged business subcontracting regulation require contracting officer to insure that "[s]ubcontracing goals for small and small disadvantaged business concerns are specifically set forth in each contract or modification over the statutory thresholds . . ." See also §§319.705-6, 319.706.

Housing and Urban Development

24 C.F.R. §84.22(j):[18] All recipients of Department of Housing and Urban Development (HUD) grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations "shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members)." Same provisions apply to use of lump-sum grants under this program, 24 C.F.R. §84.82(c)(2), a related HUD state and

local grant and cooperative agreement program, 24 C.F.R. §85.21(h) (1994), and comprehensive planning assistance grants at 24 C.F.R. §600.410(k)(2) (1994).

24 C.F.R. §84.44(b): All recipients of HUD grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations are to establish written procurement procedures to provide for "positive efforts . . . to utilize small businesses, minority-owned businesses, and women's business enterprises, whenever possible" and to ensure that such businesses "are utilized to the fullest extent practicable." Same provisions apply to procurement standards used by recipients for the procurement of supplies, equipment, real property and other services with federal funds. 24 C.F.R. §84.84(e)(2)(i).

24 CFR APPENDIX A and B to SUBTITLE A §425(a)(8) (1994): Rating factors for award of certain HUD Public and Indian Housing Home Ownership funds to accord maximum 10 points for "[t]he extent to which the applicant demonstrates a firm commitment to promoting the use of minority business enterprises and women-owned businesses, especially resident-owned businesses" . . . "but may not include awarding contracts solely or in part on the basis of race or gender."

24 F.F.R. §572.320(e) (1994): HUD will assign points in rating applications for certain single-family home ownership grants based on "[t]he extent to which the applicant demonstrates a firm commitment to promoting the use of minority business enterprises and women-owned businesses" . . . "but may not include awarding contracts solely or in part on the basis of race or gender."

24 C.F.R. §§850.33(o), .35(b), .39(b)(9) (1994): Applications for Section 8 Housing Assistance Programs and Section 202 Direct Loan Program must include a "description of minority and women representation in the ownership of the project" and "a minority and women-owned business development plan which shall contain specific and measurable goals and an affirmative strategy to promote awareness and participation of such businesses in the contracting and procurement activities generated by the project." In addition "[m]ore favorable consideration will be given to projects with a higher percentage of minority or women representation in the ownership of the project."

24 C.F.R. §968.110(b) (1994): Public housing modernization program requirements include: "the [public housing authority] shall take every action to meet Departmental goals for awarding modernization contracts to minority business enterprises. The PHA shall take appropriate affirmative action to assist women's business enterprises."

24 C.F.R. §968.320(d)(7)(vii): Public Housing Modernization program includes requirement of comprehensive plan certifying that "[t]he PHA has adopted the goal of awarding a specified percentage of the dollar value of the total of the modernization contracts, to be awarded during subsequent FFYs, to minority business enterprises and will take appropriate affirmative action to assist resident-controlled and women's business enterprises . . ."

48 C.F.R. §2419.901 (1994): Department of Housing and Urban Development (HUD) Office of Socially Disadvantaged Business Utilization is responsible for "Department-wide goals" for contract awards "to women-owned businesses" and monitoring and reporting with respect thereto.

48 C.F.R. §2426.101 (1994): States the policy of the Department of Housing and Urban Development "to foster and promote Minority Business Enterprise (MBE) participation in its procurement program, to the extent permitted by law and consistent with its primary mission." For this purpose, "minority" is defined as "Black Americans, Hispanic Americans, Native Americans, Asian Pacific Islanders and Asian Indian Americans, and Hasidic Jewish Americans." *See also* 48 C.F.R. §2452.219-70 (Small Business and Small Disadvantaged Business Subcontracting Plan to include percentage goals).

Interior

25 C.F.R. §276.3(c) (1994): Uniform administrative requirements for grants by the Bureau of Indian Affairs "encourage" grantees to use minority banks.

43 C.F.R. §§12.61(h), 12.922(j) (1994): Department of Interior Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments "encourage" grantees and subgrantees to use minority banks at least 50% owned by minority group members.

43 C.F.R. §12.944(b) (1994): Department of Interior procurement requirements provide that "[i]t is EPA policy to award a fair share of subagreements to small, minority, and women's businesses. The recipient must take affirmative steps to assure that small, minority, and women's businesses are used when possible as sources of supplies, construction, and services."

43 C.F.R. §27.6 (1994): Affirmative action plan requirements for recipient of financial assistance from the Department of Interior include "specific goals and specific timetables to which its efforts will be directed, to correct all deficiencies and thus to increase materially the participation of minorities and women in all aspects of its operation."

43 C.F.R. §1419.901 (1994): Department of Interior socioeconomic program regulations state that "[a]nnual goals for contract awards to women-owned businesses shall be established as prescribed in 1419.202-70."

Justice

P.L. 103-322, 108 Stat. 1796, 1860, §31001 (1994): Not less than 10 percent of the amount paid from the Local Government Fiscal Assistance Fund created by the Violent Crime Control Act shall be expended on contracts or subcontracts with socially and economically disadvantaged and women-owned small businesses, historically Black colleges and universities, and higher educational institutions with more than 40 percent hispanic student enrollment.

28 C.F.R. §O.18a (1994): Provides that Director of the Office of Small and Disadvantaged Business Utilization within the Department of Justice shall "[e]stablish Department goals for the participation by small businesses, including small businesses owned and controlled by socially and economically disadvantaged individuals, in Department procurement contracts."

28 C.F.R. §42.206 (c)(1) (1994): Recipients of Criminal Justice Improvement Act funds shall be selected for post-award compliance reviews in part on the basis of "[t]he relative disparity between the percentage of minorities, or women, in the relevant labor market, and the percentage of minorities, or women, employed by the recipient."

28 C.F.R. §66.21(h) (1994): Uniform requirements by the Justice Department for administration of state and local grants and cooperative agreements "encourage" grantees and subgrantees to use minority banks at least 50 percent owned by minority groups.

Labor

29 U.S.C.S. §718b(b): Directs the Commissioner of the Rehabilitation Services Administration to develop an "outreach" policy for "recruitment of minorities into the field of vocational rehabilitation, counseling and related disciplines" and for "financially assisting Historically Black Colleges and Universities, Hispanic-serving institutions of higher education, and other institutions of higher education whose minority enrollment is at least 50 percent."

29 U.S.C.S. §771a: Authorizes grants for personnel projects relating to training, traineeships and related activities to historically Black colleges and universities and other higher educational institutions with at least 50% minority student enrollment.

20 C.F.R. §627.430(g) (1994): Recipients and subrecipients of Job Training Partnership Act funds are "encouraged to use minority-owned banks (a bank which is owned at least 50 percent by minority group members)."

20 C.F.R. §653.111 (a), (b)(3) (1994): State agencies participating in the administration of Services for Migrant and Seasonal Farmworkers, under the United States Employment Service, are to develop affirmative action plans which contain "a comparison between the characteristics of the staff and the workforce and determine if the composition of the local office staff(s) is representative of the racial and ethnic characteristics of the workforce in the local office service area(s)." "On a statewide basis, staff representative of the racial and ethnic characteristics in the workforce shall be distributed in substantially the same proportion among (1) all 'job groups' . . . and (2) all offices in the plan(s)."

29 C.F.R. §§89.52(d), 89.72(d), 95.22(j), 97.21(h), 1470.21(h) (1994): Administrative requirements for Department of Labor (DOL) Project Grants to State and Local Governments, higher educational institutions, and other programs, "encourage" grantees to use minority banks.

29 C.F.R. §95.44(b) (1944):[19] All recipients of DOL grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations are to establish written procurement procedures to provide for "positive efforts . . . to utilize small businesses, minority-owned businesses, and women's business enterprises, whenever possible" and to ensure that such businesses "are utilized to the fullest extent practicable."

48 C.F.R. Part 2919, §1919.202-70 (1994): Small disadvantaged business program regulations of the Department of Labor require "Heads of Contracting Activities [to] develop annual goals for each category of small business and small disadvantaged business utilization programs, which shall include projected acquisition awards to small businesses, minority businesses, 8(a) concerns, women-owned businesses, and HBCU."

National Aeronautics and Space Administration

42 U.S.C.S. §2473b: NASA Administrator is required to annually establish a goal of at least eight percent of the total value of prime and subcontracts awarded in support of authorized programs to be made to small disadvantaged business and minority educational institutions.

48 C.F.R. §1819.705-4 (1994): Small disadvantaged business subcontracting regulation of the National Aeronautics and Space Administration (NASA) states that "NASA contracting officers may accept as an element of a subcontracting plan the prime contractor's intention to use total small business, small disadvantaged business, women-owned business, historically black college and university, or minority educational institution set-asides in awarding subcontracts so long as such set-asides are competitive and awards

are made at reasonable prices." See also §1819.7003 (agency goal of 8 percent of total value of prime and subcontracts for disadvantaged businesses); and §1815.219-76 (prescribed clause for NASA contracts incorporating 8 percent goal for "small business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals (including women), Historically Black Colleges and Universities, and minority education institutions").

Small Business

41 U.S.C.S. §417a: "Each Federal agency shall report to the Office of Federal Procurement Policy the number of small businesses owned and controlled by women and the number of small business concerns owned and controlled by socially and economically disadvantaged businesses, by gender, that are first time recipients of contracts from such agency."

13 C.F.R. §115.30(c) (1994): The Small Business Administration (SBA) Surety Bond Guarantee program indemnifies sureties for 90 percent of losses incurred on certain bonds "issued on behalf of a small concern owned and controlled by socially and economically disadvantaged individuals," including "Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Subcontinent Asian Americans, and other minorities or any other individual found to be disadvantaged by SBA . . ."

13 C.F.R. 125.4 (1994): Small Business Administration requirement "[t]hat separate goals for the participation by small business concerns and small disadvantaged business in Government procurement contracts and subcontracts thereunder shall be established annually by the head of each Federal agency following consultation with the SBA, and that the Administrator of the Office of Federal Procurement Policy shall establish the goal whenever there is disagreement between a Federal agency head and the SBA . . ."

13 C.F.R. §143.21(h) (1994): Grantees and subgrantees under SBA program of grants and cooperative agreements with state and local governments are "encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members)."

State Department and Foreign Affairs

22 U.S.C.S. §4852(d): Not less than 10 percent of the amount appropriated for diplomatic construction or designed projects each fiscal year shall be allocated to the extent practicable for contracts with American minority contractors.

22 U.S.C.S. §4864(e): Not less than 10 percent of the amount of funds obligated for local guard contracts for Foreign Service buildings shall be allocated to the extent practicable for contracts with minority small business contractors.

P.L. 103-306, 108 Stat. 1608, §555 (1994): Provides for a 10 percent set-aside of the aggregate amount of certain appropriations to the Agency for International Development—the Development Assistance Fund, Population, Development Assistance, and the Development Fund for Africa—for socially and economically disadvantaged U.S. businesses and private voluntary organizations, historically black colleges and universities, and higher educational institutions with more than 40 percent Hispanic student enrollment.

Government procurement agreements. The United States has entered into procurement obligations under the North American Free Trade Agreement (NAFTA) (Chapter Ten) and the Uruguay Round Agreement on Government Procurement under which the United States agrees, among other things, to accord national treatment to products, services, and suppliers of other parties with respect to government contracts entered into by named agencies above certain threshold amounts. In both the NAFTA and the Uruguay Round Agreement (as well as in earlier trade agreements), the United States has taken a reservation stating that agreement obligations will not apply to set asides on behalf of small and minority businesses (NAFTA, Chapter 10, Annex 1001.2b, General Notes, Schedule of the United States, Note 1; Uruguay Round Agreement on Government Procurement, Annex of the United States, General Note 1).

22 C.F.R. §145.44(b) (1944): All recipients of Department of State grants and cooperative agreements awarded to institutions of higher education and other non-profit organizations are to establish written procurement procedures to provide for "positive efforts . . . to utilize small businesses, minority-owned businesses, and women's business enterprises, whenever possible" and to ensure that such businesses "are utilized to the fullest extent practicable." Same provisions apply pursuant to uniform administrative requirements prescribed by 22 C.F.R. 518.44(b) (1994).

48 C.F.R. §652.219-70 (1994): Clause in Department of State contracts requiring disadvantaged and minority subcontracting goals. *See also* 48 C.F.R. §§619.201(b), 619.708-70.

48 C.F.R. §706.302-71 (1994): Agency for International Development (AID) requirement that "[e]xcept to the extent otherwise determined by the Administrator, not less than ten percent of amounts made available for development assistance and for assistance for famine recovery and development in Africa shall be used only for activities of disadvantaged enterprises," which includes minorities and women.

48 C.F.R. Part 419 (1994): Socioeconomic Program policies of AID state that "[w]here practicable and desirable, small business and minority goals will be established" for procuring activities (§719.270(e)); and mandates that the AID Office of Small Disadvantaged Business develop "a plan of operation designed to increase the share of contracts awarded to small business concerns, including small minority business enterprises" (§719.271-2(6)). Disadvantaged enterprises include socially and economically disadvantaged concern, historically black colleges and universities and higher educational institutions with more than 40 percent Hispanic student enrollments (§§726.201, 752.226-1,2).

TRANSPORTATION

49 U.S.C.S. §47107(e)(1): Requires federally aided airport operators to insure "to the maximum extent practicable" that at least 10% of contracts for consumer services to the public be placed with "small business concerns owned and controlled by a socially and economically disadvantaged individual . . ." The statute incorporates the Small Business Act definition of that term "except that women are presumed to be socially and economically disadvantaged." (49 U.S.C.A. §47113(a)(2)).

P.L. 102-240, 105 Stat. 1914, 1919, §1003(b) (1991): "Except to the extent that the Secretary [of Transportation] determines otherwise, not less than 10 percent of the amounts authorized to be appropriated" under various Titles of the Intermodal Surface Transportation Act of 1991 "shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals;" the statute incorporates the SBA presumption in favor of racial minorities (15 C.F.R. §637(d) and further provides that "women shall be presumed to be socially and economically disadvantaged individuals for purposes of this subsection."

49 C.F.R. Part 23, subpart C (1994): Minority-business enterprise program requirements for recipients and applicants under Department of Transportation financial assistance programs. DOT approved MBE affirmative action programs are to include recipient's "overall goals and a description of the methodology to be used in establishing them" (§23.43) and separate "contract goals for firms owned and controlled by minorities and firms owned and controlled by women, respectively" (§23.45). Rules for counting MBE participation toward meeting applicable goals (§23.47). The regulations further provide that a prime contractor unable to satisfy a particular contract's minority goal may nevertheless be awarded the contract if its "best efforts" were made to achieve the goal (§§23.45(g)(2)(ii), 23.45(h)). Several elements are considered in determining whether a prime contractor failing to meet its goal in fact made a good faith effort to comply (§23.45, app. A).

49 C.F.R. Part 23, subpart D (1994). Implementation of §105(f) of the Surface Transportation Assistance Act of 1982. DOT regulations establish a rebuttable presumption that women, Black-Americans, Hispanics, Native Americans, Asian-Pacific Americans, Asian-Americans and those individually certified under §8(a) of the Small Business Act are socially and economically disadvantaged (§23.62). Recipients of surface transportation funds must establish overall goal for disadvantaged business participation on funded projects (§23.64) and, absent a waiver by the DOT Secretary, must insure that at least ten percent of monies expended on federally assisted projects go to such enterprises (§§23.61(a), 23.63). "If a recipient fails to meet an approved goal, it shall have the opportunity to explain to the Administrator of the concerned Department element why the goal could not be achieved and why meeting the goal was beyond the recipient's control," failing which the recipient is subject to "appropriate remedial sanction" (§23.68).

49 C.F.R. §23.95 *et seq.* (1994): Minority business enterprise participation standards under §511(A)(17) of the Airport and Airway Improvement Act of 1982 provide that sponsors of airport improvement projects "shall establish an overrall goal for the participation of DBE's" as concessionaires and "[t]o the extent practicable, shall seek to obtain DBE participation in all types of concession activities." "Where not prohibited by state or local law and determined . . . to be necessary to meet DBE goals, procedures to implement DBE set-asides shall be established. The DBE plan shall specify the concessions to be set-aside."

49 C.F.R. §265.13 (1994): Federal Railroad Administration regulations barring discrimination in federally assisted programs require "where there are deficiencies based on past practices, and with respect to future plans for hiring and promoting employees or awarding contracts, the development of specific goals and timetables for the prompt achievement and maintenance of full opportunities for minority persons and MBEs with respect to programs, projects and activities subject to this subpart.

Veterans Affairs

38 C.F.R. §43.21(h) (1994): Department of Veterans Affairs Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

"encourage" grantees and subgrantees to use minority banks at least 50% owned by minority group members.

48 C.F.R. §819.202-5(c) (1994): Department of Veterans Affairs regulations require "all acquisition activities [to] submit information and procurement preference goals" for "minority direct business awards," "women-owned business awards," and "[s]ubcontracts to be awarded to small disadvantaged business concerns."

Other

36 C.F.R. Part 906 (1994): Affirmative action policy and procedures, including goals and timetables for women and minorities, "to assure full minority participation in activities and benefits that result from implementation of the Pennsylvania Avenue Plan—1974."

36 C.F.R. §1207.21(h) (1994): National Archives and Records Administration Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments "encourage" grantees and subgrantees to use minority banks at least 50% owned by minority group members.

44 C.F.R. §§13.21(h) (1994): Federal Emergency Management Agency Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments "encourage" grantees and subgrantees to use minority banks at least 50% owned by minority group members.

EQUAL EMPLOYMENT OPPORTUNITY LAWS

The evolution of federal law and policy regarding affirmative action in employment may be traced to a series of executive orders dating to the 1960's which prohibit discrimination and require affirmative action by contractors with the federal government. The Office of Federal Contract Compliance Programs, an arm of the U.S. Department of Labor, currently enforces the E.O. 11246, as amended, by means of a regulatory program requiring larger federal contractors, those with procurement of construction contracts in excess of $50,000, to make a "good faith effort" to attain "goals and timetables" to remedy underutilization of minorities and women. Another early Executive Order, No. 11478, was a precursor to the 1964 Civil Rights Act and mandates affirmative action hiring and employment policies by all federal executive department and agencies.

Public and private employers with 15 or more employees are also subject to a comprehensive code of equal employment opportunity regulation under Title VII of the 1964 Civil Rights Act.[20] Except as may be imposed by court order to remedy "egregious" violations of the law, or by consent decree to settle pending claims, however, there is no general statutory obligation on employers to adopt affirmative action measures. But the EEOC has issued guidelines to protect employers and unions from charges of "reverse discrimination" when they voluntarily take to correct the effects of past discrimination.[21] Federal departments and agencies, by contrast, are required to periodically formulate affirmative action plans for their employees and a "minority recruitment program" to eliminate minority "underrepresentation" in specific federal job categories.

Section 717 of 1972 Amendments to Title VII of the 1964 Civil Rights Act empowers the Equal Employment Opportunity Commission to enforce nondiscrimination policy in federal employment by "necessary and appropriate" rules, regulations, and orders and through "appropriate remedies, including reinstatement or hiring of employees, with or without backpay."[22] Each federal department and agency, in turn, is required to prepare annually a "national and regional equal employment opportunity plan" for submission to the EEOC as part of "an affirmative program of equal employment opportunity for all . . . employees and applicants for employment."[23]

Section 717 was reinforced in 1978 when Congress enacted major federal civil service reforms including a mandate for immediate development of a "minority recruitment program" designed to eliminate "underrepresentation" of minority groups in specific federal job categories.[24] The EEOC and Office of Personnel Management have issued rules to guide implementation and monitoring of minority recruitment programs by individual federal agencies. Among various other specified requirements, each agency plan "must include annual specific determinations of underrepresentation for each group and must be accompanied by quantifiable indices by which progress toward eliminating underrepresentation can be measured."[25]

In addition, the following statutes and regulations relate to employment policies of the federal government or under federal grant and assistance programs:

5 U.S.C. §4313(5): Performance appraisal in the Senior Executive Services to take account of individuals' "meeting affirmative action goals, achievement of equal employment opportunity requirements, and compliance with merit principles. . ."[26]

5 U.S.C. §7201: Establishes a "Minority Recruitment Program" for the Executive Branch and directs each Executive agency, "to the maximum extent possible," to "conduct a continuing program for the recruitment of members of minorities for positions in the agency . . . in a manner designed to eliminate underrepresentation of minorities in the various categories of civil service employment within the Federal service, with special efforts directed at recruiting in minority communities, in educational institutions, and from other sources from which minorities can be recruited."

22 U.S.C. §4141(b): Establishes the Foreign Service Internship Program "to promote the Foreign Service as a viable and rewarding care opportunity for qualified individuals who reflect the cultural and ethnic diversity of the United States. . ."

29 U.S.C. §1781(a): "A contractor subject to the affirmative action obligations of Executive Order 11246 . . . may establish or participate in training programs pursuant to this section . . . which are designed to assist such contractors in meeting the affirmative action obligations of such Executive Order."

42 U.S.C. §282(h): The Secretary of HHS, and the National Institutes of Health, "shall, in conducting and supporting programs for research, research training, recruitment, and other activities, provide for an increase in the number of women and individuals from disadvantaged backgrounds (including racial and ethnic minorities) in the fields of biomedical and behavioral research."

45 U.S.C. §§797b, 907, 1004: First right to hire a certain previously separated or furloughed railroad employees subject to exceptions for vacancies covered by "(1) an affirmative action plan, or a hiring plan designed to eliminate discrimination, that is required by Federal or State statute, regulation, or Executive order, or by the order of a Federal court or agency, or (2) a permissible voluntary affirmative action plan."

Executive Order 11246: Prohibits employment discrimination because of race, color, religion, sex, or national origin by nonexempt federal government contractors and requires inclusion of an affirmative action clause in all covered federal contracts for procurement of goods and services. Pursuant to Labor Department regulations, larger federal contractors are required to adopt goals and timetables to correct "underutilization" of minorities and women. See 41 C.F.R. Part 60 (discussed *infra*).

Executive Order 11478: States the policy of the United States government "to provide equal opportunity in Federal employment for all persons, to prohibit discrimination because of race, color, religion, sex, national origin, handicap, or age, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive agency and department."

Federal Regulations

5 C.F.R. Parts 729, 720 APP. (1994): Affirmative Employment Programs of the Office of Personnel Management and Guidelines for Development of A "Minority Recruitment Program" to Implement 5 U.S.C. §7201.

14 C.F.R. §152.407, .409, .411 (1994): All grantees, sponsors, or planning agencies, with 50 or more aviation employees who participate in projects which receive federal airport aid funds are required to maintain "affirmative action" plans containing "goal and timetables" derived from "[a] comparison . . . of the percent of minorities and women in the employer's present aviation workforce . . . with the percent of minorities and women . . . in the total workforce" in the SMSA or surrounding area.

23 C.F.R. §230.111(1994): On-the-job training program rules for federally assisted highway construction projects provide that "[t]he Washington Headquarters shall establish and publish annually suggested minimum training goals . . . based on the Federal-aid apportioned amounts and the minority population, A State will have achieved its goal if the total number of training slots . . . equals or exceeds the State's suggested minimum annual goal."

23 C.F.R. Part 230 APP. A (1994): State Highway Agency Equal Employment Opportunity Programs. Affirmative action plans are to set "specific, measurable, attainable hiring and promotion goals, with target dates, in each area of underutilization" of women and minorities.

29 C.F.R. §§30.3-30.8 (1994): Affirmative action requirements of the Department of Labor (DOL) for registered state apprenticeship programs include "goals and timetable for women and minorities." "Compliance with these requirements shall be determined by whether the sponsor has met its goals within it timetables, or failing that, whether it had made good faith efforts to meet its goal and timetables."

32 C.F.R. Part 191, §191.5(a)(8) (1994): DOD Civilian Equal Employment Opportunity Program establishes affirmative action guidelines and procedures for all DOD components and directs the Assistant Secretary of Defense to "[e]nsure that realistic goals that provide for significant continuing increases in the percentages of minorities, women, and people with disabilities in entry, middle, and higher grade positions in all organizations and occupations are set and accomplished until the overall DOD objective is met and sustained."

34 C.F.R. Part 100 APPENDIX VII.C (1994): Department of Education guidelines for eliminating discrimination in vocational education programs provide that "[w]henever the Office for Civil Rights finds that in light of the representation of protected groups in the relevant labor market

there is a significant underrepresentation or overrepresentation of protected group persons on the staff of a vocational education school or program, it will presume that the disproportion results from unlawful discrimination. This presumption can be overcome by proof that qualified persons of the particular race, color, national origin or sex, or that qualified handicapped persons are not in fact available in the relevant labor market."

40 C.F.R. Part 8 (1994); Environmental Protection Agency (EPA) equal employment opportunity and affirmative action compliance requirements issued pursuant to E.O. 11246 as applied to EPA contracts and EPA assisted construction contracts.

41 C.F.R. Part 60 (1994): Sets forth the body of administrative rules issued by the Office of Federal Contract Compliance Programs within the Department of Labor to enforce the affirmative action requirements of E.O. 11246 on federal procurement and construction contractors. All contractors and subcontractors with federal contracts in excess of $10,000 are prohibited by the Executive Order from discriminating and required to take affirmative action in the employer of minority groups and women. Federal contractors and subcontractors with 50 or more employees and government contracts of $50,000 or more must develop written affirmative action compliance programs for each of their facilities. OFCCP rules direct these larger contractors to conduct a "utilization analysis" of all major job classifications and explain any underutilization of minorities and women by job category when compared with the availability of qualified members of these groups in the relevant labor area. Based on this analysis, the contractor's affirmative action plan must set forth appropriate goals and timetables to which the contractor must direct its "good faith efforts" to correct deficiencies. In addition, OFCCP has established nationwide hiring goals of 6.9 percent for women in construction, and regional and local goals for minorities in construction, which are set out in an appendix to the agency's affirmative action in construction regulations. 41 C.F.R. 60-4.

48 C.F.R. 22.804 (1994): Affirmative action program under Federal Acquisition Regulations requires written affirmative action plans of federal nonconstruction prime and subcontractors with 50 or more employees that comply with DOL regulations to assure equal opportunity in employment to minorities and women.

48 C.F.R. 52.222-23, 52.222-27 (1994): Prescribes clause for inclusion of federal contracts that requires "[g]oals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area" and "to make a good faith effort to achieve each goal under the plan in each trade in which its has employees."

48 C.F.R. 922.804-2 (1984): Department of Energy regulations implementing the affirmative action plan requirements of E.O. 11246.

It is hoped that this is of assistance to you.

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FOOTNOTES

[1] As per discussion with your staff, however, we have not included federal civil rights statutes, such as Title VI of the 1964 Civil Rights Act and related laws, that place nondiscrimination requirements upon recipients of federal financial assistance without mandating racial, ethnic, or gender preferences *per se*. Nor are regulations of the various federal departments or agencies under Title VI included for the similar reason that, although they almost uniformly authorize "affirmative action" by recipients to "overcome the effects of prior discrimination" or otherwise, they do not explicitly define the obligation in terms of "goals" or "setasides," or other forms of preference for minorities or women. *See e.g.* 15 C.F.R. 15.3(b)(6)(1994) (Department of Agriculture Title VI regulations). Also beyond the scope of this study are the remedy provisions in federal laws like Title VII of the 1964 Civil Rights Act (42 U.S.C. §2000e-5(g)), or the Fair Housing Act, 42 U.S.C. §3613, which authorize "affirmative" relief by the courts in discrimination actions, and have been the basis for judicial preference orders in certain circumstances, but do not explicitly direct the imposition of "timetables, goals, set-asides, and quotas" on their face.

[2] 42 U.S.C. §2000e-16(b).

[3] 5 U.S.C. §7201.

[4] 15 U.S.C. §637(a).

[5] 15 U.S.C. §637(a)(5).

[6] 13 C.F.R. §124.105(b).

[7] The statute, 15 U.S.C. §637(a)(6)(A), defines economic disadvantage in terms of: socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others who are not socially disadvantaged, and such diminished opportunities have precluded or are likely to preclude such individuals from successfully competing in the open market.

[8] 15 U.S.C. §637(d). *See also* 13 CFR §124.106.

[9] 15 U.S.C. §637(d). Criteria set forth in the regulations permit an administrative determination of socially disadvantaged status to be predicated on "clear and convincing evidence" that an applicant has "personally suffered" disadvantage of a "chronic and substantial" nature as the result of any of a variety of causes, including "long term residence in an environment isolated from the mainstream of American society," with a negative impact "on his or her entry into the business world." 13 C.F.R. §124.105(c).

[10] P.L. 100-656, §502, 102 Stat. 3887, codified at 15 U.S.C. §644(g)(1).

[11] *See e.g.* 49 C.F.R. §§23.64(e), 23.65 (setting forth waiver criteria for the Department of Transportation).

[12] 15 U.S.C. §637(a)(5).

[13] *See* 49 C.F.R. Pt. 23, Subpt. D, App. C.

[14] P.L. 103-355, 108 Stat. 3243, 3374, §7106 (1994).

[15] As amended by §3(a) of the Resolution Trust Completion Act, P.L. 103-204, 107 Stat. 2369, 2375 (1993).

[16] Opinions may reasonably differ as to whether federal programs that exclusively aid "historically black colleges and universities" or other minority institutions are a form of racial "preference." Without expressing any view on that policy issue, however, such programs are included here only because they employ racial and ethnic criteria or classification as the basis for distribution of federal benefits and, accordingly, at least arguably fall within the ambit of your inquiry.

[17] 59 Fed. Reg. 47279 (September 15, 1994).

[18] The provisions listed in 24 C.F.R. Part 84 are not yet codified by may be found at 59 Fed. Reg. 47010 et seq. (September 13, 1994).

[19] 59 Fed. Reg. 38281 (July 27, 1994).

[20] 42 U.S.C. §§2000e *et seq.*

[21] 29 C.F.R. Part 1608 (the guidelines state the EEOC's position that when employers voluntarily undertake in good faith to remedy past discrimination by race- or gender-conscious affirmative action means, the agency will not find them liable for reverse discrimination).

[22] 42 U.S.C. §2000e-16(b)

[23] 42 U.S.C. §2000e-16(b)(1).

[24] 5 U.S.C. §7201.

[25] 5 U.S.C. §720.205(b)(1991).

[26] As amended by P.L. 103-424, 108 Stat. 4361, §6 (1994).

Mr. DOLE. We have had a lot of requests for the CRS report, not just from Members of Congress on both sides of the aisle, but from a lot of people who would like to study it.

I hope, in the final analysis, that this would be a matter that we can discuss again in a bipartisan way.

I believe my civil rights record is impeccable, and I believe I have some credibility in this area. I am not out to destroy anybody or devastate anybody. I am out to take another look at what America should be. Can we have a color-blind society, which I think would meet the hopes and aspirations of 90 to 95 percent of all Americans? Some may want special rights and preferences. There may be some cases when we look over this document with 160-some different laws and regulations that have been compiled, where there may be some exception. There are some that should be continued. But certainly we ought to review it and look at it.

As I said earlier, unless I am totally wrong, we ought to take another look at the Executive order signed by President Johnson and see if it has been distorted, magnified, or whatever. The goal should be nondiscrimination. That was the original intent of it. We ought to look at the Small Business Administration 8(a) program. It has been abused, no doubt about it. A lot of people have made a lot of money by finding someone in a minority group to sort of front for the effort. I do not believe that is right. I do not believe that is fair. So we have asked for hearings. We will be reviewing this process, hopefully, on a bipartisan basis, not only in the Senate but in the House. I assume there will be further discussion of this as we come to the floor with a tax bill that has been reported out by the Senate Finance Committee, which takes a step, I believe, in the right direction toward eliminating preferences.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

AFFIRMATIVE ACTION

Mr. SIMON. Mr. President, I hope we can work out some bipartisan efforts here on this issue, but let me add that there is a lot of talk attacking affirmative action that is just nonsense. I see Senator DOLE nodding that he is in agreement.

Affirmative action can be a very good thing. It is like religion—it can be abused. It does not mean religion is wrong. But regarding affirmative action, if there is a company that hires 1,000 people and they all happen to be white males, I do not think we ought to have to prove that there is some discrimination. We ought to be able to say to that company that there ought to be some diversity. You ought not to have to lower your standards at all. But there ought to be some minorities, there ought to be some disabled people and some women in your work force.

The case at hand—and I have to say I do not remember all of the details—but a high school which has a majority of minority students there in the business section of that high school had nine teachers, all of whom happened to be white.

They had to reduce the number of teachers. The two teachers who had the least amount of seniority both happened to be hired the same day. One

was white and one was black. That school made a decision on the basis of race that they felt it was important to have minority representation in the business section of this school.

I am not saying that their decision was necessarily right, but I think it is an understandable decision and I think the situation has been distorted. I think there are times when there should be some agreement.

I dealt with a city in Illinois that had some civil rights violence. It was 40 percent black. They did not have a single black on the police force or the fire department. We worked out an agreement that the next person they would hire would be someone who was African-American. I think that just makes sense. We did not say, "Lower the quality," or anything. That is affirmative action. I think it makes sense.

I am sure BOB DOLE, Senator FAIRCLOTH, Senator BAUCUS, like PAUL SIMON, you try to have some diversity in your office. You do not lower standards.

Two of the lawyers in my office are Jayne Jerkins and Carlos Angulo. I will put them up against any staff members in the U.S. Senate. One happens to be African-American; one happens to be Hispanic-American. They are just quality people.

But I have consciously in my office tried to have some diversity. And I think that is a healthy thing. That is affirmative action. It does not mean you lower standards or anything else.

So I think before we do too much attacking of affirmative action, let us recognize it can be a very good thing. Can it be abused? Yes, like any good things can be abused. But we should seek, as part of the American ideal, that we are going to have opportunities here for all Americans. I think that has to continue.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. Mr. President, I thank my colleague from Illinois. I know of his feelings in this area.

I think, in fact, we want to do the same thing he has already suggested through nondiscrimination and penalties for discrimination. I mean, if you discriminate there ought to be punishment.

Al Shanker of the American Federation of Teachers came out against the Justice Department's position on the Piscataway case. In fact, he has written a column about it. There was not any evidence of any discrimination by the school board. Next time, it could be a black person, a black woman or black man, who may lose their job.

So that is why I say if somebody discriminates, to me that is one thing. If somebody has 1,000 white males, as the Senator from Illinois suggested, and there were good Asian, Hispanic, and black applicants, there ought to be at least some presumption or some evidence that someone may have discriminated, and we ought to go after that person if there is any evidence.

We are talking about the same result. We may have a different way of approaching it.

But I think, in any case, when we have had laws on the books for 10, 15, 20, 25, 30 years around here, it might be time to go back and take a look to see what has worked, what has not worked, see if they have worked at all, or if they have been misused or abused, taken advantage of by some people who may not have been in any of those special groups. That has happened, too.

So I hope we can discuss this in a very reasonable way, because it is a very, very touchy subject. In the past, you know, if you had two equally qualified people, you used to flip a coin. One might be black, one might Asian; or one Hispanic, one white. You would say, "Well, somebody has to go." You flipped a coin. And we have done a lot of that. I think we can all look back at the time we flipped coins. Sometimes we won; sometimes we lost.

In any event, it is a very important debate. There has been a lot of statements made that I think go over the edge; probably some from each side that go over the edge. That is not my purpose. I hope that, as we delve into this on the committee level, we will have a good discussion and maybe get some better results.

I yield the floor.

Mr. BAUCUS addressed the Chair.

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

Mr. BAUCUS. Mr. President, what is the pending business?

The PRESIDING OFFICER. H.R. 889 is the pending business.

Mr. BAUCUS. Mr. President, I ask unanimous consent to speak as if in morning business for not to exceed 10 minutes.

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

DOUG SWINGLEY WINS THE IDITAROD TRAIL SLED DOG RACE

Mr. BAUCUS. Mr. President, let me read from a story that appeared on today's AP wire:

> A quiet "yahoo" was the first thing Montana musher Doug Swingley uttered when he arrived at Nome, winning the Iditarod Trail Sled Dog Race in record time. Swingley is the first non-Alaskan winner of the race in 23 years.

Well, today, many Montanans are echoing that "yahoo" heard up north.

We are saying yahoo for Doug Swingley and the hard work, determination and endurance that helped him win.

We are saying yahoo for the family and friends—particularly his wife Nelda—who backed Doug up and helped him get to where he is today.

And we are even saying yahoo for Doug's lead dog, Elmer, and what is almost certainly the fastest team of sled dogs in the world.

They have all made Montana proud. And to Doug, his family and his friends, we say congratulations.

Yet I doubt there is a yahoo to be heard anywhere in the State of Alaska today. And that includes my good friends and colleagues from Alaska, Senators STEVENS and MURKOWSKI.

But I would urge them to not take this loss too hard. It is never easy to keep up with Montana. Perhaps all those cold, dark Alaska winters have just slowed the Alaska mushers down. And maybe, if Alaska wants to stay competitive in future Iditarods, they should send their mushers to Montana to train. After all, it is warmer. But we usually have plenty of snow. And the sun even shines.

Despite this loss, Senators STEVENS, MURKOWSKI and the people of Alaska can be justly proud of the rich tradition and sporting heritage of the Iditarod and their home State.

THE LADY GRIZ OF THE UNIVERSITY OF MONTANA

Mr. BAUCUS. Mr. President, on a related subject, this is a great week for Montana sports enthusiasts. First, Doug Swingley won the Iditarod Dog Sled Race, and tomorrow night the Lady Griz of the University of Montana will be playing in the opening round of the NCAA's Women's Final Four Tournament being held in San Diego.

I have been watching the Lady Griz's trek to March madness. At the beginning of the season, we all had high hopes for them. But they have far surpassed what many of us expected of them—and believe me—we Montanans have high expectations for our sports teams.

This group of tough Montana and Pacific Northwest women have shown that they have the grit and the discipline to be national champions.

Just last weekend, I saw them win their final Big Sky season game against their cross-State archrivals, the Montana State University Lady-Bobcats. It was a great game, I sat down in the front row, right next to the floor, I enjoyed very much. Both teams played very well.

And now that the Lady Griz have prevailed and won the Big Sky title, all Montanans join together in wishing their coach Robin Selvig the best of luck as they represent Montana at the NCAA tournament. Robin has built a great program that stresses hard work, excellent academics and discipline—all Montana values that we treasure.

With the tough inside play of Jodi Hinrichs and the outside shooting skills of Kristy Langton and Skyla Sisco, teams from all over the country will be facing a tough challenge from

the Big Sky State. Win or lose, we are all very proud of them. And we look forward to seeing them in the final four and hopefully as national champions.

Mr. President, I yield the floor.

MORRELL RETIREES

Mr. DASCHLE. Mr. President, last month, Republicans in the House of Representatives marked the first 50 days of their efforts to pass the Contract With America. Notably missing from their speeches was any mention of progress in the fight to enact health reform.

Indeed, this issue was not even mentioned in the House Contract With America, nor was health reform among the priority bills introduced by Republicans in either the House or Senate leadership.

Meanwhile, in this first 100 days, another group of citizens in my home State was learning, personally and painfully, why we need to continue the fight for health reform.

The 3,300 retirees of John Morrell & Co., a South Dakota meat packing firm, learned this January that the firm was ending all retiree health coverage.

Many of these retirees and their families had worked for Morrell all of their adult lives.

On January 24, Morrell retirees received a simple, yet unexpected, letter stating that their health insurance plan was being terminated, effective midnight, January 31, 1995—only a week later.

The benefits being terminated, the letter said, included all hospital, major medical, and prescription drug coverage, Medicare supplemental insurance, vision care, and life insurance coverage.

For those retirees under 65, this action poses a particular problem. While Morrell gave them the option of paying for their own coverage for up to 1 year, few can afford the $500 monthly premium for a couple. And many cannot purchase coverage at any price, because of preexisting conditions like diabetes or heart disease.

Medicare beneficiaries would have to buy expensive supplemental insurance on their own.

Morrell's decision was all the more painful to the retirees because it was so unexpected. These retirees believed they worked for a fair company; that a fair day's work resulted in a fair day's pay. They found out the hard way that the company they had helped to build had turned its back on them.

They also found out that the court system was not sympathetic to their cause: The Eighth Circuit Court of Appeals ruled in favor of the company's decision. The union is now planning to appeal the decision to the Supreme Court.

Sadly, some of the retirees will not live long enough for a possible reversal.

And, if medical expenses eat up their income and assets, some Morrell retirees might be forced to resort to welfare.

All will struggle financially and emotionally to accept the change in benefits that they counted on for life.

A recent edition of the Sioux Falls Argus Leader recounted the stories of several Morrell retirees and their families.

One 26-year veteran of Morrell is legally blind, has diabetes and arthritis, takes heart medication, and wears a hearing aid. His $300 monthly pension from Morrell will not even cover the prescription drugs he needs. He fears the financial burden of high medical costs will force him and his wife to sell their home.

Another retiree gave up $130 from his monthly Morrell pension so his wife could get health insurance. He now has cancer and glaucoma, and his monthly prescription costs are $800. His wife's monthly drug costs are $200. His monthly pension from Morrell, after 30 years service, is about $300.

Finally, a retiree who had a kidney transplant and recently had a leg amputated, figures that he can pay for the company-offered insurance coverage for the year it is available. After that he is not sure what he will do to pay the $1,000 monthly cost for antirejection drugs, which Medicare doesn't cover.

Mr. President, the stories go on and on.

They describe proud people who worry that high medical costs will impoverish them or force them to rely on their children for financial help.

They are stories about loyal employees who each day will live in fear of illness and injury because they have no health insurance.

Unfortunately, this is not an isolated situation. What happened to Morrell workers could happen to any of the 14 million retired workers who believe they and their families have lifelong health insurance coverage through their employers.

As companies look for ways to reduce their health care costs, they will no doubt look at drastic reductions in, or outright elimination of, retiree health care benefits.

That just is not the way it should be in this country.

We all like to think that, if we work hard and play by the rules, we will be rewarded, especially in our old age.

Sadly, when it comes to our health care system, this is often not the case.

I was disappointed that the 103d Congress was unable to pass comprehensive health reform, because many of the proposals we were considering would have addressed the problem the Morrell retirees now face.

A union official recently said, "I wish that Harry and Louise could see what's happened to the people at Morrell."

I could not agree more. The problems we talked about in last year's health reform debate have not gone away simply because that session of Congress has ended.

The Morrell retiree situation is a painful reminder of that fact.

As I recently indicated in a letter to the majority leader, I remain committed to working with all of our colleagues to craft legislation that will address the serious problems of the health care system that plague American families and businesses.

I will also be offering in the next few weeks a bill that will deal directly with the problem that Morrell and other retirees face.

I hope that those who have blocked and delayed health reform will at least support the effort to ensure that our Nation's retirees get a fair day's wage from a fair day's work.

LOSS OF HEALTH CARE COVERAGE FOR MORRELL RETIREES

Mr. PRESSLER. Mr. President, I join my colleague, Senator DASCHLE, in efforts to find a solution for the Morrell retirees' who have lost their health benefits.

Nearly 1,200 Morrell retirees living in South Dakota have had their health insurance benefits terminated. Many retirees cannot purchase a private health insurance plan. Under the terms of their retirement contract with John Morrell & Co., health insurance benefits were provided to all retirees. But like so many retirees, they have found the ground rules changed. John Morrell & Co. has terminated their health benefits. This decision has caused great hardship for many South Dakota citizens. Benefits, which they were promised and which they earned, have been terminated.

I have taken steps to correct this problem. I have written to Mr. Carl Lindner, president of the Morrell parent company, Chiquita Brands. I asked that they reverse their earlier decision to terminate benefits. In addition I have drafted legislation, which I am garnering support for, which would reduce the health insurance deduction for corporations that terminate health insurance benefits of their retirees. Specifically, my proposal would limit a company to deduct just 25 percent of their health insurance costs—if they terminated the health benefits of their retirees.

The union has appealed this decision and the matter next goes before the Supreme Court. I am working on an amicus brief and hope to file this on behalf of the retirees.

I am prepared to assist in legislation, or take any needed steps, to find a solution. This will be very difficult. However, I am hopeful this can be resolved.

I did want to rise on the Senate floor to say that I am very concerned about

what has happened to those retirees who have lost their health insurance in a contract dispute which sprung out of a long and difficult labor dispute that has been going on near the meat packing plant of John Morrell & Co. in Sioux Falls, SD.

So, Mr. President, I wish to announce that I am also prepared to join in a legislative effort to protect not only these retired workers, but other retired workers who believed that they had health care coverage into their retirement. We must make it clearer to people what these contracts contain. I think both unions and management have an obligation to be clearer and more careful about the rights of these elderly retirees in the medical area.

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

(The remarks of Mr. SIMPSON pertaining to the introduction of S. 559 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Chair recognizes the senior Senator from Maine.

Mr. COHEN. Mr. President, I ask unanimous consent I be allowed to proceed in morning business for a period of time not to exceed 15 minutes.

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

AFFIRMATIVE ACTION

Mr. COHEN. Mr. President, I have been planning to take the floor for some time this week and have not been able to do so, given the Senate's schedule prior to this time. I was not aware that Senator DOLE would be taking the floor to talk about affirmative action.

First, let me say that I have the highest regard and respect for Senator DOLE and I agree completely with what he said earlier that no one—no one—can criticize his position on civil rights or on policies that would benefit those who suffer from any sort of affliction or disability.

Especially in the field of civil rights, he has been a leader. No one can question his motivations. I think he is correct to start calling attention to some revisions that may be necessary in dealing with affirmative action.

Having said that, I want to point out that affirmative action has moved apparently to the center stage of this country's political agenda. Critics of programs designed to address centuries' old discrimination range all the way from Presidential contenders to syndicated columnists.

Some argue that our Nation is or should be colorblind and our laws race and gender neutral. Some have argued—and I am paraphrasing, but I think correctly—that reverse discrimination is as bad as slavery. I want to repeat they believe that reverse discrimination is as bad as slavery. I suggest, perhaps, a reading of Alex Haley or James Baldwin or Gordon Parks might be beneficial in dismissing such a preposterous notion.

One writer has written that, "Compensatory opportunity is advocated by those who want to remedy the presumed victimization of certain groups in the past." Mr. President, since victimization has only been presumed, apparently like the Holocaust, it has to be proven in the present and in the future time and time again.

It is also said that preferential treatment based on race, gender or ethnicity is inherently anti-American and contributes to the polarization of the American people. Finally, some say that 30 years is long enough to compensate for the four centuries of our fathers' sins.

Mr. President, I should point out that these critics of affirmative action are not confined to angry white males. There are a number of prominent blacks, some of whom have no doubt been the beneficiaries of affirmative action programs, who now denounce the programs because of the so-called Faustian bargain that they had to strike. They resent the fact that they now have scarlet letters "AA" stamped on their brow, which, they believe, forever identifies them as social and intellectual inferiors who could not make it on merit.

Let me say, Mr. President, as a strong supporter of programs designed to help women and African Americans and other minorities break through glass ceilings and concrete walls, I believe, as I said earlier, that no program, however well-intentioned, should be excluded from review, revision, even elimination if circumstances warrant. There is no doubt in my mind that some programs have been used and abused in ways that many of us who are the authors and supporters of affirmative action never anticipated. The Viacom deal, which is about to come before the Senate in the next week or two, is perhaps a classic case of a program that has long since outlived its usefulness. Maybe it needs to be rejected and repealed.

But I say to those who argue that we should not consider any preferential treatment on the basis of group membership, I think we have to look back into our history and look deep into our hearts and remind ourselves that we have a great deal to account for and correct based on discriminatory policies of the past—policies that continue to this very day. Judgments and jobs are not, as we would like to believe, based on the content of our character. They are, in fact, in many, many cases still based on the color of one's skin, gender or ethnic background.

I know that affirmative action is said to be a politically defining issue, a wedge issue, one that is going to drive the middle-class white voters fully into the arms of the Republican Party, leaving the minorities and women and other liberals floating in the backwash of the Democratic Party. The polls actually confirm that this wedge is politically powerful and popular as a force that will, in fact, succeed in dividing segments of our society into clearly defined political camps.

Mr. President, let me say I believe any short-term political success is going to prove to be a long-term policy disaster, because what is truly at stake in the coming debate is not wedges but values.

There are two values that lie deep within the American hearts and minds. One is that every person should be given a fair chance to compete in the classroom, on the athletic fields and in the workplace. Every person under our Constitution should enjoy equal privileges and protections of the law.

Second, there should be no special privileges, no favoritism, no artificial or arbitrary rules that give something to someone that has not been earned. There should be no quotas, no rules of thumb. We want rules of reason instead.

In an ideal world, these values are not in conflict, they are in complete harmony.

But let us suppose that the world is less than ideal. Let us suppose that all the people are not treated equally over a long period of time. Suppose there are laws that discriminate against people because of their race or sex. Suppose that some people are treated as slaves or pack mules or objects of hatred and violence or as simple reproductive vessels. And suppose that some people cannot buy a home or obtain a mortgage or get a job or break through that so-called glass ceiling just because of the color of their skin. Is there anything more un-American than to deny a human being the chance to be the best that he or she can be on equal terms?

Is there anything more un-American than to isolate people in a ghetto, to put up invisible barriers by denying them jobs, opportunity, and any hope of breaking out of that prison of poverty, and then to watch in horror and outrage as their children go fatherless and the streets go white with drugs and run red with the blood of mindless violence?

Is there anything more un-American than to rob people of equal opportunity because of the pigment of their skin, the texture of their hair, the composition of their chromosomes, all while we proudly proclaim that our policies are colorblind and gender neutral?

And is there anything more hypocritical than to say that racism or sexism is a thing of the past?

Mr. President, a book I read some years ago, "Native Son," written by Richard Wright 55 years ago, told the story of what it means to be black in

this country. There are many memorable scenes, but one that has stayed with me over the years is one where there are two young boys, one named Bigger and one named Gus. They look up at a pilot who is skywriting on a lazy summer day. The passage goes:

"Looks like a little bird," Bigger breathed with childlike wonder.

"Them white boys sure can fly," Gus said.

"Yeah," Bigger said wistfully. "They get a chance to do everything. I could fly a plane if I had a chance."

"If you wasn't black and if you had some money and they'd let you go to the aviation school, you could fly a plane," Gus said. . . .

Then Bigger said:

Every time I think about it, I feel like somebody's poking a red-hot iron down my throat. . . . It's just like living in jail. Half the time I feel like I'm on the outside of the world peeping in through the knot-hole in the fence. . . ."

Mr. President, that scene was memorable for me not just because it depicts innocence in a novel that is filled with horror, but because it says so much about the human spirit, about the significance of hope, and about the utter destructiveness of knowing in advance that hope can never be realized.

Well, "Native Son" is fiction. It was written more than 50 years ago now, and we know that a lot of things have changed since that time. We know that we have Michael Jordan who may be, once again, skywriting in Chicago. We know that you can turn on your television set and watch Bryant Gumbel or Oprah Winfrey. We know we have Justice Thomas on the Court. We know that we have Colin Powell, who may be the most popular non-Presidential candidate to date on the American political scene. There are powerful women as well, Sandra Day O'Connor and Justice Ginsburg, to name a few.

Let me just say that for every Michael Jordan, for every Colin Powell, for every athlete, musician, businessperson who has succeeded, there are millions of people locked away from opportunity to this very day.

One of the things that struck me several years ago was a program I watched, I think it was on "ABC PrimeTime." The producers of that show took two attractive articulate male college graduates, one was white, one was black, and sent them out into the world followed by a hidden camera.

How was the black man treated? In a store, he was regarded with great suspicion by a security guard who followed him wherever he went. At an auto dealership he was ignored for not just minutes but nearly a half-hour or more. He went to look for an apartment and was told, "Just happened to miss it. The last one went just a few minutes ago."

Then they followed the white college graduate. Needless to say, he was treated quite differently. When he went to the store, he was welcomed with open arms. When he went to the auto dealership, he was given preferential treatment and terms. When he went to look for an apartment, the same building at which the black man had just been turned down, they said, "We have an apartment for you."

Well, the camera never blinked, not once, not twice. And not one of the participants in the film blinked. They either denied they were engaged in acts of racism or discrimination or they reacted with anger at the exposure of their behavior.

So for those today who say that racism is all a thing of the past, that we do not have to worry about it anymore, that 30 years has really leveled the playing field—it isn't true. And for those who say that affirmative action is being used to deny qualified white males their opportunity—Mr. President—that was never the goal of affirmative action. It was never the goal of affirmative action to give preference to unqualified people over qualified ones, be it in college, in graduate schools or the management level of business. We are not discriminating in favor of unqualified blacks and unqualified women.

Affirmative action is really about finding qualified people. They are out there in abundance. But either through inadvertence or deliberate neglect and rejection, they have been ignored. The pursuit has not been for mediocrity, it has been for opportunity, to give everyone a chance to be the best that they can be.

Justice Holmes, one of my favorite Justices in the history of this country, said at one time that the tragedy that filled the old world's literature was really about people who were taxed beyond their abilities. We know the story of Sisyphus forever rolling the rock up the hill and it kept rolling back down. We know about those with the water that kept coming up to their necks but could never drink. This theme was really part of the myths and the tragedies of the ancient Greeks.

Holmes said that in modern times there is a different type of hell, a much deeper abyss, that occurs when people who are conscious of their powers are denied their chance. That is what affirmative action really has been all about, when people conscious of their power have been denied their chance. Affirmative action has provided an opportunity for the U.S. Congress and the administration to work together to help bring people who have the talent and the ability, who have been held down over the centuries—not just 30 years, over the centuries—to give them a chance to break through the barriers. Now we are suddenly saying that society is all level, we are gender neutral, we are race neutral, we do not have to worry about affirmative action anymore.

But we have not been fully successful. A recent Time magazine article shows that affirmative action has not had as positive an effect as the critics claim or supporters hope. The article cites a Bureau of Labor Statistics study from 1994 noting that whites now hold 88.8 percent of managerial professional positions, down only slightly from 91.6 percent in 1983. In that same period, blacks increased their presence in the managerial professional ranks only marginally—from 5.6 to 7.1 percent. So there have not been these great strides that the critics of the programs have now cited.

Mr. President, I say it again, I have no doubt that there are some who might use either their race or gender as an excuse for failure. The vast majority of people, however, have found that others have used their race or gender as a reason to keep them from success. So let us remove programs that are no longer necessary, let us revise ones that are not working, but let us not indulge in the delusion that the field of dreams is equal and level for all of our people. We still have a long, long way to go.

Mr. President, I yield back the remainder of my time.

Ms. MOSELEY-BRAUN addressed the Chair.

The PRESIDING OFFICER (Mr. GRAMS). The Chair recognizes the junior Senator from Illinois.

Ms. MOSELEY-BRAUN. Thank you, Mr. President. I ask unanimous consent to speak in morning business for a period not to exceed 10 minutes.

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

AFFIRMATIVE ACTION

Ms. MOSELEY-BRAUN. Mr. President, I want to associate myself and actually commend Senator COHEN for the statement he just made on the subject of affirmative action. I have had the pleasure of serving with Senator COHEN now since I came to the Senate 2 years ago. I have seen him in action, and I have been just overwhelmed and, frankly, very grateful that he brings to these issues, particularly the hot-button issues and issues pertaining to race, a sensibility, a level-headedness, fairness, and a perspective that is just so important to have in this body.

It is because of the work of Senator COHEN and, frankly, many of the other Senators who approach these issues with a perspective that relates to the interests of our community, that makes it easier to address these issues here than might otherwise occur.

I come to the floor, Mr. President, though, because I just left a meeting of the Finance Committee in which the committee voted to repeal a section of the Tax Code which provided for minority and female ownership of broadcast media. The argument around the repeal had come up because of a particular deal that was talked about in the newspapers, one that has been debated as to

whether or not it was a good deal or fair deal.

The point is that by its action, in my opinion, the committee has essentially cemented the glass ceiling that keeps women and minorities from participating as full partners in an important industry that really goes to the very heart of the character of our country.

I say that because, Mr. President, the section that was under review, section 1071, was originally adopted back at a time when the concern was over diversity of voices in the airwaves. The notion was that our entire community had an interest in hearing a multitude of voices so as to avoid the almost Orwellian Specter of a single point of view, a single voice being communicated to the American people over the airwaves.

And so this section was initially adopted in order to provide for openness, in order to provide for inclusion, in order to provide for diversity of voice in the airwaves. At the time, by the way, Mr. President, when the broadcast spectrums were initially instituted, they were essentially given away. There was no cost associated with them at the time.

As you can well imagine, Mr. President, at the time of the giveaway of these broadcast spectrums, no women got anything for free; no minorities were at the table. It was a situation in which you could almost say there was a 100-percent set-aside for white males who knew about broadcast spectrums and the opportunities they might provide.

Subsequently, Mr. President, the Congress decided that this section of the law that provided for openness and for inclusion and for diversity of voice should be amended to provide opportunity for women and minorities to have ownership of broadcast facilities. So the tax certificate approach was used as a way, really a tax way—it was not a set-aside in the sense we think of. It was a provision in the law that allowed for the private sector to diversify the airwaves, and allowed for the private-sector actors to come together and open up ownership so there would be this diversity of voices and so there would be diversity, in fact, in the ownership of broadcast facilities.

That section of the law has been with us for awhile, and it is almost disappointing, frankly, to note that in all the years since the 1980's, when this section was amended to include women and minorities, as of today women own about 3 percent of the entire broadcast industry—3 percent—and minorities own about 2 percent of that same industry.

So for all of this time and all of the effort, we still only were able to come up with a cumulative total of about 6 percent of the entire industry owned by women and minorities—a long way, I suggest, Mr. President, from achieving the kind of diversity of voice, the kind of diversity that was originally intended by this section.

However, apparently there was a deal announced in the newspapers that involved some high-profile actors in the broadcast field, and the House took it upon itself to target that specific deal—and I will use the name, the Viacom deal—to target that transaction as the basis upon which to repeal section 1071 and thereby constitute the first shot across the bow, if you will, on affirmative action.

The chairman of the committee was actually—it was kind of almost humorous because the chairman of the committee said he never expected that the first battle on affirmative action would come in the Finance Committee. But lo and behold, I guess by the law of unexpected consequences, it wound up there, and so we had to take up the issue of what about this section of the law? Is there some unfairness here? Should we maintain it or should we repeal it?

Mr. President, the question underlying this tax certificate issue was extension of health insurance for the self-employed. We all, I think, support that. People who are self-employed ought to be able to deduct their payments for health insurance just like anybody else. And we are just now restoring a partial effort in that regard. But the question before the committee was not just the reinstitution of the 25-percent deduction for health insurance. The question before the committee was how to pay for that. Do we pay for that through the repeal of this tiny step for women and minorities in the broadcast industry, do we pay for it with the repeal of section 1071, or do we find some other revenue sources?

Mr. President, it was, frankly, reflected in the President's budget, and a number of the members of the committee were interested in other alternative revenue sources such as a revenue source coming from those Americans who renounce their U.S. citizenship to avoid paying taxes. That provision, had we just changed the law a little bit for those billionaires that renounce their American citizenship to avoid paying taxes, would have raised twice the money, two times the money that would have been raised by repealing section 1071.

Unfortunately—and this is why I have taken the floor this afternoon—the committee decided it was going to go ahead and repeal section 1071 nonetheless, that somehow or another this was affirmative action gone amok, that somehow or another there was some problem with this section, that is, it was open to abuse and fraud alike.

The fact is, the facts do not show that. The facts show that those few minorities and those few women who participate in the broadcast industry in an ownership capacity got there in large part because of the existence of this statute that made it, frankly, financially worthwhile for sellers to sell to them. People would sell to minorities and people would sell to women precisely because they knew that there would be some tax deferral by virtue of the ownership of these tax certificates.

To the extent the door was open or the window was open or the ceiling was cracked just a little bit, what the committee did this afternoon was to seal over the crack in the glass ceiling, to shut the window on minority ownership, to close the door on women who would own in this area, and to really seal them in and make it more difficult than before, in spite of the limited success we have had so far.

I would like to review, just for a moment, some of the numbers. I have used percentages, but just so you get a sense of it: Of the 11,586 broadcast stations—11,586 broadcast stations, 420—420 are owned by women, and 323 are owned by minorities.

With regard to television stations, of the 1,342 television stations operating in the United States, 26 are owned by women and out of that number 31 are owned by minorities. I can break the figures down further and I certainly intend to do that at some point in the future. But the point is, of this huge industry, there is just a little bit of diversity of ownership. And the committee this afternoon decided to get rid of that.

In radio, out of 10,244 radio stations, some 394 are owned by women and 292 are owned by minorities.

It would be one thing if we were just talking about ownership, and that certainly is the issue. But think what that says about the whole notion of diversity of voice. If, to the extent we have minority ownership at all, to the extent we have female ownership at all, if we foreclose it and make that more difficult, then I fear we are doing a disservice to all of the American people who would benefit from the opportunity to share in the diversity of viewpoint, the diversity of voice, the diversity of opinion, the diversity of conversation, the diversity of perspective that is brought to this broadcast industry, which communicates information to all of us, by the presence of women and minorities in the field.

I listened to the majority leader a moment ago as he was speaking. I want to say this at the outset: I did not hear all of his comments, but I did hear some. One of the statements was the race counting game had gone too far. I daresay, if anything, that almost casts this debate in the wrong light altogether. No one is in favor of unfairness. No one wants to be unfair to white males. No one wants to be unfair to black males, black women, white women, Asian, Hispanic—you can go down the list and divide us up any number of ways. But the bottom line is

we are all Americans. We are in this together and we will rise and we will sink as a Nation together. And to the extent we define ourselves as a community with coherent interests, with interests that come together, we will succeed as a Nation. We will not allow ourselves to be divided up and pitted against each other in this no-win, lose-lose game—I submit a cynical political game that suggests that race counting has any role in any of this.

That is not what affirmative action is about. I think Senator COHEN's remarks on this point were very well taken. Affirmative action is not about race counting. It is not about quotas. What it is about is the total community recognizing the value of opening up opportunity so the face of opportunity in America is everybody's face; so it is not just white males who are given broadcast spectrum, but now it is the face of black people, brown people, women, and all kinds of groups that were not previously included in the definition.

When we talked about the American dream 100 years ago, it had a particular meaning. It meant white male, period. I was reminded women in this country just got the vote 75 years ago. So even though an American of African descent—the emancipation happened over 100 years—as a woman, as an African-American woman, I still would not have been even able to vote until 75 years ago.

So the face of the American dream is changed. The face of the American dream now is a multiplicity of people. It is a multiplicity of faces. It is an inclusive face. It includes everybody. It includes everybody who subscribes to the ideals and the values that define us as Americans.

I submit that this debate about affirmative action goes to the heart of what we mean by who is included in this American dream. It goes to the heart of whether or not opportunity is going to be open to all Americans or just some Americans; whether or not we are going to begin to try to undo and fix some of the persistent problems that we have in our society by providing some support and some help to those who have previously been excluded.

It is for that reason, again, I am very distressed by what happened in the committee this afternoon. I am very distressed by the assault on affirmative action. I am very distressed, frankly, by the tenor that this conversation has taken—happily, so far, outside of this Chamber. I hope here in the Senate we will have a more reasoned debate about what are the real issues here, and not allow ourselves to get separated and inflamed, and not allow for the hot button appeals to pass and prejudice to succeed.

I hope in this body we will take it upon ourselves to look at the facts and make our decisions based on reality and not myths, preconceptions, diversions, and misinformation; make our decision based on what is actually going on in our country and what direction do we want to take.

I think in Senator COHEN's remarks—and I would like to take a point there to make the next step and talk about the next point—he talked about people having a sense of opportunity, of being able to rise to the highest level of their ability.

Certainly, ability and merit and excellence are concepts that are important and dear to all of us. But the question becomes to what extent do those who feel they are denied inclusion—to what extent do we not exacerbate, make worse the hopelessness that besets all too many of our communities, that besets all too many of our people? To what extent do we not exacerbate the notion that you can rise just so far but you cannot go any further; the notion the glass ceiling is there, intact; that a woman can only go so far, that a minority can only go so far in maintaining the institutions and the systems that by their operation create whole communities of disaffection? By maintaining those institutions, I believe we buy into and build up and give succor to the hopelessness that is beginning to erode the very foundations of our national character.

I submit this debate is going to be one of those turning debates, one of those critical debates that will direct the future direction of our country as we go into the next millennium which, as you know, is only 5 years from now. As we go into this next century, the question before us today—whether it is in a debate as specific and as complex as 1071 and the operation of a section of the Tax Code, or if the debate is on something more general and straightforward that people can grasp onto—the question becomes, for this body, how shall we proceed in this debate? Shall we allow it to become the kind of hot button race-baiting prejudicial kind of inflammatory debate that pits us against each other, inflames passions, distorts the debate, ignores the facts, and plays into myths and prejudices and fears? Or, instead of playing into people's fear, do we play to and direct our comments and our conversation and our decisions to the hopes of the American people that the American dream really is still alive; and that it lives not just for white males, but it lives for black males and black women and brown males and brown women and men and women of every stripe and description who call themselves Americans?

That is what this debate is about. I know the issue is going to come back to the floor time and time again. I am making extemporaneous remarks right now about it. But I was drawn to come to the floor this afternoon in large part in response to some of the things that were being said earlier.

I just submit to you that I hope that as we go down this road it will be a road we go down together and that we can appeal to, as Abraham Lincoln said, the "higher angels" of our nature and which address what is in the best interests of our country as a whole. And, therein, I think we will find a correct answer as to what to do about the issue of affirmative action.

Thank you.

Mr. FEINGOLD. Mr. President, let me first of all say that I am very glad coming down here I have the opportunity to hear the statements of both the Senator from Maine and the junior Senator from Illinois about the issue of affirmative action. It is again encouraging to see the U.S. Senate acting in a bipartisan manner to ask the questions that have to be asked about certain aspects of the so-called Republican contract that we are going to carefully examine the record of affirmative action and other such issues and make sure that in our haste to address some genuine public frustration that we do not destroy some of the things that have been done in the last 20 or 30 years that actually have helped people and made this country a fairer place.

So I appreciate that.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT

The Senate continued with the consideration of the bill.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, thank you.

Mr. President, the pending business before us I assume is the Kassebaum amendment.

The PRESIDING OFFICER. The Senator is correct.

Mr. FEINGOLD. Mr. President, the purpose of the Kassebaum amendment is to overturn the President's Executive order saying in effect that Federal dollars should not be used to encourage strikebreaking. That is what it is really about. I think it is only fair to remind everyone that this amendment obviously has nothing to do with the bill before us. What is this amendment about strikebreakers doing on a Department of Defense bill having to do with peacekeeping? None of us are completely pure in this category of offering amendments that are not completely relevant to the core of a bill. The germaneness rule here essentially does not exist in most instances and stands in stark contrast to the rule that I got used to in the Wisconsin State Senate and for 10 years we really did have a germaneness rule. You can actually prevent this kind of confusion.

I want to reiterate. Of course, this has happened before. But on this bill it

seems extremely off the mark to try to address the issue of strikebreaking and the strikebreaker issue in the context of this bill which I thought was about readiness.

I thought the bill was about whether we are going to provide certain funds for our peacekeeping forces. I thought the bill was supposed to be about the identification of certain cuts within the Defense Department that would help pay for some other things that the Defense Department believes needs to be done both in this country and around the world. That is what I thought the bill was about.

So do not let anybody be fooling you here. The effort we are making here is not a filibuster again against the bill. Many of us who are objecting to this amendment think the bill has tremendous merit. There is a lot of merit to it. But it is a rather unique way to finance needed peacekeeping funds by finding other things in the Defense Department that maybe can be eliminated. It has a lot of fiscal sense behind it. But this is not an effort to kill the bill. Everyone in here knows that. But I am afraid some of the people who might be watching this would assume, given the reputation of the Senate for filibusters, that this is an effort to delay the process. In fact, it is just the opposite.

It is amendment offered by the Senator from Kansas that has slowed us down. Day after day is being wasted on an effort to embarrass the President on this issue that could have been used, either to move this bill through to deal with the some 40 amendments pending on the bill, and maybe we could even be on what I thought was the business at hand according to the majority. According to the majority in this body, we were going to pass that balanced budget amendment so we could get down to the nitty-gritty of identifying where the cuts would come from and make the cuts now. Time and again both sides said, sure, we can pass a balanced budget amendment or not, but that the real work is identifying where the cuts are and not just identifying them but coming out here on the floor of the Senate and voting to cut waste in the Federal Government. Why is not that happening today? It is not happening today because we have this amendment before us that is completely extraneous to the deficit issue and that is intended to embarrass the President and that is intended to further drive a stake into the heart of the working people of this country.

I want to talk a little bit today about the merits of the issue. But before I do I hope we do not hear any complaints from the majority or the talk radio people about how the balanced budget amendment took up so much time. It did take time. It was a terribly important issue. It deserved to have that kind of consideration. I think the whole process was better for it. But what is happening here is that day after day we are arguing about a Federal Executive order about strikebreakers that is preventing us from getting on to the real work of identifying what must be eliminated from our Federal budget so we can have not just a balanced budget amendment, Mr. President, but a balanced budget, not necessarily waiting to the year 2002 but so that we can do it now.

In fact, it is one of the reasons I voted against the balanced budget amendment because it is an opportunity for people to say I am for balancing the budget but then talk about everything else in the world instead of getting down to the work of finding the cuts and implementing them. This amendment helps that process. Putting us off the track, putting us onto the effort to kick down, kick people who are already hurting in the labor movement, is a great way to stay away from those hard choices that we made in the 103d Congress and that the 104th Congress claims it intends to address. But so far we have seen none of the debate that is involved in reducing the Federal budget.

Sometimes I wonder if the Republicans in this body forgot that they won. This is the kind of amendment you bring up when you are in the minority. Say there is a bill coming up, and the bill has to pass—an appropriations bill. We know we have to do it. That is when you bring up these amendments to kind of put them off the track. But what you are doing is delaying your own agenda here. In the House they are moving much faster than you are here. I think generally that is not good. But in the case of this bill, what would be wrong with moving this issue forward and not getting sidetracked? You are slowing yourself down. You are slowing down the Republican contract for one specific aspect of the Republican contract which has to do with not just trying to prevent the use of permanent replacement workers or allow the use of permanent replacement workers but specifically to say it is OK to have Federal dollars flow to companies that use permanent replacement workers.

Mr. President, I hope everyone understands exactly what is going on here. It is a completely extraneous amendment that does not have to do with this bill and has even less to do with the main business that this Congress should be addressing which is reducing the Federal deficit.

Mr. President, to discuss this amendment we must because it is the business before us. The effort to embarrass the President continues despite the failure of two cloture votes now to cut off debate.

Mr. President, last week I spoke at some length on the issue of the use of permanent replacement workers by employers during labor disputes. I had a chance to come to the floor and follow the Senator from Massachusetts in describing the history of the use of permanent replacement workers in my own State of Wisconsin, the border State of the Senator in the chair. As I indicated then, I was the author of legislation in Wisconsin that would have prohibited the use of permanent strikebreakers. And I had the chance years ago when I was still in the State senate to come to Washington and testify before a committee of the other body on behalf of the Federal law that has been proposed over the years because I do think in the end it is better that we have a Federal law banning the use of permanent replacement workers. We have not achieved that yet. That was killed last session by a filibuster. We had enough votes in both the Senate and the House and the President ready to sign the bill. It was killed by a Republican filibuster.

So our President, President Clinton, who is a supporter of the antistrikebreaker legislation, at least has done what he could do. The Executive order issued last week by the President is actually just a very modest step which would only say that employers who receive Federal contracts would be prohibited from engaging in this unfair practice. To me that is almost a disappointment. It is just a minimal requirement to impose upon those who want to do business with the Federal Government. But it is what the President can do. And I am very proud of him for having the nerve and the courage to make that Executive order.

To me those who would take Government money should be held to certain standards of fundamental fairness. That is why Presidents have in the past issued Executive orders directing Federal contractors to do things like maintain discriminatory-free workplaces and to take affirmative steps to eliminate discriminatory practices. There are a number of important issues raised by the debate around the use of permanent replacement workers. My friends in Wisconsin, who work so hard, describe them as striker breakers. At the core of this however, is really one central question, the question that goes to the heart of the whole debate on this amendment. The question is should workers have the right to use the strike as an economic voice during times when negotiations with their employers break down? That is the question. I, of course, have answered in the affirmative. They must have that right to collectively bargain, the right to join together in a union to have any meaning at all.

Mr. President, let me examine this a little more closely in three areas. First, I want to talk a little bit about what other countries do with regard to the use of permanent replacement workers in the strike context. Secondly, I would like to turn to some of

the comments of not political people but religious and community leaders that have strong moral feelings about the appropriateness of the use of permanent replacement workers. Finally, I would like to take a few minutes to illustrate yet a few more examples of the great harm and cruelty that can come from the abusive practice of using permanent replacement workers to resolve labor disputes.

First, turning to other countries. We ought to take a look, as some Senators have had us do, at what is done by other countries, what our international competitors do in this area. So often, when it comes to labor law or other laws having to do with health or safety, people say, let us look at this because we do not want to put American businesses at a disadvantage. That sometimes is a reason that people raise, that it is very legitimate for us not to pass legislation to protect our own people, saying it could hurt us competitively. But the senior Senator from Illinois, who has spoken on this issue very eloquently, has pointed out time and again that virtually all countries in the world that are involved in serious industrial and trade activity do not allow the use of permanent replacement workers.

I will give you a few examples from a report prepared by the Library of Congress in 1990. With the exception of Great Britain and some of the Canadian Provinces, the law in practice in all of the countries surveyed—Belgium, France, Germany, Greece, Italy, Japan, Netherlands, and Sweden—all prohibit employers from dismissing striking workers.

One example is France. French law does not allow the firing of workers during or because of a strike. Indeed, according to the first paragraph of article L.521-1 of the Labor Code, a strike is not a breach of contract. According to the third paragraph of the same article, any dismissal in violation of paragraph 1, which is the right to strike, is null and void. French law, as a consequence of this article, also prohibits the permanent replacement of striking workers. Moreover, article L.122-3 of the Labor Code specifically forbids the use of temporary replacements during a strike. French law regulates this issue to the point that even temporary workers hired before a strike cannot be used as replacements for permanent employees. Indeed, the notion of replacement for strike purposes is simply forbidden by law.

So I hope nobody says that our efforts to compete with the French and African trade opportunities is going to be impaired by this Executive order. It will not, because they do not allow it. We do.

The same is true of Greece. The right to strike in Greece is guaranteed by the Constitution of 1975, as amended. Article 23 states that the right to strike could be exercised by lawfully established trade unions in order to protect and promote the financial and general labor interests of employees. The fundamental law that governs workers' freedom in general and the right to strike in particular is Law 1264/1982 on Democratization of the Syndicalistic Movement and the Establishment of Syndicalistic Freedom of Working People. In article 19 of this law, only trade unions have a right to declare a strike to support economic and labor interests. Article 22 of Law 1264 explicitly prohibits the hiring of replacement workers. Specifically, it states: "During a legal strike, the hiring of strikebreakers is prohibited. The lockout is also prohibited."

Consequently, Mr. President, in Greece, a lawful strike does not bring about a breach of an employment contract. As in France, the contract is merely suspended during a strike, and the employer does not have the right to either dismiss the workers or hire replacement workers. That European nation does not permit permanent replacement workers.

Let us turn to another country nearby—Italy. Article 40 of the Italian Constitution recognizes the right to strike. In the absence of any legislative regulation expressly called for by the Constitution, the right is recognized in its broadest form and is intended to be used for the improvement of working and economic conditions. As a consequence of this recognition, a strike is considered as a cause of legitimate suspension of the individual employment relationship, with consequent suspension of compensation. The Italian law says a strike does not empower the employer to dismiss the strikers or permanently hire other workers to replace them.

Furthermore, in Italy, the right to strike finds strong, indirect protection under the provisions of Decree No. 300 of 1970, known as the "Workers' Statute." Article 28 of this decree punishes employers who carry out any actions aimed at preventing or limiting a worker's free exercise of union activities, as well as his or her right to strike. Article 15 of the decree nullifies any act or pact aimed at dismissing or discriminating against or hurting a worker in any way because of his union membership or because of his participation in a strike.

Finally, let me turn to another part of the world of our great competitors in international trade, if not our ultimate competitor—Japan. The senior Senator from Illinois, not just during this debate but in previous debates, has pointed out time and again that Japanese companies cannot use permanent replacement workers and strikebreakers in Japan. But, apparently, companies owned by the Japanese in this country have gone ahead and done that to break strikes. That is a great irony and unfortunate irony of the current state of our law.

Looking at the Japanese law, article 7, paragraph 1, of the Labor Union Law of Japan provides that:

> The employer shall not engage in the following practices: (1) discharge or show discriminatory treatment toward a worker by reason of his being a member of a labor union or having tried to join or organize a labor union or having performed an appropriate act of a labor union . . .

These last few words in the Japanese law, the words "an appropriate act of a labor union" are construed under Japanese law to include acts arising from collective bargaining with the employer, such as strikes, picketing, and so on. Therefore, under Japanese law, as with the other countries I mentioned, it is unlawful for an employer to discharge a striking employee.

The validity of the above provisions was upheld by the Supreme Court in that country, which stated that since the prohibitory clause as set forth in article 7, paragraph 1, of the Labor Union Law originated from article 28 of the Constitution and was intended, according to the court, to guarantee the workers' right to organize and to bargain collectively, and therefore any acts on the part of the employer done against the above provision is illegal per se.

For that reason, I believe it is fair to say that the use of strikebreakers, permanent replacement workers, would, of course, also be illegal under Japanese law.

So I hope we do not hear too much argument that our competitive position is about to suffer if we do not join the rest of the industrialized countries in the world in saying that the use of permanent replacement workers is unfair labor practice, that it is harsh and the unfair to people who have chosen to join together in a labor union.

Having mentioned some of the other countries' positions on this, let me turn to a completely different angle on this issue—some of the comments of some religious and community leaders, who are not addressing this issue because they intend to run for office, who are not addressing this issue because they like to always get into the political fray. I assume they address the issue because they have a responsibility to reflect and think and talk about what is fair and moral conduct in this society. What is the way one human being should treat another, I think, would be the perspective of the people I am about to discuss.

Mr. President, reviewing support for legislation prohibiting permanent replacement workers, I was struck by the number of religious and community leaders who agreed that no company—and certainly not the Federal Government—should engage in conduct that would promote the use of strikebreakers. The Most Reverend Frank

Rodimer, bishop of Paterson, NJ, had this to say on behalf of the U.S. Catholic Conference in testimony in 1991:

The role of unions in promoting the dignity of work and of workers is very important in Catholic teaching. In the words of Pope John Paul II, through labor unions workers can "not only have more, but be more." Rooted in the basic human right to freedom of association, the right to organize unions and to bargain collectively remains essential in order to prevent the exploitation of workers and to defend the human person as more than just a factor in production. For one hundred years the Church has called on governments to respect and defend labor unions in their essential roles in the struggle for justice in the workplace and as building blocks for freedom and democracy.

He continues:

Mr. Chairman, an essential tool for unions in pursuing the just rights of their members is the possibility of a strike; without the threat of a strike unions would be next to powerless to resist unjust demands by employers. Without the right to strike, workers come to the bargaining table at a serious disadvantage, facing employers who are holding most of the cards. This relative weakness of workers in a market economy is the reason that Catholic teaching supports the legitimacy of the resort to a strike when this is the only available means to obtain justice. The right to strike has not always been used wisely; nor are unions above criticism, but neither the corruption that has plagued some—not all—unions nor the violence associated with some—not all—strikes can justify the denial nor the erosion of workers basic rights.

The bishop continues:

Forty years ago when I become a priest it would have been unthinkable for an employer in my community to respond to a strike by hiring permanent replacements. I am told that because of a Supreme Court decision in 1938 it would have been legal to do so, but in those days employers knew better. Labor unions represented a large proportion of workers, and union values permeated the community. In those days, solidarity was not the name of a union in Poland but a working principle in American communities.

He continues:

However, economic restructuring and social change have undermined the cohesiveness of our communities, and devotion to the common good is often sacrificed in pursuit of personal gain. The painful recessions of the 70's and the relentless individualism of the 80's have left many without either the financial cushion or the community connections to ride out strikes or prolonged unemployment. In such an atmosphere, some employers feel free to use strikes as an opportunity to get rid of the union and collective bargaining and their union work force. I know many employers who wouldn't do this, but, unfortunately there are those that have done so and others that are open to it.

The results have been predictable and damaging. Not only have unions been weakened in their ability to defend the rights of workers, but communities have experienced savage struggles, with neighborhoods in turmoil, families divided and workers without hope. The promise of permanent employment made to the replacement workers becomes an impediment to settling the strike, and negotiations are stymied. The victims are the original workers and their families who often have no place else to go and even the replacement workers who are later discharged when the business closes because of the damage of a prolonged strike. In some places, whole communities suffer wounds that won't heal for generations.

Mr. President, I am reading from the bishop's comments, but I would just say that I, too, in my work have had a chance to see whole communities wounded and damaged in Wisconsin, places like De Pere, WI, by the use of permanent replacement workers.

Returning to the comments:

When employers are allowed to offer permanent jobs to strikebreakers, strikers lose their jobs. It's that simple. If workers lose their jobs, what does it mean to have a right to strike? If there's no effective right to strike, what does it mean to have a right to organize?

Human dignity is clearly threatened in our country. The evidence is visible on our streets and in our shelters where a growing number of people are forced to live even though they work every day. In our cities and in our rural areas throughout this country working people are homeless because their wages have fallen so far below the cost of housing. Recent immigrants and single mothers, newcomers to the labor force and those least likely to have union representation, are mired in poverty.

Bishop Rodimer concluded:

The right to strike without fear of reprisal is fundamental to a democratic society. The continued weakening of worker organizations is a serious threat to our social fabric. I think we have to decide whether we will be a country where workers' rights are totally dependent on the good will of employers or whether we will be a country where the dignity of work and the rights of workers are protected by the law of the land.

I think this was an eloquent statement by the bishop that gives us some guidance about how appropriate this amendment before us is today.

Very briefly, here is what some other national religious leaders have said.

From the United Methodist Church, Council of Bishops and General Board of Church and Society, this statement:

Since the early years of the trade union movement, Catholic, Orthodox Christian, Protestant and Jewish leaders have supported collective bargaining as a democratic way to settle differences in the workplace. Permanent replacement of strikers upsets the balance of power critical for achieving peaceful, negotiated settlements between labor and management. As a result, both collective bargaining and the democratic values that created this Nation are under attack.

From the Christian Church—Disciples of Christ—Department of Church and Society, Division of Homeland and Ministries, the following:

The record is clear that major religious groups in this country for many years have supported workers' rights against abusive tactics and treatment by employers.

We deplore the tactics of "permanent replacement" and we urgently call for new federal legislation that will protect workers from such tactics.

Mr. President, from Jewish organizations, the National Council of Jewish Women has said: "The practice of hiring permanent replacement workers has had a chilling effect on collective bargaining. The legislation currently under consideration by Congress"—referring, I am sure, to S. 5 of last session and similar bills—"would help restore the balance between labor and management * * *"

From the Evangelical Lutheran Church in America, Reference and Counsel Committee, a resolution which they passed which "calls for an end to recriminations against workers who participate in strikes, and calls upon the appropriate churchwide units, synods, congregations, and members to support legislation that would strengthen the viability of negotiated settlements and prevent"—not slow down, but prevent—"the permanent replacement of striking workers."

Mr. President, not only in other countries but from some of our leading religious leaders and leading religious denominations in this country, not just my own words, but words of condemnation for the cruelty and harshness and immorality of throwing people out of their jobs permanently when they have exercised their legitimate right to strike.

Mr. President, I would like to turn now, third, to just add a few moments of real-life situations, concrete examples, of where workers have been forced to pay dearly for asserting their legal right to strike when collective bargaining efforts have failed.

Naturally, I begin with one from my own State of Wisconsin, one that I recall to have been very painful for the whole community of Racine, WI, and, of course, especially for the working families of that area.

I already talked about similar incidents in De Pere, WI, near Green Bay, and Cudahy, WI, near Milwaukee, and the area near my own home in southern Wisconsin, in towns like Madison, Stoughton, and Janesville.

But this is about Racine, WI, where the Ladies' Garment Workers Local 187 had not had a strike for 50 years at Rainfair, Inc., a manufacturer of protective clothing at Racine, WI. That, unfortunately, changed on June 20, 1991, when the workers did walk out over management demands that seemed designed to actually force a strike.

It appeared to the workers not just that they needed to go on strike, but that somebody was pushing them, shoving them, trying to get them to go out on strike.

The company had demanded the health insurance copayments more than double, and offered the low-wage workers only a 15-cents-an-hour increase over a 3-year period.

Unfortunately, and not surprisingly in this new era of permanent replacement workers, soon after the strike began, Rainfair began to hire permanent replacements, and seemed bound and determined to break the union.

The workers, most of them women, many of them single mothers, working single mothers—not single mothers on welfare, but working single mothers—held out, with virtually no one crossing the picket line.

I recall that five strikers joined a protest fast. Two of them went 35 days with no food.

The union launched a nationwide boycott of the protective gear sold to many union members, including police officers, firefighters, construction, postal and chemical workers.

But the presence of these permanent replacement workers did not help resolve the dispute. It greatly prolonged the dispute.

The primary issue soon became whether there would be an opportunity to return to work for all of the strikers. The issue divided the community and embittered once amicable labor-management relations.

Finally, the Rainfair Co., under pressure from the boycott and the national attention drawn to it by the fast, finally agreed to a new contract on December 3, 1991. To enable all strikers to return, the workers agreed to work 6-hour days temporarily.

But obviously, the situation was made worse by the use of permanent replacement workers, not better.

Another example, having to do with the General Dynamics Corp. In the summer of 1987, 3,500 machinists in San Diego were forced to strike in a division of General Dynamics Corp. when the aerospace firm demanded cutbacks in medical benefits and seniority rights.

Even before the final strike vote was taken, General Dynamics was threatening the members of IAM Local 1125, issuing handbills that told workers in advance that the intent of the company was to permanently replace them if they struck, and instructing union members on how to withdraw from the union. They were trying to undercut the union in advance.

During the second week of the strike, the company carried out its threat and resorted to scare tactics and coercion, cutting off workers' health benefits and pressuring union members to cross picket lines.

Those workers who did return to their jobs were directed to call IAM members at home, reminding them of the company's threat that they were going to be permanently replaced.

After the strike was finally settled, nearly 700 union members had, in fact, been permanently replaced. They were forced to wait on a recall list for a year or more just for a chance at a job that they were supposed to have in the first place. During that time, IAM members exhausted their savings, lost their homes, cars, and sometimes their families, as they struggled desperately to help each other out.

It was also a heartbreaking story of a woman from Indiana having to do with a company called Arvin Industries. One of the statements made was, "I always felt obligated to do a good job. I thought that honesty and obligation were a good way to live my life, but now I'm not sure. That company robbed me."

She said of the workers, "I look at the replacement workers and I wonder how they can feel good about taking our jobs. I try to put aside my feelings, but it's hard."

That is the status of Marcina Stapleton, for whom being permanently replaced brought bankruptcy and forced her daughter out of college.

The single mother of two was permanently replaced when Electrical Workers Local 1331 struck Arvin Industries in Columbus, IN. She had worked 6 years as a press operator. Even though the strike was settled in 7 months she was not called back for 17 months.

"It was hard making it" through those months, she said. Her only income was a $200 a month in child support and whatever she could earn from odd jobs. She had rent payments of $325 a month, car payments, utilities, college costs for her daughter, and it all proved to be too much.

Her daughter had to drop out of school and Stapleton declared bankruptcy. She said, "I am not proud of it but it was the only way out."

But the biggest toll was the emotional strain it put on her and her family. She felt the pressure of bills, including $2,300 in back rent, and the relationship with her children suffered from the strain. The children were fighting with each other and her teenage son ended up in counseling.

She went back to work in October 1990, making $8.80 an hour and paying $9 a week for health insurance. Before she went on strike she made $11.57 an hour with $2.25 an hour incentive bonus and employer-paid insurance, complete.

She said, "I had to go back into work, I have to keep living." But it is not easy to work alongside people who benefited from her pain. "What I did was the right thing. I would do it again if I had to," she said.

So, Mr. President, I assure you I could continue to read descriptions of these heartbreaking real life stories. I am tempted to do so. I may be back to do so later. I think at least for now the point has been made that these are real human examples and real human tragedies that are caused by the heartless practice and abuse of the use of striker replacement.

This is not, as the Senator from Massachusetts has pointed out time and again, just a dry academic argument about labor law. This is about people who simply want the opportunity to make a decent living and to be paid fairly and not be thrown out of their jobs because on occasion they may have to use their legitimate right to strike.

This is not just a debate about a Federal order from the Executive. This is a debate about whether this country cares about American workers. Whether we are prepared to stand by and watch the tremendous gains accomplished to be eroded by this kind of cruel practice aimed at breaking the backs of workers who exercise their right to engage in collective labor efforts and to strike when negotiations fail.

Mr. President, I would like to conclude shortly, but in doing so I would like to quote from an article recently written by the new president of our Wisconsin AFL-CIO, Mr. David Newby. David wrote:

> Let's cut through the rhetoric to the central issue: What is a strike? It is a situation where workers voluntarily leave their jobs—simply walk away—because they can't agree with their employer on a contract covering wages, working conditions, health insurance, or pension? Or is it that workers retain their jobs but temporarily withhold their labor until they and the employer come to an agreement?

Which is it? Just walking away or a legitimate part of the collective bargaining agreement, he was asking. Dave Newby says:

> The distinction is fundamental.
>
> The anti-union crowd means that workers have no bargaining power at all. As long as management can find others to work for whatever they offer (not hard to do when decent paying jobs are so scarce), they have no incentive to bargain serious with a union. And without strong unions that can bargain on equal terms with management, we will continue to see workers' wages fall and good paying jobs disappear.
>
> In the workplace, a "right" means nothing if you can be fired (or permanently replaced) for exercising it.

Mr. President, David Newby says that.

> If the right to strike means anything at all, it has to mean you can't be fired for striking. You lose your paycheck, but you don't lose your job. Win, lose, or draw, workers must have the right to return to their jobs when a strike is over.

Mr. Newby says:

> Workers don't strike for frivolous reasons. A strike is an action of last resort. Workers don't strike in order to bankrupt or close down the companies they have worked for: They realize better than anyone that their companies need to be profitable in order to have jobs at good wages.
>
> The issue for workers is simply getting their fair share and having the effective right to strike for their fair share when management won't voluntarily grant it.
>
> During the 1950's and 1960's, employers almost never used "permanent replacements during strikes"—temporaries, yes; permanent replacements, no. Both business and community values held that the permanent replacement of workers and strikers was abhorrent.

That is the way people felt, Mr. Newby points out.

> That changed 15 to 20 years ago. Many employers decided to destroy unions instead of bargaining with them. Indeed, this vicious management practice is becoming even more

common. In a recent Congressional General Accounting Office survey, 35 percent of CEO's said they would use permanent replacement strikers during a strike; 17 percent reported actually doing so.

Mr. Newby concludes:

It's time that American workers had the same rights and protections that workers have in the industrialized countries that are our main competitors and trading partners—countries such as Germany, Japan, and Canada. We're tired of being second-class citizens in the industrial world of global competition.

Mr. President, I don't think any statement could have pulled together these themes better than Mr. Newby's. The theme of competition internationally, the theme of what religious and communities leaders have to say about this practice, and the theme of the actual heartbreaking stories of what happens to the people in these communities when their jobs are ripped away from them simply because they are trying to exercise their right to strike.

It is time that American workers have the same rights and protections that workers have in the industrialized countries that are our main international competitors and trading partners. American workers should not be second-class citizens in the industrial world of global competition.

The President's Executive order is only a small step in the right direction. We ought to provide these protections against permanent replacement workers for all Americans, but at a minimum, we should uphold President Clinton's action to provide these protections for those employed by Federal contractors.

Mr. KENNEDY. Will the Senator yield?

Mr. FEINGOLD. I yield.

Mr. KENNEDY. Mr. President, I want to commend my friend and colleague from Wisconsin for an excellent presentation. This presentation was, I thought, one of the most thoughtful and comprehensive reviews of the significance of the Kassebaum amendment and what its implications would be in the real world.

We have heard a great deal of speeches about Executive orders, the power of the President, whether this Executive order was issued to benefit a special interest. But I think the Senator has in a very comprehensive and thoughtful way provided an insight about what is really before the Senate in terms of the people of his State. I just want to commend him and thank him for his thoughtfulness and for his insight in analyzing this issue and for sharing with the Senate a superb presentation on what is a very, very important issue.

When this amendment was initially proposed, it was really what I would call a seat-of-the-pants amendment. The President signed an Executive order, and the ink was not even dry when there was an amendment to try to undermine what the President was attempting to do.

I hope the American people have gained an insight into the human dimension of this debate. If they have, it is because of the presentation of the Senator from Wisconsin. I am very grateful to him for his presentation and, most importantly, I think our colleagues will be if they take the time to read and study this superb speech. I thank the Senator.

Mr. FEINGOLD. Mr. President, I would just like to thank the Senator from Massachusetts and say he has truly been an inspiration on this issue and during this debate. Not only has he spent a lot of time out here debating the amendment, trying to defeat it, but he has brought passion to the issue that it deserves.

It is an issue that should involve passion. It is an issue that should involve condemnation and that should bring forth the human element, which the Senator from Massachusetts has done so well.

I would just like to reiterate, this amendment is slowing down the process in the Senate. It is not helping us get our work done; it is hurting us getting our work done. We have no choice but to fight it because we believe it is off the point and it is fundamentally damaging to the very families that we have based our careers on and trying to fight for.

So it can be ended right away if this amendment is taken back. We can get back to the Department of Defense bill, but that is not the choice that the majority has made.

I am eager to work with the majority on a number of issues, including even some that are in the Republican contract—some. But when it comes to this kind of conduct suggesting that Federal dollars should be used to break unions and break the families that are part of them, we will fight and we will resist such a harsh verdict for the American people.

So, again, I thank the Senator from Massachusetts for his kind comments but, more importantly, for his strong leadership on this issue.

I yield the floor, Mr. President.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER (Mr. ABRAHAM). The Senator from Connecticut.

MEASURES PLACED ON THE CALENDAR—H.R. 988 AND H.R. 956

Mr. DODD. Mr. President, I understand there are two bills at the desk that are due to be read a second time.

The PRESIDING OFFICER. The Senator is correct. The clerk will read the first bill for the second time.

The bill clerk read as follows:

A bill (H.R. 988) to reform the Federal civil justice system.

Mr. DODD. Mr. President, I object to further proceedings on the bill at this time.

The PRESIDING OFFICER. Pursuant to rule XIV, the bill will be placed on the calendar.

The clerk will now read the second bill for the second time.

The bill clerk read as follows:

A bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes.

Mr. DODD. Mr. President, I respectfully object to further proceedings on that bill at this time as well.

The PRESIDING OFFICER. Pursuant to rule XIV, the bill will be placed on the calendar.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT

The Senate continued with the consideration of the bill.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I thank you. Those are procedural matters we just dealt with in order to clean up some business on the floor.

Quickly, before my colleague from Wisconsin leaves the floor, let me join in the comments of my colleague from Massachusetts. I want to commend Senator FEINGOLD for a very, very thoughtful set of remarks regarding the cloture motion on the Kassebaum amendment. It is an historical perspective that is not something we do with great frequency around here, but it is always nice to have a sense of history as to why we are in this particular debate and what has happened over the last number of decades that brought us to this particular debate when it comes to the issue of permanent replacements for strikers.

I just think he has added immeasurably to the knowledge base of this discussion and debate, and I think if Members do read it, particularly those who may be unclear in their own minds about whether or not we are on the right track with insisting that this Executive order issued by the President be given a chance to proceed, they will be enriched as a result of reading his remarks. I commend him for them.

Mr. President, as well, I commend my colleague from Massachusetts who, once again, is taking a very strong leadership position on a matter that many of us care very, very strongly about, and I rise, as well, today in opposition to the motion to invoke cloture on the Kassebaum amendment.

Throughout much of the 20th century, economic growth broadly benefited Americans of all income levels. We grew together and an expanding economy meant better jobs for everyone.

I will point out, Mr. President, in reading some history of the early part of World War II the other evening, I was shocked—maybe we should not be

if we read a little more history—but shocked to discover that in 1940 in this country, which is not that long ago—there are many people working today who were at work in 1940 in this country—one-half of all the adult males in the United States in 1940 had an annual income of $1,000 a year; two-thirds of all working women outside the home had an annual income of $1,000 a year; one-third of all the homes in this country roughly had no indoor plumbing to speak of; almost 60 percent had no central heating. Only 1 in 20 in this country went beyond high school. In fact, only one in four actually had a high school diploma in 1940. And of the adult 75 million people in this country at that time who were above the age of 21, 2 in 5 only had eighth-grade educations.

That is not 100 years ago. It is within the living memory, the working memory of many Americans. We have come a long way since the early days of the 1940's and the outbreak of World War II. We were successful over the years in generating and creating wealth; in raising the living standards because of efforts made to see to it that people could improve their educational opportunities, that they could improve working conditions; in improving the ability of people to earn wages and salaries that would make it possible for them to buy homes and educate their children like no other generation has been able to do in the past. We were reaching down to people who would have been stuck permanently in a status economically in this country with little or no hope of moving up the income ladder. I think this country has benefited tremendously because of those efforts. In fact, it was one of those efforts that will be the subject, I gather, later this year of a significant debate here on the minimum wage, which has raised, if you will, the tide that made it possible for the hopes of people who could not otherwise dream of doing better to actually do better. And many of the laws that we put in place to protect people on the job also occurred during those days.

So there is much to be proud of as Americans over the success that we have made of our country in a generation and a half since the days of World War II and immediately thereafter. A typical family over these past number of decades could work hard and, year by year, build a better life, whether that meant buying a home or putting a child through college or taking a simple family vacation—things that were beyond the reach of an awful lot of people in this country not that many years ago.

But since 1979, Mr. President, the situation has changed dramatically, and I do not think most people are aware of this, except those who may be caught in it themselves and wonder what has happened. Thanks to rapid technological change, global competition and other political and economic factors, during this period from 1979 forward, the American engine of economic growth has continued almost unabated. In fact, during the last 15 years, real household income in the United States grew by $767 billion.

Let me repeat that. In the last 15 years in this country, real household income has grown by $767 billion—an incredible amount of growth. But, unlike the past, those gains have not been broadly shared. I am not engaging here in some sort of hypotheses or fiction. These are facts. Ninety-seven percent of our real income growth—that $767 billion—has gone to the top one-fifth of households incomewise in the country. The top 20 percent of households saw their real family incomes climb by 18 percent during the last 15 years while people in the middle 20 percent economically in this country actually suffered a 3-percent decline in that income growth. And the poorest families, the poorest one-fifth in this country, who previously had been the principal beneficiaries of economic growth in the decades of the 1940's, the 1950's, the 1960's, and up through the 1970's, saw between 1979 and 1993 their incomes decline by a staggering 17 percent.

So the top one-fifth has gone up 18 percent, the middle 20 percent has actually declined by 3 percent, and the bottom 20 percent, those working families out there struggling to make ends meet, to hold their families together, have seen their incomes decline by 17 percent in that same period.

So here we have this staggering increase in growth overall, and yet we can begin to appreciate, with that $767 billion of income growth, which part of our economy, what percentage of those in the economy have actually seen their lifestyles benefited the most.

The falling living standards of the vast majority of Americans should, I think, be of grave concern to all of us regardless of party or political ideology or persuasion. This country has historically done better when those at the lower income levels have had the chance to grow and become stronger, to be better consumers. We all benefit as a result of that.

I believe the President and many of us here are committed to doing something about raising those standards of living. The President wants to raise incomes for ordinary Americans. I mentioned already the debate that will ensue on the minimum wage law in this country in the coming days. Unfortunately, there are those who seem to be trying to block every effort to make a difference in this area. The minimum wage, we have already heard people say, they will filibuster. The last President, to his great credit, who raised the minimum wage was George Bush. It was a bipartisan effort. And here we are talking about 45 cents a year for 2 years, 90 cents, to a little over $5 an hour.

So the minimum wage says you make $8,500 a year in America. That is almost $4,000 less than the poverty level in this country for a family of three. How are we ever going to induce people on welfare to go to work when you start out with a minimum wage level that leaves you $4,000 less than the poverty level in this country?

If we are going to reward work, we are going to have do a bit better, it seems to me, than suggesting we cannot increase the minimum wage.

Summer job programs. Here we are talking about 600,000 summer jobs for kids in our inner cities. The Presiding Officer comes from Michigan. In the city of Detroit, and my city of Hartford, we have a lot of inner-city children who can get into a lot of trouble in the summer. Here is a chance—we have seen the benefit of it—to put these young people to work, and yet we are being told that the summer job program should be eliminated. We are also hearing no to job training, no to education, no to child care.

Again, I come back to the issue of trying to get people off welfare and reward work. Two-thirds of all families on welfare have at least one child of preschool age today. How are we going to convince those people to get off public assistance if we do not have an adequate child care system in this country? But our colleagues say no to that as well.

So you begin to see a pattern here that develops. It is no to everything except one thing. And that is that we are now going to provide, apparently, a significant tax break to that top 20 percent who are earning incomes in excess of $100,000 or more a year. The top 1 percent will get the kind of tax break that is being advocated in areas like capital gains.

I am not making this up. Before too long, the House of Representatives will try to cut $17 billion out of hot lunch programs, nutrition programs, drug free schools, higher education, a long list—$17 billion. Where did it go? Was it for deficit reduction? Oh, no. It was for the tax cuts, despite all of the great debate and a lot of heat around here about deficit reduction. We had an extensive debate about deficit reduction. But where does the first $17 billion in spending cuts go? It goes for a tax cut for those people who, as I said already, did the best in the last 15 years economically in the country.

In short, Mr. President, the message from the other side seems to be to working Americans: Tough luck; you are on your own.

And by blocking this Executive order on permanent replacement workers, the Kassebaum amendment would tell ordinary Americans that after years of losing ground on pay and benefits, they could lose their jobs, as well, solely for

exercising their fundamental right to strike.

Let me talk about this point, because this is a serious one, and it goes to the sense of balance we should have in labor relations. Management has the power of salaries and wages which it offers to people. Labor has their work. That is what they have.

That is the balance here. And we have struck this balance historically between management and labor where labor, working people, say I will withhold my labor if we cannot strike an agreement on working conditions, wages, salaries. Management says we will not pay if we cannot strike a bargain.

So both sides have had some leverage, that is, working people say they will not work; they will go on strike. Management says we will not pay you.

And that has been the tension that has kept the process moving forward. Both sides have something to withhold.

What has happened lately is that management has said, look, we are going to take away the one thing working people have, that is, the right to strike, because we are going to hire permanent replacements. You go out on strike; we hire permanent replacements to fill your job.

The equation gets destroyed, in effect. If working people are told that withholding their labor no longer can be a factor or used as leverage, then how do you get to collective bargaining? How do you achieve the balance that has brought us the kind of working conditions and improvement in our plant floors that we have seen over the years?

What we are suggesting here is that, at least in the area of Federal contracts for employers who engage in this practice—that is to permanently replace people who are out on strike—we are saying if you are that kind of employer and you have Federal contracts, we are going to stop giving you contracts because we do not think what you are doing is right. It is not right for you to say to your striking employees, we are sorry, but we are going to hire permanent people to take your jobs.

I do not know anybody who thinks that is fair. It is one thing to say, look, you go out on strike, you do not get paid. You do not get work.

Here is a pressure then on working people and labor to come to that table. Obviously, if the management is not producing their widgets, their products, then there is pressure on management to get back to the table. But if you take away the major leverage point that working people have, that is, what they produce with their hands or otherwise, then you destroy that equation.

All we are trying to do here is to see to it that with those who get Federal contracts, that equation not be destroyed. We might even give it a chance to see what it does. It might improve the situation out there so we would not be asked all the time to get involved in strikes and negotiations where the Federal Government gets drawn into these processes.

So, Mr. President, I hope that we might even give this a chance, this Executive order that has been issued by the President—to his credit, I would add—for dealing with the issue of permanently replaced striking workers, and see how it goes for awhile instead of denying this experiment, because we are obviously not going to pass a bill that would ban it all across the board.

The President has exercised his Executive powers, which he has the right to do. Why not wait a few years and see how this works instead of trying to destroy this idea and attempt to test whether or not the situation might improve?

So, again, I commend our colleague from Massachusetts for taking a leadership role on this. I hope our colleagues who have been supporting the effort to not invoke cloture will continue to do so, or that those who have been trying to invoke cloture would let us move on to other matters because many of us here feel very, very strongly about this. I think it would be a tragic day, indeed, to not give this a chance to work.

It has been tough enough on working people over the last 15 years, watching their wages and salaries remain stagnant or decline, as I have already pointed out. Now they have their jobs in jeopardy by hiring permanent replacements when they exercise their right—this is a right we are talking about—the right to strike. It is a right. It is not a privilege; it is a right. When you come in and hire permanent replacements and destroy people's ability to exercise their rights, it is a setback for all of us.

So I hope we will be able to continue to muster the votes necessary or, better yet, I hope we'll drop this amendment. Let the President's Executive order go into place. Let us see what happens over the next few years. We will come back and revisit this issue—we can at any time—and let us move on to the other important matters that are before us.

Mr. KENNEDY. Will the Senator yield?

Mr. DODD. I will be glad to yield to my colleague.

Mr. KENNEDY. I thank my friend and colleague from Connecticut for really a splendid presentation. I hope our colleagues will pay particular attention to the comments of the Senator from Connecticut as they relate to how this proposal really impacts children. The Senator from Connecticut has been the chairman of the Children's Caucus and has really been the leader in this body, now and in the past, for the day care programs that we have as well as for family and medical leave and other very important programs.

One of the points we have been emphasizing over the course of this debate are the different concerns of the two parties. The Senate has just debated the unfunded mandates and the balanced budget, and the first issue we debate is an Executive order which makes more sure the economic security of working families. When the President issues an Executive order, the ink is not even dry on it when an amendment is put in which is going to diminish the economic interests and power of working families.

When we talk about the working families and the workers who are being permanently replaced, as the Senator knows, we are talking about people who are making $5, $6, $7, $8 an hour. Some maybe make $6 an hour and trying to get to that 7th dollar. To be a parent with two or three children making those kind of wages and then to be permanently replaced is a terrible thing.

I know the Senator is concerned as he looks back over the period of the past years and sees what has happened to real family income over the period from 1980 to 1993 and he takes into account that total real family income includes the income of the many mothers who have entered the work force. What you see is that families with small children have not even stayed even but are falling behind. And then look at who gains under the Republican contract? Just take a look at the most obvious parts of that contract which the Ways and Means Committee took up yesterday—the capital gains tax and the elimination of the minimum tax for corporations. Who gains? Who are the individuals benefiting from these proposals? Again, large corporations and the wealthy are the block benefiting from these contract proposals.

I ask whether the Senator is concerned not only about the impact on the workers who are being replaced but also on the impact on children. Because this is not the only proposal being made. There is a proposal to cut back on child care, cut back on the school nutrition programs, cut back on the WIC programs, cut back on lead paint poisoning to try to help parents who are trying to do something about lead paint poisoning and who are trying to stop the ingestion of lead paint by children. The Carnegie Commission report of several months ago talks about the importance of giving nutrition to children from 1 to 3 so they can develop and be able to develop cognitive skills, learning skills, so they can take an active part in learning—does the Senator believe this amendment will also impose a heavy burden on children in our country and that this is something that ought to be addressed as well?

Mr. DODD. Mr. President, let me thank my colleague from Massachusetts for his question. I think it is instructive to note the chart here as I am looking at it on my left. That points out what happened to incomes, real family incomes, between 1979 and 1993. I will come directly to the Senator's point regarding children right now.

But I think it is worthwhile for people to know that the sense of frustration people feel in a lot of working families in this country, wondering what is happening to them, is entirely justified. It is worthwhile to note in the economy of the Nation, household income grew at an incredible rate, $767 billion of family household income growth in that 15-year period. There was a staggering amount of growth. But 97 percent of that growth in the last 15 years grew in the top 20 percent of income earners in the United States.

I was trying to point out earlier that in the decades of the 1940's, 1950's, 1960's and 1970's, the distribution of income growth was fairly level. That is, all income groups did roughly the same and the country got stronger as a result of it. It has only been in this last 15 years that we have found unprecedented growth of our country and yet the growth has been pretty much locked in to the top 20 percent—97 percent of the $767 billion has been concentrated in the top 20 percent.

The middle 20 percent actually saw their household incomes decline by 3 percent in the midst of this unprecedented growth. That middle 20 percent found themselves losing ground.

And the lower 20 percent saw their household incomes decline by 17 or 18 percent, a tremendous drop, in the midst of great growth.

Now we are confronted with a situation where people lose their jobs. How does it affect children? I asked, back this fall, for the General Accounting Office to give me an update of how many children of working families are covered by health insurance, a subject very near and dear to the heart of the Senator from Massachusetts. We got the numbers back yesterday. Let me just share some numbers with my colleague.

Mr. President, 89 percent of uninsured children have at least one working parent, and 61 percent have a parent working full time for a full year. So even in these working families, the basic necessity of health insurance for these young children is being lost. Add to that the economic difficulty of a job lost to these children because their parents have exercised a right to strike, then you begin to see that the problem becomes even greater.

It is tough enough as it is right now for these kids. My Lord, you talk about a child starting out life without having basic health care, what are the implications to that child learning and being a productive citizen in their adulthood? Again, I am not stating anything that most of our colleagues are unaware of here. The data and information are overwhelming. A child that does not begin life with the proper nutrition and immunizations does not learn right. The child that does not learn right from the beginning drops out of school, does not get the kind of job he or she needs. The problem explodes down the road.

When you are talking about the economy here and how it affects children, the Senator from Massachusetts is absolutely proper and right to raise the issue.

We talked about adults and their jobs. But it is these kids who are the ones who pay an awful price. And it is that bottom 20 percent who really do not get a golden parachute. You lose your job on a factory floor; you may get a month or 6 weeks, if you are lucky, of paycheck. After that it is over with. We all know what happens to you if you are top management and you lose your job in this country. You get taken care of for life and two or three generations do pretty well in your family because they have worked out the deal. God help you if you are a working person out there every day trying to hold body and soul together and raise a family and do so on your own and not be dependent upon anybody else. You lose that job and the bottom falls out from under you. There is no golden parachute for you whatsoever.

So we are talking about here a basic right to protect your family and to negotiate through the normal processes of wages and benefits. When you strip that away, then you make the situation of these families that much more difficult for them to cope with.

I thank my colleague.

Mr. KENNEDY. This is really a point that I think needs underlining. There are those who are supporting this amendment that say, "Look, I do not know why there is a discussion about what is happening to working families. All we are talking about is a narrow, little Executive order."

Would the Senator not agree with me that those that are in lockstep in support of that proposal would have more credibility if they were out here on the floor of the U.S. Senate today saying we will join you in passing a resolution to increase the minimum wage? For example, wouldn't this proposal have more credibility if its proponents also supported the same increase in the minimum wage that was signed by a Republican President in 1990 of 45 cents? That 45-cent increase in minimum wage has lost its purchasing power. When we had Democratic Congresses and a Republican President, we were able to get together and pass that. Now we have a Republican Congress and a Democratic President who wants to do that. If they were out here saying we are really for those working families, we want to reward them, we are here to help minimum wage families, we are out here to help children and the sons and daughters of working families go on to school, but we are bothered by this Executive order, I daresay there might be a greater sense of belief on our part that this is not just a further attempt to diminish the real purchasing power of working families.

I want to mention one thing to the Senator. We had a forum last Friday of those who are concerned about the increase in the minimum wage. And we had a young couple, David Dow and his wife. Both of them effectively make the minimum wage. Both of them work hard. They want to go to school. They have a child. And as is typical, both have to go out and work, effectively at minimum wage. Mr. Dow has glasses. His young daughter used to get his glasses in the early morning when he woke up for his job and give them to him. One morning he woke up and he said, "Where are my glasses?" And she walked in and pointed into the toilet. She had dropped them down there. It would be humorous if it were not so sad and tragic. He has now been without those glasses for 3 months putting aside $5, $6, $7 in order to try to build a kitty to be able to purchase some replacement glasses.

The point is that this family believes that it is not only important to work and had a desire to work to provide for themselves and their wonderful young daughter, but the fact of the matter is both of them are working two jobs. They have 45 minutes every Saturday and 30 minutes on Sunday to spend time with that child; an hour and a half. What Member of the Senate would tolerate that policy? An hour and a half to spend with a child, and how do we expect that child to develop? Let alone the kinds of additional pressures these parents have—the toys that are not bought, the fact that the child cannot go to visit another child for her birthday party because she will not be able to bring a toy. All of these other issues aside, how can the time spent between a parent and a child, be denied? These are not people, as the Senator pointed out, that are not playing by the rules. These are people that want to work, honor work, have a pride in work, want to go to school, are trying to go to school. This one person is paying back $80 a month with the money he makes in the minimum wage to pay for his school loan because he wants to keep ahead so he can go back to school. But he just wonders when that tide is going to take over, when it is going to push him under.

That is what we are talking about in terms of the Senator from Connecticut, the Senator from Wisconsin, and others who talked about this measure and where we are as an institution and

what is happening to people. That is what this measure is about.

I was interested in whether the Senator, as someone who has spent time working with children, wonders if this is not something more than an economic issue, not something more than just a bottom line of dollars and cents. That is important, but I am always impressed by the amount of time we spend on trying to understand the cost of so many things and the value of so little around this institution. Aren't we talking about providing these people who have become parents through a wonderful act of God and who have a wonderful opportunity as parents to love and adore their children, with a real opportunity to spend time with their children? Don't we have some responsibility to make sure that we are going to be attendant to their needs to care for their children?

Mr. DODD. I will conclude, Mr. President, by saying I think the Senator put it well by saying some people talk about the price of everything and the value of nothing. We can argue the numbers. Maybe we should not always talk numbers because I guess people's eyes glaze over if you start talking about the size of the economy, the percentages of groups of people that lose or gain in all of this. But it is not any great leap of knowledge to know what happens when you lose your job or are gripped by the fear of losing your job.

Most people in this country do not wake up in the morning wondering whether or not they are a Democrat or a Republican or conservative or liberal or who is winning or losing in Washington. Many families get up in the morning and there is a knot in their stomach because they do not know whether or not at the end of that day that job is going to be there. If that job is not there, how do you keep up the rent payments or the mortgage? How do you take care of those kids and their educational opportunities? If you have a parent that is living with you or down the street, you worry about what will happen if they get sick. How do you make the choice between the child and your parent who may need the money or the mortgage on the house or the car payment? That is what most people think about every day. That is what they think about.

They just like to know that occasionally somebody stands up for them because they do not have political action committees. They are not heavyweights who are in Washington. But they would like to think that somebody might stand up and say, "If I fight for a better wage or fight for a better salary or fight for better working conditions so that my family might do a bit better"—somebody might stand up and say, "I have a right to do that." They look around and they see that people do not seem to care about it at all. When they lose everything and they look in those children's eyes at night and wonder how they are going to put food on the table or provide for them down the road with their educational desires knowing full well how important it is, what is the price of that? I cannot tell you—$10, $20, $1,000, $10,000? That really is not the issue so much. It is about dreaming. It is about aspirations. It is about hope. That is what most people do. They dream for their families. They try to plan. They save. They think about how they might make it possible for their kids to do better than they have done.

So what we talk about with this issue here in many ways is pulling the rug out from under people and pulling the rug out from under these families who really make up the glue that holds this society together. These are the people who vote. These are the people who fight the wars. These are the people who pay the taxes. This is the working crowd in America. They believe in this country. It is a pretty depressing sight to see that when their right to fight for themselves and to fight for their concerns or wages or salaries, that that basic right is going to be denied them; that someone can be hired permanently to replace them if, God forbid, they stand up to defend themselves and their families and their children. That is basically what this is about. You do not have that right any longer. You can stand up and fight but you can get thrown out of a job tomorrow. You are gone, and "We will hire somebody else. Let me warn you. When we hire you as a new person, you had better not try it either. God forbid if you try to defend your family. We will do the same thing to you that we did to that person."

That is what this is about. It is that simple: Should people have the right to be able to protect themselves and protect their families? They are not asking the Government to come in and wage the battle for them. Good management-labor negotiations have produced fairness in this country. What the Senator from Massachusetts is talking about is how does it affect these children? I do not know, I suppose we can search out the actuaries and others to come up with the numbers.

But I know that it gets impossible for those parents to provide for those children, to give them much hope when their basic rights to defend themselves and their rights in the workplace are gone. I hope my colleagues will think long and hard about this. This issue may go away. Maybe the votes will be there to defeat us, and they think it will disappear. It is not going to go away. It is going to come back over and over again because peoples' rights ought not to be denied when they are trying to protect themselves.

I thank the Senator.

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

Mr. KENNEDY. Yes, I am happy to.

Mr. BIDEN. I did not come over to speak to this issue, but listening to my colleagues, with whom I agree with on this issue, I was struck by how much things have changed since I arrived here in the Senate in 1973. Back in 1973, which is not that long ago—I guess my kids think it is 100 years ago, but it is not that long ago. It is not like listening to my Grandfather Finnegan telling me about strikes in the 1920's and that kind of thing. It was the beginning, looking back on it, of sort of the end, if not the demise, of the balancing power of American organized labor in the country, where they were able to be major players in determining wages, hours, working conditions, their input on the economy, and which direction the economy could go.

Over the last 23 years, something interesting has happened. If this debate were taking place in 1973, you would have some of our Republican colleagues standing up—and maybe even a few Democrats standing up—and saying, you know, the problem is that organized labor has become too powerful; organized labor is fat; organized labor is resting on its laurels; organized labor is not productive, and all of the list of horribles we used to hear. I find it kind of interesting in this debate that nobody who opposes our position—which is that you should not be able to replace people who are legitimately striking under the law—to maintain, not to gain but maintain, where they are. Nobody is making the argument we used to hear about how powerful and bullying the American labor movement is. Nobody is even making the argument that we used to always hear about how this is so unfair to business. What happened to them?

When I attend chamber of commerce dinners in my home State—a corporate State, and I suspect the same is true in Massachusetts and Connecticut—I do not hear businessmen complaining about organized labor; because, in effect, organized labor has already given at the office, already gotten the living devil kicked out of them. Without making a judgment that I think is unfair, the point is that this is like beating up on a kid now. Organized labor now frequently gets put in the position where, because of horrible management practices over recent decades, they are told that, by the way, if you do not make the following concessions, we are going to shut down. We are just going to close the company.

So organized labor is scared to death; the workers are scared to death. And they give much more than management gives in terms of concessions to keep a lot of these outfits open and running. And now they have gotten to the point where what happens—and it rarely happens—is that when they are truly being abused and when there is no serious good faith collective bargaining going on, they decide they

have nothing left to do but go out on strike. And now some in American business are saying, we are about to strip you of the last bit of leverage you have. If you go out on strike, we are going to replace you. And thus union members are deterred because of what the Senator from Connecticut said: Fear.

People are scared to death. They are scared to death to exercise what they believe to be even their legitimate rights. Even when they are being maltreated, they do not go on strike because they are afraid of the alternative because of the nature of the economy, the downsizing of American corporations, the way things are; the whole world is turning upside down. I find it interesting that on this issue, which you would think would be so basic, this is not even taking place in an environment where anybody is legitimately making the argument that these people who are going on strike are doing it because they are greedy and trying to take over a company, or because they are trying to put somebody under. You do not even hear that argument. When these people go on strike—I think this is an interesting point people should remember—it is desperation. It is not deciding whether they want to go on strike to get a better wage to be able to have a second car and a trailer and a vacation at the beach. That is the argument we heard in the 1960s and 1970s. They are going on strike now because they say, hey, wait a minute, I have given at the office; I have been giving at the office for the last 15 years. I have already had my standard of living lowered and now you are telling me again that I cannot even maintain where I am. I do not think it is fair, you are not treating me fairly, and I am going on strike, which I am allowed to do under the law.

It amazes me why we are even having this fight. When is the last time any of the people in this Chamber picked up a paper and read about how unions and organized labor have taken such horrible advantage of people? All they have done for the last 10 to 12 years is given concessions and increased their productivity. And now, we have reached the point that—to steal a phrase from Mr. Stockman, who commented on the Reagan tax policy—these folks are like pigs in a trough now. They not only want them to continue to give at the office, but they want to take away the last thing they have under the law. I, quite frankly, did not ever think this would be a debate we would be having on the floor of the U.S. Senate.

Again, look at all the strikes that are taking place nationwide. Look at the effects of the strikes taking place nationwide. Look at what is being requested by those strikes that are taking place nationwide. I will lay you 8 to 5 that 85 percent of the people would say what is being asked is reasonable. They may or may not agree, but it is reasonable.

No one is even making the claims anymore, I say to my friend from Massachusetts, that this is some muscle-bound organized labor, who is just out there ripping off everyone and intimidating companies. This is just people who are just trying to be in a position where they can—to use the expression of my friend from Massachusetts—"keep their heads above the water." And now they are being told they do not even have a right. What prompted me to say all this was the word used by the Senator from Connecticut: Fear. Can you imagine the fear and intimidation of an individual who, in today's circumstances, thinking that after roughly 60 years of practice under the NLRB, they are going to be put in the position if they even stand up and try to stop further erosion, that the alternative for them in an environment where there are no other jobs is that they lose their job permanently? That is simply not fair.

Our former colleague from California, the present Governor of California, ran an ad I remember seeing. He was talking about immigration, but I will take the words he used and apply it here, because I disagreed with his view on immigration. He said something like this: Some people are playing by the rules. They are doing it the American way. Other people are not playing by the rules and they are being rewarded for it. That is not the American way.

Striker replacement in circumstances where there is no evidence that there has been a violation of the labor laws is not the American way.

It is a reflection of greed, the greed and avarice of those who want to make a fundamental change that working women and men are put into their proper place, from their perspective. I think it is, quite frankly, outrageous.

The Senator said, "Who is going to stand up and fight for them?" Well, I know of no two people who have been better champions of their cause in making sure they are never left unspoken for than the Senator from Massachusetts and the Senator from Connecticut, and I compliment them.

Mr. KENNEDY. Mr. President, I thank the Senator from Delaware for his comments and for his historical perspective. I think the Senator has, in his brief but I think pointed comments, reflected what this issue and what this battle is really all about. In the last day or so, as we focused on it, there have been those who say, We do not understand why we are talking about these broader themes of equity, about fear, about the real America. This is really just an Executive order.

The Senator has stated very clearly and effectively what really is at issue on the floor of the U.S. Senate and why this battle is so important. I thank the Senator for his statement and for his excellent support for working families, which has been a trademark of his career in the Senate.

Mr. BIDEN. Mr. President, I ask unanimous consent to be able to go into morning business for the purposes of discussing an issue totally unrelated to this, the introduction of a bill.

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

Mr. BIDEN. Mr. President, I thank you.

(The remarks of Mr. BIDEN pertaining to the introduction of S. 564 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

ORDER OF PROCEDURE

Mrs. BOXER. Mr. President, I plan to speak about the striker replacement amendment that is before the Senate. But before I do, I ask unanimous consent that I may speak on another matter for about 15 minutes without losing my right to the floor.

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

Mrs. BOXER. Thank you very much, Mr. President.

THE CALIFORNIA DISASTERS

Mrs. BOXER. Mr. President, before I get into the issue that my colleague, Senator KENNEDY, and others have addressed for the past few legislative days, I felt it is important to discuss briefly the disasters that have hit my State of California. I will tell you that one wonders when we are going to stop seeing these floods and these earthquakes, fires, and droughts. It seems as if our State is for some reason just getting much more than its share of these natural disasters. But it was interesting today that the Senate task force presented its report on disaster funding. I am a member of that task force, and we have been working hard to come up with some solutions as to how we are going to deal with these future disasters.

I want to say that the President moved very quickly to declare 39 counties disaster areas eligible for both individual and family emergency grants, and for infrastructure repairs. Federal Emergency Management Director James Lee Witt once again has proved that he is someone who wants to cut through the redtape that used to accompany FEMA wherever it went in this country. The President sent him out along with Acting Agriculture Secretary Rominger, and with Leon Panetta, the Chief of Staff who is so familiar with California. They saw for themselves the damage that we are facing.

I have to say that when Leon Panetta saw Monterey County, which he represented in Congress for many years, I

am sure his heart stopped for a minute because so much damage greeted him. We have infrastructure problems there. We have communities shut off. We have crop damage to fruits and vegetables which is going to cause a lot of financial harm to the farmers. But also we are going to feel it in our pocketbooks—as consumers when we go to the stores.

We have already seen 2,900 applications for assistance from the storms that started on January 3. That was the first one, and then we had the one February 10. Those resulted in 90,000 applications for assistance. More than $51 million in emergency housing assistance checks have been mailed for the first disaster. In addition, $40 million in Small Business Administration loans have been approved for 2,000 people for losses to homes and businesses.

I cannot count how many times I have stood in this U.S. Senate and in the House telling my colleagues about these disasters. It just does not get any easier.

Interstate 5, a major north-south economic artery in the West, is still closed. I think many people saw the tragic photographs of cars that plunged into the waters and were swept away when a bridge failed. And we are trying very hard to get a temporary bridge constructed there.

We are looking at crop losses of about $300 million or more. This storm was very, very harsh on the crops. I talked about the fruits and vegetables. To be specific, the severe losses are lettuce, broccoli, cauliflower, almonds, and strawberries. California is the salad bowl of our Nation, and we got hit very, very hard. We have had damage to vineyards of $11.5 million. I have spoken to local elected officials in Monterey County, in Napa County, throughout the southern California region, and the Los Angeles area.

I have told them that we are going to do everything we can here. We will be getting an emergency supplemental to deal with this problem. We are working now on a defense emergency supplemental bill. But unfortunately—and I say this really from the heart—the House has chosen to use this needed emergency spending to relieve the suffering of the people in California, and I might add, other States who are recovering from other disasters, to rush through a $17 billion budget cut, rescissions of $17 billion, onto a bill that is about a $6 billion emergency relief bill.

I want to tell you that I intend to fight that bill, and I am not going to go into too many of the details other than to say that it wipes out many important programs, including summer youth job programs. It is very interesting, because today I received a letter from the Los Angeles Board of Supervisors and they have a lot of damage, of course, left over from the earthquake, and yet they are saying we should oppose that rescissions bill. They wrote to House Speaker GINGRICH and House Majority Leader ARMEY, and the county supervisors basically say that this bill, which would fund the disaster relief, but also offset it with very devastating cuts, is not the way to go.

People used to complain that we would load down these emergency bills with extraneous spending items, and that was true, and we stopped doing it. Why should we see it loaded down with rescissions of programs that are so very important? For example, on the one hand, the House says, California, we know you need money to rebuild. Yet, they cut emergency highway funding in the same bill, which could well be used to repair freeways and to make them safe from future earthquakes.

So I am very hopeful that when this bill gets into the U.S. Senate, we will look at it a little differently here. I am often reminded about what our Founders said about the U.S. Senate, that we act like the "saucer" and the House is the "cup." When the legislation comes over here, it cools down and people get a chance to look at it. This is certainly one that we have to look at.

Well, I will say, Mr. President, we need disaster reform. We do not have the perfect way to pay for disasters, that is for sure. I am working with my colleagues, really, from all over the country. This is a bipartisan task force that was set up here. Senators BOND and GLENN head it up, and I am on that task force. We are going to look at all of the ways we can to prepare here for the next disaster, to make sure that we can meet the needs of our people when our people cry out after an earthquake, flood, fire, or volcano, wherever that might be. And during the debate on the balanced budget amendment, I remember bringing to the floor photographs of disasters from all over the country, and truly there is not a place in America that is immune from a flood or some natural disaster that could lead to an emergency.

There is one element of disaster reform that I am prepared to introduce today. This component would repeal the current 10-percent income threshold for casualty loss deductions arising from a presidentially declared natural disasters. It is identical to legislation I offered 1 year ago to help the victims of last year's tragic Northridge earthquake.

We have all seen the devastating images of flooded farms and homes on television. But it is important to remember that many Californians affected by the flooding suffered serious, but moderate, damage. Their basements are filled with mud and their carpets and furniture need to be replaced, but their homes still stand. These people have $5,000 in damage, or maybe $10,000. These are the taxpayers who may not get the relief they need.

Suppose a middle-class family with adjusted gross income of $50,000 sustains $4,000 in flood damage. Under current law, only losses in excess of $5,100 can be deducted. But under my bill, that family could deduct all losses over $100, or $3,900. And where would their tax savings go? It would go back into the economy as a direct stimulus. It would create jobs for contractors and those who produce the raw materials they use. The economic benefits would ripple throughout the community.

This bill would allow nearly full tax deductibility of all casualty losses attributable to disasters declared on or after January 14, 1994. Victims of the Northridge earthquake could take advantage of this tax deduction as could victims of the current flooding. And most importantly, future disaster victims would gain a valuable tool to help themselves recover from these disasters.

So, Mr. President, that concludes my remarks on the update on the disaster.

(Mr. THOMPSON assumed the chair.)

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT

The Senate continued with the consideration of the bill.

Mrs. BOXER. At this time, I will speak about the business before us. I think some very important issues have been raised in this debate. I often try to put myself in the position of an average American turning on the television set, looking at the U.S. Senate, and seeing a Senator speak from either side of the aisle and wondering why is a Senator speaking about this issue or that issue, when on the schedule it says we are taking up a defense emergency supplemental bill.

In fact, that is what we are doing. We have been asked by the Pentagon to meet their needs because they are engaged in some foreign operations for which they did not have a budget, and for which there were costs that they need to be reimbursed for. So in the middle of this debate that we are having on this very important defense emergency supplemental appropriations bill, there is an amendment offered which has absolutely nothing to do with the bill before us, not even in the most remote sense of the word.

I try to make some type of connection between the amendment that is pending and the bill that is pending, too. And unless I am missing something, I cannot see a connection, because the bill is about reimbursing the Pentagon for items that were needed for this country to engage in military or peacekeeping assignments. And the Kassebaum amendment before us, which has been before us for days now, deals with a worker issue, a workplace fairness issue, an Executive order that has to do with replacing legally striking workers. It has nothing to do with

the military emergency supplemental bill.

I heard Senator FEINGOLD make this point, and I think it is worth repeating. It is interesting that the Republicans are in charge of this bill; they brought it out of the committee, and now they are amending it with a very controversial amendment which has nothing to do with the bill. They are slowing down their own bill.

One has to ask oneself why this would be. I have looked at that, also. I tried to look at the merits of it. They said, well, the President signed this Executive order and he now says that the Government should not do business with companies that permanently replace legally striking workers. The President said that. And so the argument is that he has no right to do that; he is trampling on the rights of the Congress. Yet, as you go back in history—and I will bring this out later—I never heard one Republican come to the Senate floor and complain that President Bush was overstepping his bounds when he made similar moves. So that is not an issue here.

So I come down to this: I think it is a way to slap working people, to put them in their place, to tell them that they do not have rights. And I think that is very sad. I do not see how—and I try intellectually to be fair about this—you can look a worker in the eye, whether it is a nurse or whether it is a construction worker, whether it is someone whose fingernails are dirty or clean, and say to that worker: You, my friend, have a right to strike; you, my friend, have a right under the laws of the United States of America to withhold your labor if you feel you are being treated unfairly. That is your ultimate human right. How could you look that worker in the eye, male or female, young or old, rich or poor, and say to that worker: You have the right to strike; and yet, in the same breath say: However, if you go out on strike, your boss can permanently replace you, even if you are out on strike legally and you have done everything right and you want to negotiate.

This is a very simple issue. You do not have the right to strike if you know the minute you step out the door you do not have a job.

What really interests me is that during the heyday of the Soviet Union, when we were all so excited about the fact that the Wall could come down, the Soviet Union would break up, and countries like Poland could be free at last, Republicans embraced the union movement in Poland called Solidarity.

I will never forget it. Lech Walesa came here. Republicans and Democrats alike said, "Solidarity. Show your strength. Stand up against the Communists. We support you. You are right. The Communists are not treating you fairly. They are treating you brutally."

Everyone embraced Lech Walesa and everyone invited him to speak. Republicans and Democrats here in America, we were united for Solidarity.

But, wait a minute. What happened? What happens in our own country when workers asked for that same dignity in this Nation? You get amendments like this one, amendments like this one that are so hurtful to people who believe they have a right to strike, to people who want to work but who want to know that they have that ultimate leverage.

I wish to compliment the President, because he looked at this issue and he knew that for many years we had a majority in this U.S. Senate which would have outlawed the permanent replacement of these striking workers. We did not have 60 votes, so we fell victim to filibuster.

He knew he had the ability to do something about this. And the Republicans do not like it. But he did it. He signed an Executive order. Guess what? We have a President. He has the ability to take some steps on his own.

My goodness, we have Republicans here who want to give him so much line-item veto power that it is too much for this U.S. Senator. I do not want to give the President too much power. But the President has a right to issue an Executive order like this one.

The Kassebaum amendment would say the President does not have this right, this very simple Executive order that says that we cannot contract with companies who fire legally striking workers. The Kassebaum amendment would wipe out that Executive order.

I will tell you what I hope. I hope, if that survives this bill and it is attached to this bill, I hope the President vetoes this bill, because I think that working people in America today need to know that they get some respect, that you do not have to be a striking worker in Poland and belong to Solidarity before you get respect from the Government of the United States of America.

The President, as head of the executive branch agencies, is well within his right to issue this order.

I said before, I never heard one Republican complain when George Bush issued his Executive order which required all unionized Federal contractors to post a notice in their workplace informing all employees that they could not be required to join a union. George Bush made sure that that kind of language was posted. The order says workers had a right to refuse to pay dues for any purpose unrelated to collective bargaining. I did not hear any Republican Senator complain that the President had overstepped his authority.

Oh, but now President Clinton stands up for workers and all you hear is complaints about it and we are going to stop him.

Well, I hope we do not succeed in overturning that Executive order, because I think working people are getting the shaft.

And why do I say that? Common sense. I am not a labor lawyer, but I have common sense. If somebody says to me, "You have a right to strike, but the minute you walk out the door someone is going to permanently replace you and you are out, no health insurance, no benefits, no nothing," I do not have a right to strike at all. It is just a paper right.

President Clinton understands this and he is showing leadership. The Republicans around here do not like it, so they put up the Kassebaum amendment. They slow down their own bill to slap working people.

There is a lot of talk in this country that people are insecure about this economy. In California, there is a lot of talk about affirmative action. And they are saying, "Well, this is the reason that people are having trouble getting jobs, affirmative action."

Well, let me tell you, if you look at the facts, you will find that is not so; that what is hurting the working person today is the fact that we do not see any policies coming out of this Congress that are going to help them.

Let me tell you, you read the contract for America or with America or on America. I think its the Contract With America, the Republican Contract With America. You read every line of that contract and you show me one place in that contract where there is one thing said about jobs, where there is one thing said about the rights of working people, where there is one thing said about increasing a minimum wage that is at a 40-year low. And there is a modest proposal by this President to increase it and no way will this Republican Congress even consider it.

But if they get a chance to slap the worker, here it is. I say it is wrong. It is wrong. These are the people that should be respected, not shunned, and this amendment that has been offered by the Senator from Kansas should be defeated.

The threat of using replacement workers is a veiled iron glove hovering over workers at the bargaining table. It upsets that delicate balance.

I have known some wonderful people in California who are very good bosses, who have very good relations with the working people that they hire. And I can tell you, those people would never replace workers who go out on strike. They would not do it because they have come to respect those workers and the workers' families and the workers' children and they know that their success has been brought about because of those workers. So this is not aimed at them—the good bosses, the management people who bring their workers in.

But I will tell you, there are those management people—and I have seen

them, too, in California—who do not really care about the workers, who really do not care. Sometimes it is new management that is brought in when a company is bought out, some kind of a hostile takeover. They come in and they throw everybody out the door. They goad workers until they go out on strike, and then they permanently replace them.

We have a lot of companies to choose from when we hire companies to work for the Federal Government. President Clinton is right. Do not hire those firms that treat their people so badly, who care so little about them and their families, who would throw them out at the drop of a hat the minute they walk out on strike.

Let me say when people go out on strike, that is not a happy occasion. That is not something they do lightly. People suffer when they are out on strike. The family suffers when a person is out on strike. It is very hard. No one knows when the strike will end. It is very difficult to know that you will be replaced the minute you walk out the door. It changes the entire balance between workers and management. A stable and productive relationship can be put out of kilter if you know the minute you walk out that door you can be replaced.

Now let me say why I think what the President did is not only good for workers, it not only honors workers, but why it is good for America. It is a very important point. Strikes involving permanent replacements last far longer than other strikes. On average, strikes involving permanent replacements last seven times longer than other strikes. They are bitter. They are disruptive because business targets not just wages and benefits but the very right of the worker to strike.

I will tell Members as I have looked at these strikes in the past, the bad feelings linger. The bad feelings linger because permanent people have replaced workers, and finally if workers even do get their job back, it is after a very long struggle. It is not the right way to proceed.

So I say if we do not deal with companies that do that, that treat their people so badly, we will be dealing with better companies. We will be contracting with companies that will do a better job for the American people. I think that argument is sometimes lost.

So it is not only that this Executive order by the President is good for workers and honors workers, it is good for America because we will be contracting with companies that have a better labor track record and, therefore, are more reliable.

Now, I said before, we have had many incidents in California, and I want to talk about one that I talked about before. It is a situation where more than 400 nurses at the California Nurses Association went out on strike at the City of Hope Medical Center, in Duarte, CA. They were protesting contract demands that cut their vacations in half, and reassigned large portions of their duties to lower paid and in some cases unlicensed personnel.

I do not have to say how committed nurses are. They are committed to their work. They are proud of their work. They do not walk out on strike easily. They love their jobs. But they knew they had no choice. The minute they walked out the hospital management began to hire replacement workers. Let me tell Members, it was a bitter, bitter pill for those nurses to swallow.

Carol Beecher-Hoban, a pediatric nurse, found out on her sixth anniversary at the hospital that she would be permanently replaced. The day she went out on strike—a legal strike—a single mom with two kids, without her job, she was without health insurance for her and her family. Believe me, a registered nurse knows what it means to be without health insurance.

She had to take two jobs and sell her house to make ends meet, all because she exercised her right under laws passed by this Congress and supported, presumably, by everyone—the right to strike. That is supported by everybody. This is an amendment, my friends, to end the right to strike. If ending the right to strike was the amendment before the Senate, it would be more direct. But this deals with permanent replacement of strikers, which I say, is equivalent to ending the right to strike.

So here is a nurse who walks out to protest the working conditions of her job—and she's been there for 6 years—and she loses her job. Right away, a single mother, two kids, no medical insurance. She has to take two jobs, sells her house, because her employer chose to permanently replace her.

Let me underline the word "permanent." We are not talking about temporary replacements. Employers can do that if they want to. We are talking about permanent replacements. People go out on strike because they believe they have the right to strike. It is guaranteed to them here in the laws of our land, and then they are permanently replaced.

How about this other woman: Betty Razor, a specialist in a certain type of therapy which is very difficult to deal with. She deals with patients who have colostomies or other kinds of artificial diversions in place for bodily functions. It is a very tough and stressful job.

This woman, Betty Razor, was nurse of the year and employee of the year at that hospital, in Duarte, CA. She went out on strike. She was nurse of the year and voted employee of the year by the management. What do they do with Betty Razor? They permanently replace her. In a snap. In a snap. That is what they thought of her.

I say that is wrong. That is wrong. If a company wants to temporarily bring in a replacement because they have a need to fill, that would be something that could be understood. But to permanently replace the employee of the year, the nurse of the year, with no feeling at all about this person, is wrong. Yet this amendment would say, "It's fine. Go ahead. We love it. Congress says it's great. Permanently replace your people."

Not me. I say it is wrong.

What is she doing now? She is working in home care. She called my office when this debate was raging a few months back. She said when they told her they were replacing her she said, "You must be kidding. I didn't seem to think that they could do that." She said, "I thought when they told me I was being permanently replaced that it was a ploy to make us knuckle under." She said, "I didn't think they could just pick anyone to replace us. They let go the cream of the crop. Everyone who has professional influence with other nurses was replaced." So they got rid of the cream of the crop.

Five nurses of the year were replaced permanently. What did they do? Were they bad? Did they treat their patients badly? No, they were the nurses of the year. Their patients loved them. But they exercised their right to strike. Their human right to withhold their labor to protest. They thought once the strike was over, they would be working again, because they loved their work and they wanted to work, but they were permanently replaced.

This amendment will send a signal all over this country. Go ahead, everyone, fire people if they dare go out on strike, and permanently replace them. That is wrong.

She said to me, "I always felt you strike because of the issues, and when you settle the issues, you go back to work. You don't win every issue," she says, "You compromise."

She said, "That's how we do it in America. I never thought you would permanently replace the workers. Why would anyone strike then?"

I think the American people are fair, and I do not think the American people think it is unfair to tell someone "You have a human right to withhold your labor, to strike; now, remember, when you do it, you won't get a paycheck, it's going to be hard, you may have to stand out with a picket sign, you're going to have problems, people may not like you, it may be tough. But you have a right to strike while you bargain collectively until all the issues are resolved; you have a right to strike." I think the American people believe that is right.

Now, when it comes to certain public employees, we know that is another problem, that is another issue, and we are not talking about that here. We are talking about private contractors. So

to tell someone you have the right to strike, we support your right to strike, and yet then say to them, "But the minute you walk out the door, you're history; you'll be thrown off health insurance, you can't get your job back," I think the American people would say that is not fair.

So Nurse Razor learned it the hard way.

Mr. President, there are other instances in California of the sheer inhumanity of hiring replacement workers. Last year, Senator Metzenbaum talked about an issue in California, the Diamond Walnut workers. It is a very, very, very tough issue. Four hundred members of a union exercised their right to strike more than 2 years ago. In 1985, they had given huge wage concessions to the employer because they were wanting to help the company avoid bankruptcy, and they said, "Look, we are part of the team here. We are not going to insist on higher wages if you are having trouble in the company."

They said, "We will give concessions. We will take lower wages," and they gave huge wage concessions.

The company turned around. It did amazingly well. But the concessions were not restored, despite renewed profitability and what they thought was an implied promise that things would change for them if the company's fortune reversed.

More than half of the striking workers happened to be women in that case. In a special report to Secretary of Labor Reich, Karen Nussbaum, Director of the Department's Women's Bureau, said, "The workers' sole precondition is to return to work while retaining union representation." That is all they wanted. They want to go back and still stay in their union. They cannot do that right now. They were punished, and they cannot go back to work, punished for exercising an American right, a right that is so American that we said to the workers in Poland when they were under the Soviet Union, "We back you." Solidarity was the union. "We back you," Republicans and Democrats on their feet, greeting the President of Poland, Lech Walesa. "We love you," we said. Solidarity. The workers overthrew communism, and yet right here, the workers in America are getting the shaft. The President says that is wrong and about 42 of us said that is wrong, and whether or not we hold ranks, I do not know. But I hope we hold our ranks. I hope we stick together for these working people.

I think the message that we send out from this Chamber is very important to the workers of America to know that someone is on their side. Maybe it is not so popular to be on the worker's side anymore, but it is popular with me, because I believe in America and the American dream and hard work, like the nurse of the year, who worked with patients who were sick, and they loved her and the bosses loved her, and the minute she said, "Wait a minute, you're not treating me fairly in these negotiations," and she walked outside the door, the door slammed shut on her.

What kind of a message is that to send to the hard-working people of America? We have a lot of contracts with companies. We can choose and pick the best. Let us choose and pick the best, and that means those that are the best to their workers. Does it mean that workers are always right? Of course not.

When I was a member of the board of supervisors, the union struck against me. I did not like that. I did not think they were right. I felt terrible about that. They struck me. They held signs against the board of supervisors. They said we were wrong, and I said to them that I thought they were asking for too much compensation, and we sat at the table. They went out on strike, and we had to work hard.

We had management people doing their jobs. It was not easy, but we negotiated in good faith, and when the strike ended, those employees came back to work and they said to me, I remember at that time, "Supervisor BOXER, we didn't agree with you, but let's put it behind us." That is what America is all about. We should not lord our power over working people and fire them the minute they have the temerity to walk out the door. This is America. That is wrong. We should not punish people for exercising their rights. We should argue with each other when we do not agree. I argued with those employees. I said, "You're asking for too much. You're making a mistake. You're going to get burned because you are not going to get everything you want. Don't go out on strike. It's wrong." But I never said to them, "If you walk out that door, you're history."

Why would I not say that? Because they are good people; they cared about the county. They worked in public works; they worked in all kinds of important parts of the county in Marin. They were good, hard-working, decent human beings who very rarely went out on strike, and when they did it, I said, "You're wrong." When it was over, we shook hands.

That is what America is about, not saying, "We're changing the lock on the door and you can never come back because you legally exercised your rights." That is wrong. That is what this Kassebaum amendment is about. It is slapping working people. It is a message that they do not have the right to withhold their labor and to have in any way a level playing field.

So I hope we are going to stand up for those who work for a living, whether they are cracking walnuts in Stockton or providing specialized nursing care in Duarte, CA, or any other economic pursuit you can name.

If people want to fight about the right to strike, let us have it out on that issue. That is what is so interesting to me about the Republican Contract With America, because I look at it as a war on children, on families, on consumers, on the environment. But if you look at the contract, it says "The Commonsense Legal Reform Act." That is how they talk about their legal reforms.

You tell me what is reform about saying there are no punitive damages that can be leveled against a corporation that goes ahead with a product that has FDA approval—let us say something like the Dalkon shield—and you say, "Well, you got FDA approval. Therefore, if it makes women sterile or it hurts them or it kills them or it gives them cancer, no punitive damages."

That is the commonsense legal reform act. I say it is a war against consumers, just as this amendment is a war against working people. But they never put it in those terms. There are other parts of the contract—regulatory reform—that deal with issues that can really hurt the health and safety of the people of this Nation.

What is a reform about stopping a regulation that is going to stop E. coli from getting into the hamburgers that people eat all through this country? I have constituents who have died because they ate a hamburger that had E. coli.

Regulatory reform, my friends, is going to do a lot for those people because it is going to stop that regulation from going into effect that will protect the meat supply. But they call that regulatory reform.

How about this one? A bacteria called cryptosporidium showed up in the Milwaukee water supply. We are finally getting around to regulating standards for the water supply. Oh, the Republican contract: Moratorium on all regulations. So they call it regulatory reform. I call it a war on consumers, a war on the environment. And this amendment, stopping a President from issuing an Executive order that he has every right to do, to me is a war on the working people of this Nation.

In a way, I am discouraged about having to fight these battles, but in a way it energizes me because I think the American people have to engage in what is going on here in Washington. A hundred days to change America, 100 days to turn back the clock on progress we have made in providing this country the toughest consumer law, the best in environmental protection, the best protections for water, for air. All that, we turn it back in 100 days because that is what the politicians said the last election meant.

Let me tell you, I think the last election meant change. People want

change. People are tired of politics as usual. There is no question about it. People do not want waste. They want an end to fraud. They do not want useless regulation. But the election was not about leaving this country unprotected, unprotected from pollution and bacteria that gets in our meat supply, from drugs that have not been adequately tested.

What I find very interesting about the contract is it does a couple of different things. First, it says if a company issues a product that has Federal Drug Administration approval, you can never sue that company for punitive damages if you die or get cancer or something like that. At the same time, they want to go after the FDA and make it really an agency that cannot function. They attack the FDA. As a matter of fact, the Speaker of the House said, "Let's privatize the FDA. Let's not even have an FDA."

Well, imagine that combination: an FDA that is neutered and at the same time, you give them the power to protect companies from ever being sued if their product received FDA approval. That is a lethal combination, and that is in the Republican contract which, by the way, is moving very quickly.

But earlier in my remarks I said that when the Founders founded this Nation, they said that we would act in the Senate here as the saucer and in the House as the cup, and when these ideas spill over, they will cool down here because people are getting to see what they are.

I was very pleased that the majority leader gave us 2 extra days on the balanced budget amendment because my people in California now understand if Social Security wasn't exempted from that amendment, it would be raided and looted and gone. So where the balanced budget amendment was so popular, when people realized that Social Security was going to be looted, the polls totally switched and 70 percent opposed it.

I am glad that we have the time here to look at some of these issues, so I could tell you about some of these nurses, so I could tell you about the strikers at the Diamond Walnut plant. All they want now is to get their jobs back and stay in their union. They cannot do that.

I have to say that if you look at this contract, nowhere in it will you see anything that even mentions the word environment. Nowhere in it will you really see anything that mentions the words "consumer protection." And I hope that we will slow it down, just as we are slowing this debate down.

I do not know if we are going to win this debate on striker replacement. I do not know if we are going to win this debate. There may be some who say, look, we have had this discussion long enough. Let us get on with the bill. But I can tell you now, if the Republicans withdrew the amendment, if the good Senator from Kansas withdrew the amendment, we would be in good shape. We could move this bill forward. But if we insist on keeping this amendment alive, I think the Senator from Massachusetts is willing to talk about it for a long time. I am willing to talk about it for a long time. Frankly, if we do not have the votes to stop it, President Clinton may veto this bill. He may veto this bill, just as I think President Bush would have vetoed a bill that in fact reversed his Executive order.

There is a town in California called Hawthorne, and a firm there that makes hardware. There was a strike over a health care issue. When the workers went on strike, they were told that replacement workers would be brought in but they would not be permanent. They would only be temporary replacements.

On November 29, the members voted to call off the strike and accept the company's last offer. But—but—at that point, the company withdrew the proposal and declared the replacements permanent, leaving these union members without jobs.

Now, that to me is an extraordinary story, because I grew up to believe that when someone gives you their word, that is golden. That is golden. So the employer said: We are just going to replace you temporarily, but in the end the employer did not mean it. And I have to say that the NLRB, the National Labor Relations Board, still has not come down with a decision, and that has gone on for a long time. In the meantime, those workers are without health care, and they are close to exhausting their unemployment benefits.

Only 10 percent of those workers got other jobs. But those other jobs that they got, they are nothing like the ones they had before. Basically they are minimum wage jobs with no benefits. It is a very unhappy story, a very unhappy story.

Then there is a story, again out of San Bernardino, CA, of 150 workers at a bakery. They had very low wages. Many of them felt they were being passed up for promotions. After 5 months of negotiating, the workers went on strike. The union said let us bring in mediation, but the company refused to bargain. They hired 125 replacement workers, built a new facility somewhere else, and eventually closed the San Bernardino facility. Only 60 of those workers out of the 125 ever got back to work.

It goes on and on. I think that this amendment on this defense bill is totally uncalled for. This is not an amendment that deals with the defense supplemental bill. This is an amendment that I think is a gratuitous slap at people who work for a living. It is not necessary.

Why not have a hearing, I would say to my friend from Kansas, and bring in the administration? Let them explain why they feel this is important to the dignity of working people and, by the way, for the taxpayers who will benefit when companies with good labor records are hired by the Federal Government because they will not be dislocated. They will fulfill their obligations to be good contractors for the American people.

Offering this amendment on this bill is not necessary. I hope my friend from Massachusetts will continue to lead this fight.

I ask him at this point if he has remarks planned or if he wishes me to continue a few remarks for a short period of time?

Mr. KENNEDY. If the Senator will yield?

Mrs. BOXER. I am happy to yield.

Mr. KENNEDY. Mr. President, first of all I thank my friend and colleague, the Senator from California, for her comments. These have been comments, not just this afternoon, but I know and I can tell the Senate that she has been there every hour, every minute of this battle. She has worked with our minority leader and others who have been working on this issue for the past several days. She has spoken on this and has been ready to continue the battle for working people.

I want to thank her for her immense contribution to this debate. It has been enormously interesting. As she has pointed out, the time that was taken both in the balanced budget amendment and also particularly on this issue, I think, has been enormously informative to our Members. I find that has been the case.

We had, initially, the question about the Executive order, whether the President had the power to take this action. We went through that history. We went through the past Executive orders by past Presidents. There was some confusion. But we went through it.

We went through exactly the types of people who were going to be affected and impacted, and we were able to demonstrate these were, by and large, workers who were making $6, $7, $8 an hour at the tops—the ones who were being permanently replaced. So it was hard-working men and women who were trying to provide for their families who were going to be impacted by the amendment.

We went through the course of the history of the results of contracts that were being performed by permanent replacements. There were serious questions in terms of on-time delivery and also the quality of the work. And we went on in the broader context about how this issue that has affected the legitimate rights of working families, how this fits in with other actions or nonactions of the Congress during the past 3 months.

I think it has been enormously informative for our Members and also, I

think, for those who have been watching and listening and following the debate. I am enormously grateful to her for her contribution.

I see the Senator from Kansas is prepared to perhaps make a comment. So I am prepared to yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I regret that we have been unable to have a final vote on my amendment. There are those who do not wish to see it come to a resolution with an up-or-down vote, and that is their right. I respect that.

The Executive order that we have been talking about—whereby striking workers now cannot be permanently replaced, as has been the law for some 60 years and which will now be overturned by this Executive order—is very important and very troubling.

The implications of the Executive order go far beyond just saying there will only be a few companies affected and it really will not make a lot of difference. It is very important for us to understand what, indeed, the ramifications of the order will be. I would argue that using Executive orders in this way can affect labor as well as management. And it will further destabilize the relationships in the work force.

So I just want to say, Mr. President, I will be back. This is an issue of vital importance and I intend to bring it up again and again because I think it is so very important.

Mr. President, I appreciate the fact that it has been a good debate. There have been, I think, some well-stated views on both sides. I suggest that this issue is one that will not be laid to rest until, I hope, we can reach some resolution on what basically is at stake here—and that is the separation of powers between the executive and legislative branches.

I yield the floor.

Mr. JEFFORDS. Mr. President, earlier today, due to inescapable circumstances I was absent from a cloture motion vote on the Kassebaum amendment No. 331. On my journey to the Senate Chamber I was trapped in an elevator in the Senate Dirksen Building for 40 minutes. I extend my most sincere thanks to the Senate superintendent's office for its assistance in my rescue. I must say that crawling out of the elevator was certainly a new and exciting experience, but not one I hope to repeat anytime soon. As I have said in prior statements I support Senator KASSEBAUM'S amendment and would have voted in favor of cloture had I been able.

THE DEFENSE INDUSTRIAL BASE

Mr. BIDEN. Mr. President, H.R. 889, the defense supplemental appropriations bill, has provided us an early rehearsal for a larger debate that will no doubt last throughout this session of Congress and beyond.

This debate takes place at two levels: First, we will be deciding how best to provide for our Nation's defense—for now, and for the long term. At another level, we will be setting priorities for the monumental task of restoring balance to the Federal budget.

This bill is before us today because we must fund unanticipated Defense Department expenses—for our operations in Haiti, Somalia, Bosnia, Cuba—out of funds that were originally intended to support normal, peacetime functions.

Eventually, the cost of those unforeseen operations took their toll on the ability of our armed services to pay for some of those training functions. I believe that it is now clear that we need a better way—a contingency fund, for example—to deal with the inevitable, but unpredictable tasks that our Armed Forces will be asked to undertake.

Unfortunately for colleagues in the House took a very short-sighted approach in their search for the funds needed to meet this year's needs.

They decided to cut funds from two programs that are essential to our country's economic and military security.

They eliminated the technology reinvestment program, cutting $502 million from this year's and next year's budgets. And they cut 25 percent, $107 million from the advanced technology program.

These programs are part of an established, bipartisan decision to maintain the technological advantage that we displayed so convincingly in the Gulf War and will continue to need to meet the threats the world now presents.

These programs are at the heart of an emerging base on domestic, American high-technology manufacturing capacity, the base we need to assure that we will continue to foster the discovery and development of the new ideas and products that the world's most sophisticated military demands.

To establish and maintain that base, these programs take advantage of our country's historical strength—our private economy. By making our Nation's high-technology industries partners in the development of the kinds of technologies and processes that future defense systems will require, we are building the essential foundation for our national security.

These programs are critical investments, in areas where there is the potential for both commercial and military applications. The potential spillover from these programs in both kinds of applications means that without the incentives they provide, we would engage in wasteful duplication of commercial and military research, on the one hand, or miss the opportunity for important breakthroughs, on the other.

Mr. President, recent history and economic logic tell us that individual firms will not find it cost-effective to undertake the research and development that these programs support, because the payoffs are often unpredictable and many years in the making.

In addition to promoting the private sector's involvement in this kind of long-term undertaking to preserve our Nation's competitive edge in the world economy—our Government has the responsibility to provide for the common defense.

In this day and age, and certainly into the future, that constitutional responsibility will require the maintenance of an advanced manufacturing capability, along with the scientific knowledge, engineering skills, and information management that support it.

Consider, Mr. President, the kinds of projects that these program make possible. TRP is supporting the development of advanced composite materials for advanced aircraft propulsion systems. Advanced engine designs now being considered for future production could increase performance and fuel efficiency for both commercial and military aircraft.

This potential can only be realized if much of the metal engine structure in conventional designs is replaced with polymer composites that can be produced at reasonable cost.

Another TRP Program supports private industry in the development of low- and high-power high-temperature superconductor microwave components for commercial and defense satellites. These new components could radically reduce the size and the power consumption of critical satellite components, creating longer-lasting communications and weather satellites.

The ATP is supporting the development of manufacturing processes that can reduce by at least one third the cost of producing advanced composite components for use in thousands of different applications.

These advanced manufacturing processes are the key to reducing the overall cost of employing new materials, such as the aircraft engine parts in the TRP Program I mentioned.

And to illustrate the important public investment component in these projects, Mr. President, a recently awarded ATP grant supports the development of very large scale component parts that can be used on civilian as well as military infrastructure projects, such as auto and rail bridges.

As we look for ways to rehabilitate our neglected public facilities, at all levels of our Federal system, these new materials offer ways of repairing conventional structures as well as constructing new ones, with longer lasting, low-maintenance components.

Mr. President, only by supporting these innovative ATP and TRP Programs can we maintain the cutting-edge commercial manufacturing capacity that is essential to meeting the

rapidly evolving demands on our military capabilities.

At the same time, they provide the additional security of knowing that we are doing all we prudently can to assure that our domestic economy remains at the leading edge of commercial applications of new technologies.

We can no longer afford—if we ever could—wasteful duplication of military and commercial development of the same technologies.

And we certainly cannot afford to miss the next breakthrough in materials, information management, or communications, that could leave the men and women of our Armed Forces needlessly exposed to danger.

The greater their exposure—if we allow our technological edge to grow dull with false economies—the more reluctant we will be to face threats to our security. For want of the next generation of nails, Mr. President, the next century's battles may be lost.

These are difficult times—we must invest for long-term economic growth here at home and confront the confusing variety of new threats to our security abroad.

The Technology Reinvestment Program and the Advanced Technology Program are prudent, cost-effective means of dealing with both of those problems.

Mr. President, I want to commend the distinguished managers of this legislation, the members of the Defense Appropriations Subcommittee, Senators BINGAMAN and LIEBERMAN, and the other members who have spoken up for these programs, for showing the foresight to restore these important programs to more adequate levels of funding.

I am sure we will find ourselves revisiting these issues in the coming months and years. I will continue to support efforts that protect the technological foundations of our economic and military security.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, if I could inquire of the Chair, what is the pending business?

The PRESIDING OFFICER. The pending business is the Kassebaum amendment to H.R. 889. That is the pending question.

Mrs. KASSEBAUM. Mr. President, I would say these comments represent my point of view on this issue at this point. The majority leader is in discussions now. I think he will announce the outcome of those discussions in a few minutes.

Mr. KENNEDY. Mr. President, I appreciate the comments of my friend and colleague, the Senator from Kansas. I want to say, every person in this body knows the seriousness with which the Senator from Kansas takes her responsibilities as the chair of the Labor and Human Resources Committee and as someone who delves deeply and is concerned, interested, and attentive to the range of public policy issues that come before that committee. In particular, the Senator spends a great deal of time and gives a great deal of thought to issues involving the relationship between workers and employers. This has been a matter of very great seriousness, I know, to her.

I understand that and respect it. She has indicated she will be back at another time to address these issues. We regret we have not been overwhelmingly persuasive to her and to others as to the legitimacy of our position.

But we welcome the opportunity to continue the dialog not just here on the floor but otherwise to see if we can find areas of common ground in this area as we have found common ground with her and our other members of that committee in a great number of areas. We have been appreciative of the way that this debate and discussion has taken place.

We await the announcements of the majority leader as to the Senate business.

Again, I am grateful to both the Senator and her supporters as well as all of those who have spoken on this measure over the period of the past days, and for the courtesies and the attentiveness which they have given to this issue. I am also grateful to the leadership Senator DASCHLE and many of my other colleagues have personally demonstrated on this measure.

I thank all the Members. I yield the floor with the expectation that we will be on other matters after the majority leader speaks.

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. 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. COCHRAN. Mr. 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.

DEATH OF WILLIAM ARTHUR WINSTEAD

Mr. COCHRAN. Madam President, it is my sad duty to advise the Senate that Arthur Winstead, former Congressman of Mississippi, died last night at the age of 91.

William Arthur Winstead represented the 3d Congressional District of Mississippi from 1943 to 1965. During his 22 years of service in Congress, he was firmly loyal to his constituents and his principles. In an ironic twist of history, in spite of his conservatism, he was the first Mississippi Congressman in this century to be defeated by a Republican. Reflecting the changing nature of politics in the South, he subsequently became a strong supporter of several Republican candidates.

I was flattered and honored that I had the privilege to become his friend. It was only about 2 weeks ago that he called to talk about his impressions of our efforts to bring about changes in the Washington Government. He was very proud of the role the members of our State's delegation were playing in this period of transition.

Prior to entering Congress, Arthur Winstead served his community as a teacher and subsequently as county superintendent of schools for Neshoba County. During the administration of the late Gov. John Bell Williams, he served as commissioner of the Mississippi Department of Public Welfare.

Arthur Winstead was a personal friend of mine and a friend of many throughout Mississippi. I offer my personal condolences to his wife and family. In honoring his memory, we honor a good and dedicated man who served with distinction in Congress with a deep sense of public duty and principle.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT

The Senate resumed consideration of the bill.

Mr. DOLE. I ask unanimous consent that the cloture vote scheduled for Thursday on the Kassebaum amendment be vitiated.

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

Mr. DOLE. And with the consent of Senator KASSEBAUM, I would ask that her amendment be withdrawn.

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

So the amendment (No. 331) was withdrawn.

Mr. DOLE. I further ask unanimous consent that H.R. 889 no longer be the pending business and the bill be returned to the calendar.

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

MORNING BUSINESS

Mr. DOLE. Madam President, I ask unanimous consent there now be a period for the transaction of morning business with Senators permitted to speak not to exceed 5 minutes each.

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

A FAITHFUL SERVANT PASSES

Mr. BYRD. Madam President, Cecil Romine, the former president of the West Virginia American Postal Workers Union and long time national business agent for the American Postal Workers Union, passed away earlier this year at age 67. He was born and raised in West Virginia, and served in the Navy at a very young age in World War II. He came home to reside in Parkersburg, where he went to work in the post office. When postal workers were given the right to bargain collectively by Congress in 1971 he established his home Local in Parkersburg—the Mountaineer Area Local—and then the West Virginia State organization.

Cecil Romine was then elected as national business agent for the Clerk Craft for the three-State region of Maryland, Virginia, and West Virginia in 1976. It is a mark of his extraordinary skill as an advocate and a negotiator that someone from a small Local like Parkersburg would be elected—and consistently reelected—in a region in which most voters come from much larger Locals such as Baltimore, Richmond, or Washington, DC. He was equally respected by postal management not only as one of the union's most resourceful and talented representatives, but also as a man of his word. He loved the union and the Postal Service and fought tirelessly to better both. Even after retirement, he worked hard and effectively with my office to preserve service in West Virginia.

Mr. Romine turned down many chances to take better paying and more secure jobs in management. Perhaps if he had, he would have enjoyed a longer and more normal retirement. But he knew his place was in the front line fighting for working people, and he was never interested in doing anything else.

He had 7 children, 13 grandchildren, and recently 2 great grandchildren. The pillars of his life were his family, his church, and his Union. He was a man of traditional values in the true sense of those words.

I know that Cecil Romine is deeply missed by both his personal family and his larger family of postal workers. In submitting this statement, I want to let his wife Betty and all of his family know that his memory is respected here.

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES!

Mr. HELMS. Madam President, the enormous Federal debt which has already soared into the stratosphere is in about the same category as the weather—everybody likes to talk about it but almost nobody had undertaken the responsibility of trying to do anything about it until immediately following the elections last November.

When the 104th Congress convened in January, the U.S. House of Representatives approved a balanced budget amendment. In the Senate, however, while all but one of the 54 Republicans supported the balanced budget amendment, only 13 Democrats supported it. The balanced budget constitutional amendment, needing 67 votes, failed by just 1 vote. There will be another vote later this year or next year.

This episode—the one-vote loss in the Senate—emphasizes the fact that a lot of politicians talks a good game when they are back home about bringing Federal deficits and the Federal debt under control. But so many of them come back to Washington and vote in support of bloated spending bills rolling through the Senate.

As of the close of business yesterday, Tuesday, March 14, the Federal debt stood—down to the penny—at exactly $4,846,819,443,348.28. This debt, remember, was run up by the Congress of the United States.

The Founding Fathers decreed that the big-spending bureaucrats in the executive branch of the U.S. Government must never be able to spend even a dime unless and until authorized and appropriated by the U.S. Congress.

The U.S. Constitution is quite specific about that, as every school boy is supposed to know.

So, do not be misled by politicians who falsely declare that the Federal debt was run up by some previous President or another, depending on party affiliation. These passing-the-buck declarations are false because as I said earlier, the Congress of the United States is the culprit. The Senate and the House of Representatives have been the big spenders for the better part of 50 years.

Madam President, most citizens cannot conceive of a billion of anything, let alone a trillion. It may provide a bit of perspective to bear in mind that a billion seconds ago, Mr. President, the Cuban missile crisis was in progress. A billion minutes ago, the crucifixion of Jesus Christ had occured not long before.

Which sort of puts it in perspective, does it not, that Congress has run up this incredible Federal debt totaling 4,846 of those billions—of dollars. In other words, the Federal debt, as I said earlier, stood this morning at 4 trillion, 846 billion, 819 million, 443 thousand, 348 dollars and 28 cents. It'll be even greater at closing time today.

FRIENDS OF IRELAND ST. PATRICK'S DAY STATEMENT—1995

Mr. KENNEDY. Madam President, over the last year, we have witnessed truly historic progress in Northern Ireland which gives great hope that lasting peace and reconciliation are at hand.

The Friends of Ireland is a bipartisan group of Senators and Representatives opposed to violence in Northern Ireland and dedicated to maintaining a United States policy that promotes a just, lasting, and peaceful settlement of the conflict that has cost more than 3,100 lives over the past quarter century.

Since 1981, the Friends of Ireland have joined together in an annual St. Patrick's Day statement which focuses on the situation in Northern Ireland. I believe that all our colleagues will find this year's statement of particular interest, and I ask unanimous consent that it may be printed in the RECORD.

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

STATEMENT BY THE FRIENDS OF IRELAND, ST. PATRICK'S DAY, 1995

On this St. Patrick's Day, all friends of Ireland rejoice in the historic developments of 1994 and early 1995 that have led to a cease-fire in Northern Ireland and that offer the best hope for a negotiated and lasting peace since the Troubles began more than a quarter century ago.

We welcome the release last month by the British and Irish Governments of the Framework Document, which provides a fair and balanced basis for all-party talks in Northern Ireland—talks we hope will begin soon. The way forward can be found only if all parties work together to find a peaceful solution that will have the support of the people of Northern Ireland.

We commend all those in Ireland, Northern Ireland, and Britain, who deserve enduring credit for the achievements so far—especially John Bruton, John Major, Dick Spring, Sir Patrick Mayhew, John Hume, Gerry Adams, and Albert Reynolds.

We also commend the constructive role which President Clinton, U.S. Ambassador to Ireland Jean Kennedy Smith, and U.S. Ambassador to Great Britain William Crowe have played in advancing this process. The combined efforts of the Congress and the Administration played a critical role in the process which led to the IRA's historic cease-fire announcement in August 1994 and the Loyalist cease-fire declaration which followed in October. We commend both the IRA and Loyalist paramilitaries for deciding to seek a peaceful settlement to the conflict.

We support the total demilitarization of Northern Ireland. We urge the Republican and Loyalist paramilitaries to begin turning in their weapons. We are encouraged by the announcement by the British Government that it will begin to withdraw troops from Northern Ireland and we are hopeful that this process will continue.

Both the British and Irish Governments responded to the cease-fire announcements with significant steps to advance the cause of peace. The British Government opened cross-border roads, lifted the broadcast ban and exclusion orders, and removed British troops from daytime street patrols in Northern Ireland. The Irish Government established the Forum for Peace and Reconciliation, released prisoners, and lifted emergency laws.

Many Unionists and their leaders have shown a willingness to consider new proposals with an open-mindedness crucial to genuine progress. This development is welcomed.

We are also greatly encouraged by visits of Unionist leaders to this country. The United States is a friend of both communities and we hope Unionists will continue to visit. It is important that their voices be heard.

Recognizing that economic progress is also essential, the Friends of Ireland support measures to encourage economic development in Northern Ireland and the border counties of Ireland damaged by the years of conflict. The cease-fire has already led to new investment that will create needed jobs.

We welcome President Clinton's support for additional private economic development as demonstrated by the appointment of George Mitchell as the President's economic envoy. We look forward to the Conference on Investment and Trade for Ireland to be held in Washington in May. The aim of the conference, according to its mandate, is "to show U.S. companies that sustained peace is dramatically improving business opportunities on the island of Ireland, and particularly Northern Ireland and the border counties." We are confident it will encourage new American investment and enhance the prospects for peace.

We support the International Fund for Ireland as an important part of the search for peace. The Fund has helped create more than 25,000 jobs in the most disadvantaged areas of Northern Ireland and the border counties, and has had a major beneficial impact on the people in these areas.

We agree with the Committee on the Administration of Justice, an independent human rights organization in Northern Ireland, that "respect for and defense of human rights must be the cornerstone of any lasting settlement to the conflict." Britain should follow Ireland's lead and repeal emergency legislation with respect to Northern Ireland. There should be a thorough review of policing in Northern Ireland, with the goal of creating a police force that has the confidence of both communities. A Bill of Rights should be enacted to provide full protection for all people in Northern Ireland. Employment discrimination must be ended. We welcome advances in legislation involving fair employment; but twice as many Catholics as Protestants continue to be unemployed, and new economic initiatives are needed to address this injustice.

Finally, we are mindful that 1995 marks the 150th anniversary of the beginning of the Great Irish Famine. Though the Irish had already established a strong presence in the early years of our nation, many of the 44 million Irish Americans today are descendants of victims of the Famine. As President Mary Robinson of Ireland has eloquently stated, "Irishness is not simply territorial * * * emigration is not just a chronicle of sorrow and regret. It is also a powerful story of contribution and adaptation." Irish-Americans have contributed immensely to this country, while maintaining lasting ties of heritage, history, and affection for the land of our ancestors.

As Friends of Ireland on St. Patrick's Day 1995, we commit ourselves to ever closer ties with the island of Ireland and all its people. It is our hope and prayer that 1995 will bring even greater progress toward lasting peace.

FRIENDS OF IRELAND EXECUTIVE COMMITTEE

SENATE

EDWARD M. KENNEDY.
DANIEL PATRICK MOYNIHAN.
CLAIBORNE PELL.
CHRISTOPHER J. DODD.

HOUSE OF REPRESENTATIVES

NEWT GINGRICH.
RICHARD A. GEPHARDT.
JAMES T. WALSH.

ROBERT PERRIN GRIFFIN: IN MEMORIAM

Mr. HOLLINGS. Madam President, I rise today to pay tribute to Robert Perrin Griffin, a good friend who passed away last year.

Bobby Griffin was a native son of South Carolina. Born in Bishopville in 1992, he served as a U.S. Senate page for our beloved former colleague, Senator "Cotton Ed" Smith of South Carolina, from 1937 to 1939, and as chief page for Vice President John Nance Garner of Texas. He graduated from the Citadel in 1943, 1 year after I did.

After college, Bobby joined the Army. As a soldier, he distinguished himself as a brave leader. As a patrol officer in World War II under Gen. George Patton in the 3d Army, 26th Division, Captain Griffin led his men into the first occupation of many enemy towns in Europe. In fact, he commanded his company in the first contact with German troops in the Ardennes campaign of 1944.

Madam President, Bobby Griffin was a man of enormous courage. He served our country with great distinction and honor. Bobby was one of the few U.S. soldiers who was a prisoner of war twice. He was captured at the Battle of the Bulge in 1994 and was a German prisoner of war. He then escaped, but was recaptured. For his bravery, Bobby was awarded numerous medals and honors including: the Silver Star, two Bronze Stars, four Purple Hearts, a P.O.W. medal, the American Campaign medal, the World War II Victory medal, and the European African Middle Eastern Campaign medal.

Following the war, he continued to serve our country as commander of the Veterans of Foreign Wars Post, 3181, in Florence and as State commander of VFW in 1951.

Many around South Carolina remember Bobby best from his racing days. In 1950, he ran the first stock car in the first Southern 500 in Darlington. He was also one of the original owners of the Darlington International Raceway and past member of the board of directors.

Bobby was an auto dealer from the 1950's through the mid-1960's. In the Pee Dee, you can still spot an Oldsmobile from Griffin Motors that Bobby probably sold. After retiring from the car company, as a vice president, he spent many years in Myrtle Beach as a real estate developer.

Madam President, I would like to extend my thoughts and prayers to Bobby Griffin's friends and family. We will all miss him every much.

REPORT RELATIVE TO IRANIAN PETROLEUM RESOURCES—MESSAGE FROM THE PRESIDENT—PM 33

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:

Pursuant to the section 204(b) of the International Emergency Economic Powers Act (50 U.S.C. 1703(b)) and section 301 of the National Emergencies Act (50 U.S.C. 1631), I hereby report that I have exercised my statutory authority to declare a national emergency to respond to the actions and policies of the Government of Iran and to issue an Executive order prohibiting United States persons from entering into contracts for the financing of or the overall management or supervision of the development of petroleum resources located in Iran or over which Iran claims jurisdiction.

The Secretary of the Treasury is authorized to issue regulations in exercise of my authorities under the International Emergency Economic Powers Act to implement these prohibitions. All Federal agencies are also directed to take actions within their authority to carry out the provisions of the Executive order.

I am enclosing a copy of the Executive order that I have issued. The order is effective at 12:01 a.m., eastern standard time, on March 16, 1995.

I have authorized these measures in response to the actions and policies of Iran including support for international terrorism, efforts to undermine the Middle East Peace Process, and the acquisition of weapons of mass destruction and the means to deliver them. We have worked energetically to press the Government of Iran to cease this unacceptable behavior. To that end we have worked closely with Allied governments to prevent Iran's access to goods that would enhance its military capabilities and allow it to further threaten the security of the region. We have also worked to limit Iran's financial resources by opposing subsidized lending.

Iran has reacted to the limitations on its financial resources by negotiating for Western firms to provide financing and know-how for management of the development of petroleum resources. Such development would provide new funds that the Iranian Government could use to continue its current policies. It continues to be the policy of the U.S. Government to seek to limit those resources and these prohibitions will prevent United States persons from acting in a manner that undermines that effort.

WILLIAM J. CLINTON.

THE WHITE HOUSE,
March 15, 1995.

MESSAGES FROM THE HOUSE

At 12:04 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bill, without amendment:

S. 377. An act 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.

At 3:55 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 402. An act to amend the Alaska Native Claims Settlement Act, and for other purposes;

H.R. 421. An act to amend the Alaska Native Claims Settlement Act to provide for the purchase of common stock of Cook Inlet Region, and for other purposes;

H.R. 517. An act to amend title V of Public Law 96-550, designating the Chaco Culture Archeological Protection Sites, and for other purposes;

H.R. 531. An act to designate the Great Western Scenic Trail as a study trail under the National Trails System Act, and for other purposes;

H.R. 536. An act to extend indefinitely the authority of the Secretary of the Interior to collect a commercial operation fee in the Delaware Water Gap National Recreation Area, and for other purposes;

H.R. 562. An act to modify the boundaries of Walnut Canyon National Monument in the State of Arizona;

H.R. 694. An act entitled the "Minor Boundary Adjustments and Miscellaneous Park Amendments Act of 1995"; and

H.R. 715. An act to amend the Central Bering Sea Fisheries Enforcement Act of 1992 to prohibit fishing in the Central Sea of Okhotsk by vessels and nationals of the United States.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 34. A concurrent resolution authorizing the use of the Capitol Grounds for the Ringling Bros. and Barnum & Bailey Circus Anniversary Commemoration; and

H. Con. Res. 39. A concurrent resolution expressing the sense of the Congress regarding Federal disaster relief.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent and referred as indicated:

H.R. 402. An act to amend the Alaska Native Claims Settlement Act, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 531. An act to designate the Great Western Scenic Trail as a study trail under the National Trails System Act, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 536. An act to extend indefinitely the authority of the Secretary of the Interior to collect a commercial operation fee in the Delaware Water Gap National Recreation Area, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 562. An act to modify the boundaries of Walnut Canyon National Monument in the State of Arizona; to the Committee on Energy and Natural Resources.

H.R. 694. An act entitled the "Minor Boundary Adjustments and Miscellaneous Park Amendments Act of 1995"; to the Committee on Energy and Natural Resources.

H.R. 715. An act to amend the Central Bering Sea Fisheries Enforcement Act of 1992 to prohibit fishing in the Central Sea of Okhotsk by vessels and nationals of the United States; to the Committee on Commerce, Science, and Transportation.

The following concurrent resolutions were read, and referred as indicated:

H. Con. Res. 34. A concurrent resolution authorizing the use of the Capitol Grounds for the Ringling Bros. and Barnum & Bailey Circus Anniversary Commemoration; to the Committee on Rules and Administration.

H. Con. Res. 39. A concurrent resolution expressing the sense of the Congress regarding Federal disaster relief; to the Committee on Governmental Affairs.

MEASURES PLACED ON THE CALENDAR

The following measures were read the second time and placed on the calendar:

H.R. 956. An act to establish legal standards and procedures for product liability litigation, and for other purposes.

H.R. 988. An act to reform the Federal civil justice system.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-527. A communication from the Under Secretary of Defense, transmitting, pursuant to law, the report of a violation of the Antideficiency Act, case number 93-51; to the Committee on Appropriations.

EC-528. A communication from the Under Secretary of Defense, transmitting, pursuant to law, the report of a violation of the Antideficiency Act, case number 95-9; to the Committee on Appropriations.

EC-529. A communication from the Deputy Secretary of Defense, transmitting, pursuant to law, the report on the C-17 program; to the Committee on Armed Services.

EC-530. A communication from the Director of Defense Research and Engineering, transmitting, pursuant to law, the report on the Federally Funded Research and Development Center for fiscal year 1996; to the Committee on Armed Services.

EC-531. A communication from the Under Secretary of Defense, transmitting, pursuant to law, the report of a Department of Defense implementation plan; to the Committee on Armed Services.

EC-532. A communication from the Secretary of Defense, transmitting, pursuant to law, the annual report for calendar year 1994; to the Committee on Armed Services.

EC-533. A communication from the Under Secretary of Defense, transmitting, pursuant to law, the report of a violation of the Antideficiency Act, case number 92-10; to the Committee on Appropriations.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. DORGAN:

S. 557. A bill to prohibit insured depository institutions and credit unions from engaging in certain activities involving derivative financial instruments; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. LEVIN:

S. 558. A bill for the relief of Retired Sergeant First Class James D. Benoit, Wan Sook Benoit, and the estate of David Benoit, and for other purposes; to the Committee on the Judiciary.

By Mr. SIMPSON:

S. 559. A bill to amend the Lanham Act to require certain disclosures relating to materially altered films; to the Committee on the Judiciary.

By Mr. DASCHLE:

S. 560. A bill to amend section 6901 of title 31, United States Code, to entitle units of general local government to payments in lieu of taxes for nontaxable Indian land; to the Committee on Indian Affairs.

By Mr. CHAFEE:

S. 561. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Isabelle*, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. GRAMM (for himself and Mr. SHELBY):

S. 562. A bill to provide for State bank representation on the Board of Directors of the Federal Deposit Insurance Corporation, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. GREGG:

S. 563. A bill to amend the Internal Revenue Code of 1986 to treat recycling facilities as exempt facilities under the tax-exempt bond rules, and for other purposes; to the Committee on Finance.

By Mr. BIDEN:

S. 564. A bill to confer and confirm Presidential authority to use force abroad, to set forth principles and procedures governing the exercise of that authority, and thereby to facilitate cooperation between the President and Congress in decisions concerning the use or deployment of United States Armed Forces abroad in situations of actual or potential hostilities.

By Mr. ROCKEFELLER (for himself, Mr. GORTON, Mr. MCCONNELL, Mr. LIEBERMAN, Mr. DODD, Mr. PRESSLER, Mr. HATCH, Mr. EXON, Mr. INHOFE, Mrs. HUTCHISON, and Mr. CHAFEE):

S. 565. A bill to regulate interstate commerce by providing for a uniform product liability law, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. AKAKA (for himself and Mr. INOUYE):

S. 566. A bill for the relief of Richard M. Sakakida; to the Committee on Armed Services.

By Mrs. BOXER:

S. 567. A bill to amend the Internal Revenue Code of 1986 to allow the casualty loss deduction for disaster losses without regard to the 10-percent adjusted gross income floor; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DORGAN:

S. 557. A bill to prohibit insured depository institutions and credit unions from engaging in certain activities involving derivative financial instruments; to the Committee on Banking, Housing, and Urban Affairs.

THE DERIVATIVES LIMITATION ACT OF 1995

• Mr. DORGAN. Mr. President, today I reintroduce my legislation called the Derivatives Limitation Act to prohibit banks and other federally insured financial institutions from engaging in risky, speculative derivatives trading on their own accounts. In my judgment such proprietary trading involves a degree of risk that is totally out of step with safe banking practices.

Last year, the General Accounting office [GAO] issued a major report raising a red flag about the risks of derivatives trading. Since this report, a number of financial institutions and other derivative investors have suffered enormous losses totaling billions of dollars. Because of tremendous growth of the derivatives market, which is now estimated at $35 billion worldwide, a major default, Fortune magazine said, could ignite a chain reaction that runs rampant through the financial markets in the United States and overseas. "Inevitably, that would put deposit insurance funds, and the taxpayers behind it, at risk."

Most of us know that derivatives are essentially a form of gambling. Derivatives may be the most complicated financial device ever, contracts based on mathematical formulas, involving multiples and interwoven bets on currency and interest rates and more in a burgeoning galaxy of permutations. Generally, investors stake a position that interest rates, or the dollar, or commodities, or whatever, will rise or fall. Up to a point, this is simply a form of hedging risk. Some businesses including banks have hedged in this manner for many years, and my bill would not affect these traditional and conservative hedging transactions.

Far from hedging, some of largest players speculating in the derivatives game are banks. Three New York banks are into this market for over $6 trillion alone. All of these banks have federal deposit insurance. The purpose of my bill is to ensure that the banks don't have to use it to cover losses on derivatives trading for their own accounts.

The importance of preventing banks from gambling on risky derivatives is highlighted by the recent collapse of Barings PLC in London. As everyone knows, a 28-year-old trader for Barings Bank engaged in a speculative trading binge in the derivatives market. His actions have resulted in at least a $1 billion loss to Baring PLC, wiping out all of its capital and throwing it into insolvency. It is still unclear whether the failure of Barings will trigger others problems for the global financial markets.

This is not an isolated problem affecting a single foreign institution. The list of U.S. companies that have suffered from derivative losses is impressive, and is still growing. For example, our regulators were recently forced to take over Capital Corporate Credit Union [CapCorp], a large corporate credit union, because it loaded up on derivatives called collateralized mortgage obligations [CMO's] which soured over the past year. The General Accounting Office attributed CapCorp's failure, in part, to its inappropriate investment strategy and poor regulatory oversight.

We can't ignore the lessons to be learned from both Barings and CapCorp, or others hurt by derivatives like Orange County, CA, Piper Jaffray and Procter & Gamble. Banks, thrifts, and credit unions ought not be allowed to gamble on derivative investments because of the potential exposure to the deposit insurance fund. In my judgment, this financial roulette wheel is at odds with everything we know about sound banking principles.

I think that yesterday's Washington Post op-ed piece on derivatives called "Lessons from Barings" also makes a strong case for my legislation. It correctly states that "if banks are to be allowed to trade on their own accounts, with their own money—as Barings was doing in Singapore—that operation needs to be absolutely segregated from the part of the bank that takes insured deposits from the public." And my bill accomplishes this by prohibiting banks and other insured institutions from gambling with derivatives on their own accounts. It exempts derivatives activity that is conducted in separately capitalized affiliates operating without the protection of the deposit insurance safety net.

Again, let me point out that not all derivatives are bad. Some are important to lower capital costs and reduce interest and other financial risks. That's why I do not cover traditional hedging transactions under my legislation.

But, it's been clear to me that highly leveraged speculation by large, federally insured banks on price changes and the like is not healthy for our economy. It also threatens the long-term stability of the financial markets and to continued viability of the deposit insurance fund system.

Of course, what individual investors knowingly do with their own money is their own business. But when financial institutions are setting up what amount to keno pits in their lobbies, it's something that should concern us all. I hope my colleagues will cosponsor this important legislation.

Mr. President, I ask unanimous consent that a summary of the bill be printed in the RECORD.

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

SUMMARY OF THE DERIVATIVES LIMITATION ACT OF 1995

I. SHORT TITLE.

The act may be cited as the Derivatives Limitations Act of 1995.

II. INSURED DEPOSITORY INSTITUTIONS

(1) General Prohibition—

Except as provided below, the legislation prohibits any bank, thrift or credit union and any affiliate of such insured depository institution from engaging in any transaction involving a derivative financial instrument for the account of that institution or affiliate.

For this purpose, a "derivative financial instrument" means an instrument of value which is derived from the value of stocks, bonds, other loan instruments, other assets, interest or currency exchange rates, or indexes; and other instruments as determined by the appropriate federal bank regulators.

(2) Exceptions—

(a) Hedging Transactions.—An insured depository institution may engage in hedging transactions as permitted by the appropriate federal banking regulators.

For this purpose, "hedging transaction" generally means any transaction involving derivative financial instruments entered into in the normal course of the institution's business to reduce risk of interest rate, price change or currency fluctuations with respect to property held by the institution, or loans or other investments or obligations made or incurred by the institution.

(b) Separately Capitalized Affiliates.—A separately capitalized uninsured affiliate of an insured depository institution may engage in a transaction involving a derivative financial instrument if such affiliate complies with certain rules and regulations as issued by the appropriate federal banking regulators, including notice that none of the activities of the affiliate are insured by the federal government or the parent company of the affiliate.

(c) De Minimis Interests.—An insured depository institution may engage in transactions involving small interests in derivative financial instruments for the account of that institution as permitted by the appropriate federal bank regulators.

(d) Existing Interests.—Existing interests and the acquisition of certain reasonably related interests in derivative financial instruments are grandfathered under this legislation.•

By Mr. SIMPSON:

S. 559. A bill to amend the Lanham Act to require certain disclosures relating to materially altered films; to the Committee on the Judiciary.

THE FILM DISCLOSURE ACT OF 1995

Mr. SIMPSON. Mr. President, I rise today to introduce the Film Disclosure Act of 1995.

This legislation would recognize the interest we all have in preserving the integrity of one of the most uniquely American of art forms—the motion picture. I personally recoil at the thought of colorizing such classics as "Casablanca" or "The Maltese Falcon." These films were intended to be shown in black and white by their creators.

Perhaps the most vivid example of an inappropriately altered film is the

colorization of "Lost Horizon." That film was necessarily filmed in black and white because the mythical paradise in which it is set—Shangri-La, a name that has come down through the decades—is formed by the author's and the audience's imagination. I personally knew one of the stars of the movie, Isabel Jewell, a marvelous woman, she filled me with imagination as she described the filming of that remarkable film. It is up to the viewer of "Lost Horizon" to "fill in the blanks" when visualizing that paradise. Quite frankly, I find colorization of that particular film to be demeaning and wholly inappropriate—unfair, if you will.

However, I also believe that any legislation that addresses film alteration must recognize the realities of the international market. The motion picture industry ranks high among all industries in producing a positive cash flow in the U.S. balance of trade. While protecting the artistic integrity of motion pictures, I believe it is also essential that Congress do nothing to impede or harm the financial arrangements by which motion pictures are made and distributed.

The object of this legislation is to ensure that the artistic authors of motion pictures—principal directors, screenwriters and cinematographers—may be able to inform the viewing public about any significant changes that are made to their work by studios or by television stations. The bill requires that labels be affixed to all films that are exhibited in a "materially altered" form. The label would contain two parts: first, the nature of the alterations would be described, and second, the objection, if any, of the principal artistic authors to the alterations would be clearly stated.

This bill does not prohibit the exhibition of materially altered films. Nor does the bill allow the principal artistic authors to have their names stricken from the altered versions of the film. The bill is "truth in packaging." That is what it is, nothing more. It simply gives the consumers of films vital information on: first, the changes that have been made to the film, and second, the objection of the film's author to those changes, if such an objection exists. I might add that film authors in many European countries have much more extensive rights to object to significant alterations of their work than this bill would provide.

Here are the types of alterations—made by people other than the artistic authors—that this bill would require to be labeled: first, colorization; second, panning and scanning—changing the film's image to fit wider movies onto the narrower television screen; third, lexiconning—altering the sound track; fourth, time compression or expansion—speeding up or slowing down a film; and fifth, editing—removal of material or insertion of new material.

I know people understand that these alterations occur with surprising frequency. It is my personal belief that many of these alterations pass unnoticed by a viewing public which might wish to see the original version intended by the artist. I also believe that these alterations could discourage some artistic authors of films from making innovative films in the future. This would be a sad result.

However, let me emphasize again that this bill does not prevent alterations. It does not prevent copyright owners from changing the movie when it is distributed into the secondary markets—such as television or video stores. The bill simply will provide consumers with information on the workings of the market place for movies: it merely allows consumers of films to make the most informed choice possible when making their marketplace decision about what films to watch.

Mr. President, a little more knowledge never hurt anyone. I have visited over the years on this issue with directors and artists and actors and actresses who are offended to see the work that they have placed all of their energy and effort and skill and reputation into, seeing it jerked around, if you will, by people who have no sense or no sensitivity about the meaning of the train scene in a certain movie or this particular scene in "High Noon" or whatever was done with power, passion and skill by directors and actors and actresses.

That is what it is about. It is about knowledge. It is about the public's right to know. I hope that as this bill is reported to the American public, we will wrap around the cherished phrase of all journalists, the public's right to know. That is exactly what this is. More knowledge will not hurt any of the consumers. This is all the bill provides, more knowledge to the consumer about the original artist's intent when a film is publicly shown.

Mr. President, I commend this bill to my colleagues and ask for their support and ask unanimous consent a copy 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. 559

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 "Film Disclosure Act of 1995".

SEC. 2. AMENDMENT TO THE LANHAM ACT.

Section 43 of the Act entitled "An Act to provide for the registration and protection of trade-marks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946, commonly known as the Lanham Act (15 U.S.C. 1125), is amended by adding at the end the following:

"(c)(1)(A) Any distributor or network that proposes to exploit a materially altered motion picture shall—

"(i) make a good faith effort to notify each artistic author of the motion picture in writing and by registered mail and in a reasonable amount of time prior to such exploitation;

"(ii) determine the objections of any artistic author so notified to any material alteration of the motion picture;

"(iii) determine the objection of any artistic author so notified by the questionnaire set forth in paragraph (9) to any type of future material alterations which are in addition to those specifically proposed for the motion picture to be exploited;

"(iv) if any objections under clause (ii) or (iii) are determined, include the applicable label under paragraph (6) or (8) in, or affix such label to, all copies of the motion picture before—

"(I) the public performance of the materially altered motion picture if it is already in distribution, or

"(II) the initial distribution of the materially altered motion picture to any exhibitor or retail provider; and

"(v) in the event of objections by an artistic author to any future material alterations, include or affix such objections to any copy of the motion picture distributed or transmitted to any exhibitor or retail provider.

"(B) Whenever a distributor or network exploits a motion picture which has already been materially altered, such distributor or network shall not be required to satisfy the requirements of subparagraph (A) (i), (ii), and (iii), if—

"(i) such distributor or network does not further materially alter such motion picture; and

"(ii) such motion picture was materially altered by another distributor or network that complied fully with all of the requirements of subparagraph (A).

"(C)(i) The requirement of a good faith effort under subparagraph (A)(i) is satisfied if a distributor or network that has not previously been notified by each artistic author of a motion picture—

"(I) requests in writing the name and address of each artistic author of the motion picture from the appropriate professional guild, indicating a response date of not earlier than 30 days after the date of the request, by which the appropriate professional guild must respond; and

"(II) upon receipt of such information from the appropriate professional guild within the time specified in the request, notifies each artistic author of the motion picture in a reasonable amount of time before the exploitation of the motion picture by such network or distributor.

"(ii) The notice to each artistic author under this paragraph shall contain a specific date, not earlier than 30 days after the date of such notice, by which the individual so notified shall respond in accordance with subparagraph (A)(ii). Failure of the artistic author or the appropriate professional guild to respond within the time period specified in the notice shall relieve the distributor or network of all liability under subparagraph (A).

"(D) The requirements of this paragraph for an exhibitor shall be limited to—

"(i) broadcasting, cablecasting, exhibiting, or distributing all labels required under this section in their entirety that are included with or distributed by the network or distributor of the motion picture; and

"(ii) including or affixing a label described in paragraphs (6) and (8) on a materially altered motion picture for any material alterations performed by the exhibitor to which

any artistic author has objected under subparagraph (A)(iii).

"(E)(i) The provisions of this paragraph shall apply with respect to motion pictures intended for home use through either retail purchase or rental, except that no requirement imposed under this paragraph shall apply to a motion picture which has been packaged for distribution to retail providers before the effective date of this subsection.

"(ii) The obligations under this paragraph of a retail provider of motion pictures intended for home use shall be limited to including or distributing all labels required under this paragraph in their entirety that are affixed or included by a distributor or network.

"(F) There shall be no consideration in excess of one dollar given in exchange for an artistic author's waiver of any objection or waiver of the right to object under this subsection.

"(2)(A) Any artistic author of a motion picture that is exploited within the United States who believes he or she is or is likely to be damaged by a violation of this subsection may bring a civil action for appropriate relief, as provided in this paragraph, on account of such violation, without regard to the nationality or domicile of the artistic author.

"(B)(i) In any action under subparagraph (A), the court shall have power to grant injunctions, according to the principles of equity and upon such terms as the court deems reasonable, to prevent the violation of this subsection. Any such injunction may include a provision directing the defendant to file with the court and serve on the plaintiff, within 30 days after the service on the defendant of such injunction, or such extended period as the court may direct, a report in writing under oath setting forth in detail the manner and form in which the defendant has complied with the injunction. Any such injunction granted upon hearing, after notice to the defendant, by any district court of the United States—

"(I) may be served on the parties against whom such injunction is granted anywhere in the United States where they may be found; and

"(II) shall be operative and may be enforced by proceedings to punish for contempt, or otherwise, by the court by which such injunction was granted, or by any other United States district court in whose jurisdiction the defendant may be found.

"(ii) When a violation of any right of an artistic author is established in any civil action arising under this subsection, the plaintiff shall be entitled to the remedies provided under section 35(a).

"(iii) In any action under subparagraph (A), the court may order that all film packaging of a materially altered motion picture (including film packages of motion pictures intended for home use through either retail purchase or rental) that is the subject of the violation shall be delivered up and destroyed.

"(C) No action shall be maintained under this paragraph unless—

"(i) the action is commenced within 1 year after the right of action accrues; and

"(ii) if brought by an artistic author designee, the action is commenced within the term of copyright of the motion picture.

"(3) Any disclosure requirements imposed under the common law or statutes of any State respecting the material alteration of motion pictures are preempted by this subsection.

"(4) To facilitate the location of a potentially aggrieved party, each artistic author of a motion picture may notify the copyright owner of the motion picture or any appropriate professional guild. The professional guilds may each maintain a Professional Guild Registry including the names and addresses of artistic authors so notifying them and may make available information contained in a Professional Guild Registry in order to facilitate the location of any artistic author for purposes of paragraph (1)(A). No cause of action shall accrue against any professional guild for failure to create or maintain a Professional Guild Registry or for any failure to provide information pursuant to paragraph (1)(A)(i).

"(5) As used in this subsection—

"(A) the term 'artistic author' means—

"(i) the principal director and principal screenwriter of a motion picture and, to the extent a motion picture is colorized or its photographic images materially altered, the principal cinematographer of the motion picture; or

"(ii) the designee of an individual described in clause (i), if the designation is made in writing and signed by the principal;

"(B) the term 'colorize' means to add color, by whatever means, to a motion picture originally made in black and white, and the term 'colorization' means the act of colorizing;

"(C) the term 'distributor'—

"(i) means any person, vendor, or syndicator who engages in the wholesale distribution of motion pictures to any exhibitor, network, retail provider, or other person who publicly performs motion pictures by means of any technology, and

"(ii) does not include laboratories or other providers of technical services to the motion picture, video, or television industry;

"(D) the term 'editing' means the purposeful or accidental removal of existing material or insertion of new material;

"(E) the term 'exhibitor' means any local broadcast station, cable system, airline, motion picture theater, or other person that publicly performs a motion picture by means of any technology;

"(F) the term 'exploit' means to exhibit publicly or offer to the public through sale or lease, and the term 'exploitation' means the act of exploiting;

"(G) the term 'film' or 'motion picture' means—

"(i) a theatrical motion picture, after its publication, of 60 minutes duration or greater, intended for exhibition, public performance, public sale or lease, and

"(ii) does not include episodic television programs of less than 60 minutes duration (exclusive of commercials), motion pictures prepared for private commercial or industrial purposes, or advertisements;

"(H) the term 'lexiconning' means altering the sound track of a motion picture to conform the speed of the vocal or musical portion of the motion picture to the visual images of the motion picture, in a case in which the motion picture has been the subject of time compression or expansion;

"(I) the terms 'materially alter' and 'material alteration'—

"(i) refer to any change made to a motion picture;

"(ii) include, but are not limited to, the processes of colorization, lexiconning, time compression or expansion, panning and scanning, and editing; and

"(iii) do not include insertions for commercial breaks or public service announcements, editing to comply with the requirements of the Federal Communications Commission (in this subparagraph referred to as the 'FCC'), transfer of film to videotape or any other secondary media preparation of a motion picture for foreign distribution to the extent that subtitling and editing are limited to those alterations made under foreign standards which are no more stringent than existing FCC standards, or activities the purpose of which is the restoration of the motion picture to its original version;

"(J) the term 'network' means any person who distributes motion pictures to broadcasting stations or cable systems on a regional or national basis for public performance on an interconnected basis;

"(K) the term 'panning and scanning' means the process by which a motion picture, composed for viewing on theater screens, is adapted for viewing on television screens by modification of the ratio of width to height of the motion picture and the selection, by a person other than the principal director of the motion picture, of some portion of the entire picture for viewing;

"(L) the term 'professional guild' means—

"(i) in the case of directors, the Directors Guild of America (DGA);

"(ii) in the case of screenwriters, the Writers Guild of America-West (WGA-W) and the Writers Guild of America-East (WGA-E); and

"(iii) in the case of cinematographers, the International Photographers Guild (IPG), and the American Society of Cinematographers (ASC);

"(M) the term 'Professional Guild Registry' means a list of names and addresses of artistic authors that is readily available from the files of a professional guild;

"(N) the term 'publication' means, with respect to a motion picture, the first paid public exhibition of the work other than previews, trial runs, and festivals;

"(O) the term 'retail provider' means the proprietor of a retail outlet that sells or leases motion pictures for home use;

"(P) the term 'secondary media' means any medium, including, but not limited to, video cassette or video disc, other than television broadcast or theatrical release, for use on which motion pictures are sold, leased, or distributed to the public;

"(Q) the term 'syndicator' means any person who distributes a motion picture to a broadcast television station, cable television system, or any other means of distribution by which programming is delivered to television viewers;

"(R) the terms 'time compression' and 'time expansion' mean the alteration of the speed of a motion picture or a portion thereof with the result of shortening or lengthening the running time of the motion picture; and

"(S) the term 'vendor' means the wholesaler or packager of a motion picture which is intended for wholesale distribution to retail providers.

"(6)(A) A label for a materially altered version of a motion picture intended for public performance or home use shall consist of a panel card immediately preceding the commencement of the motion picture, which bears one or more of the following statements, as appropriate, in legible type and displayed on a conspicuous and readable basis:

'THIS FILM IS NOT THE VERSION ORIGINALLY RELEASED. _____ mins. and _____ secs. have been cut [or, if appropriate, added]. The director, _____, and screenwriter, _____ _____, object because this alteration changes the narrative and/or characterization. It has (also) been panned and scanned. The director and cinematographer,

_____ _____, object because this alteration removes visual information and changes the composition of the images. It has (also) been colorized. Colors have been added by computer to the original black and white images. The director and cinematographer object to this alteration because it eliminates the black and white photography and changes the photographic images of the actors. It has (also) been electronically speeded up (or slowed down). The director objects because this alteration changes the pace of the performances.'

"(B) A label for a motion picture that has been materially altered in a manner not described by any of the label elements set forth in subparagraph (A) shall contain a statement similar in form and substance to those set forth in subparagraph (A) which accurately describes the material alteration and the objection of the artistic author.

"(7) A label for a motion picture which has been materially altered in more than one manner, or of which an individual served as more than one artistic author, need only state the name of the artistic author once, in the first objection of the artistic author so listed. In addition, a label for a motion picture which has been materially altered in more than one manner need only state once, at the beginning of the label: 'THIS FILM IS NOT THE VERSION ORIGINALLY RELEASED.'.

"(8) A label for a film package of a materially altered motion picture shall consist of—

"(A) an area of a rectangle on the front of the package which bears, as appropriate, one or more of the statements listed in paragraph (6) in a conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the package; and

"(B) an area of a rectangle on the side of the package which bears, as appropriate, one or more of the statements listed in paragraph (6) in a conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the package.

"(9) The questionnaire required under paragraph (1)(A)(iii) shall consist of the following statement and related questions:

'In order to conform [insert name of motion picture], of which you are an "artistic author", to ancillary media such as television, airline exhibition, video cassettes, video discs, or any other media, do you object to:

'(a) Editing (purposeful or accidental deletion or addition of program material)?

Yes_____ No_____

'(b) Time compression/time expansion/lexiconning?

Yes_____ No_____

'(c) Panning and scanning?

Yes_____ No_____

'(d) Colorization, if the motion picture was originally made in black and white?

Yes_____ No_____'."

SEC. 4. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect 180 days after the date of the enactment of this Act.

By Mr. DASCHLE:

S. 560. A bill to amend section 6901 of title 31, United States Code, to entitle units of general local government to payments in lieu of taxes for nontaxable Indian land; to the Committee on Indian Affairs.

INDIAN LAND LEGISLATION

Mr. DASCHLE. Mr. President, today I introduce a bill to amend section 6901 of title 31, United States Code. This bill will provide payment in lieu of taxes to nontaxable Indian land that is conveyed to the ownership of an Indian or Indian tribe or to the United States in trust for an Indian or Indian tribe.

In 1976, Congress authorized a program to help compensate counties and units of local government for the loss of property taxes from the presence of tax-exempt Federal lands within their jurisdictions. This program, commonly referred to as payments in lieu of taxes, or PILT, is administered by the Bureau of Land Management. Payments are made for tax-exempt Federal lands administered by the BLM, Forest Service, National Park Service, U.S. Fish and Wildlife Service, and for Federal water projects and some military installations.

This amendment will provide compensation to local governments for lost revenue from land that is conveyed to an individual Indian or tribe and then converted to trust status. This amendment does not apply to Indian land that was not originally subject to property taxes or land converted to trust status prior to the enactment of this bill.

The purpose of the amendment is to provide a means for local governments to be compensated for the loss of revenue that results from the tax-exempt status of Indian land without discouraging individual Indians and tribes from converting recently purchased land holdings into trust status.

The additional PILT compensation will be minimal. Far more Indian land is converted from trust status to fee status. During the past 5 years, less than 1,000 acres have been converted to trust status in South Dakota.

This amendment is a fair and sensible approach to remedying an inequity effecting local governments in South Dakota and across the Nation.

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. 560

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PAYMENTS IN LIEU OF TAXES FOR NONTAXABLE INDIAN LAND.

Section 6901 of title 31, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking "means" and inserting "means—

"(A) land owned by the United States Government—";

(B) by redesignating subparagraphs (A) through (G) as clauses (i) through (vii), respectively, and adjusting the margins as appropriate; and

(C) by striking the period at the end, inserting a semicolon, and adding the following:

"(B) nontaxable Indian land.";

(2) by redesignating paragraph (2) as paragraph (5); and

(3) by inserting after paragraph (1) the following:

"(2) 'Indian land' means land that is owned by an Indian or Indian tribe or by the United States in trust for an Indian or Indian tribe.

"(3) 'Indian tribe' means an Indian tribe, band, nation, pueblo, or other recognized group or community, including any Alaska Native Village or regional corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), that is eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"(4) 'nontaxable Indian land' means Indian land that—

"(A) on or after the date of enactment of this paragraph, is conveyed to the ownership of an Indian or Indian tribe or to the United States, in trust for an Indian or Indian tribe;

"(B) prior to the conveyance, was subject to taxation by a unit of general local government; and

"(C) under a provision of the Constitution of the United States or an Act of Congress, is not subject to taxation by the unit of general local government by reason of that ownership.".

By Mr. CHAFEE:

S. 561. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Isabelle*, and for other purposes; to the Committee on Commerce, Science, and Transportation.

CERTIFICATE OF DOCUMENTATION LEGISLATION

• Mr. CHAFEE. 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. 561

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. VESSEL DOCUMENTATION.

Notwithstanding section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), section 8 of the Act of June 19, 1886 (24 Stat. 81, chapter 421; 46 App. U.S.C. 289), and section 12106 of title 46, United States Code, the Secretary of Transportation may issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel ISABELLE, United States official number 600655.•

By Mr. GRAMM (for himself and Mr. SHELBY):

S. 562. A bill to provide for State bank representation on the Board of Directors of the Federal Deposit Insurance Corporation, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

THE STATE BANK REPRESENTATION ACT

• Mr. GRAMM. Mr. President, our system of State and federally chartered banks has served Americans well over the years. Many of the bank products that are most popular with consumers were first developed by State banks.

Today, together with the chairman of the Financial Institutions Subcommittee, Senator SHELBY, I am introducing

legislation to strengthen the dual banking system by providing for State bank representation on the board of Directors of the Federal Deposit Insurance Corporation [FDIC]. The FDIC Board currently is made up of five members: the Chairman of the FDIC, the Comptroller of the Currency, the Chairman of the Office of Thrift Supervision, and two independent members.

Mr. President, while the FDIC insures the deposits of both State and national banks, no one is seated at the table who can be counted on to present the perspective of State-chartered banks.

Decisions made and regulations issued by the FDIC have a powerful impact on banks, whether they have a State or national charter. We are in some degree, a dangerous degree, flying blind without having both elements of our dual banking system participating on the FDIC Board.

Our legislation contains several procedural safeguards. The bill would ensure that no one State would be favored over other States in serving on the FDIC Board. First of all, the State bank supervisor would be appointed to the Board by the President and confirmed by the Senate. Second, such a supervisor would serve for only 2 years and could not be reappointed. Neither could supervisors from the same State serve consecutive terms on the Board.

Finally, to ensure that it is the point of view of State bank supervisors that is being represented, should the individual while serving on the FDIC Board cease to be a State bank supervisor, then membership on the FDIC Board would also be lost. The President, in that case, would need to appoint another supervisor, with the advice and consent of the Senate, to serve for the remainder of the unexpired term. Such new appointment could be, but would not have to be, an individual from the same State as the individual originally appointed to that term.

As with the Comptroller of the Currency and the Chairman of the Office of Thrift Supervision, a State bank supervisor would receive no Federal salary for service as a member of the FDIC Board.

Mr. President, I believe that provision should have been made for a State bank supervisor on the FDIC Board when the Comptroller of the Currency was included on the Board. This legislation will rectify that oversight and bring about the balance that currently does not exist.

Mr. President, I ask unanimous consent that the text of the bill and a summary be printed in the RECORD.

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

S. 562

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 "State Bank Representation Act".

SEC. 2. STATE BANK REPRESENTATION OF FDIC BOARD OF DIRECTORS.

(a) IN GENERAL.—Section 2(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1812(a)(1)) is amended—

(1) by striking "5 members" and inserting "6 members";

(2) in subparagraph (B), by striking "and" at the end;

(3) in subparagraph (C), by striking the period at the end and inserting "; and"; and

(4) by adding at the end the following:

"(D) 1 of whom shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals serving as State bank commissioners or supervisors (or the functional equivalent thereof) as of the date on which the appointment is made.".

(b) LIMITATION.—Section 2(b) of the Federal Deposit Insurance Act (12 U.S.C. 1812(b)) is amended—

(1) in paragraph (1), by striking "appointed members" and inserting "members appointed pursuant to subsection (a)(1)(C)"; and

(2) in paragraph (2), by striking "appointed members" and inserting "members appointed pursuant to subsection (a)(1)(C)".

(c) TERMS.—Section 2(c)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1812(c)(1)) is amended—

(1) by striking "Each appointed member" and inserting the following:

(A) IN GENERAL.—Each member appointed pursuant to subsection (a)(1)(C)"; and

(2) by adding at the end the following:

"(B) STATE BANK REPRESENTATIVES.—

"(i) IN GENERAL.—Except as provided in clause (ii), each member appointed pursuant to subsection (a)(1)(D) shall be appointed for a single term of 2 years.

"(ii) EXCEPTION.—If a member appointed pursuant to subsection (a)(1)(D) ceases to be a State banking commissioner or supervisor (or functional equivalent thereof) on a date prior to the expiration of the 2-year period described in clause (i), such member's membership on the Board of Directors shall terminate on that date.".

(d) VACANCIES.—Section 2(d)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1812(d)(1)) is amended—

(1) by striking "Any vacancy" and inserting the following:

"(A) IN GENERAL.—Subject to the restrictions contained in subparagraph (B), any vacancy"; and

(2) by adding at the end the following:

"(B) RESTRICTIONS.—

"(i) SAME INDIVIDUAL.—In filling a vacancy on the Board of Directors pursuant to subsection (a)(1)(D), the President may not appoint an individual who has previously served as a member of the Board of Directors pursuant to subsection (a)(1)(D).

"(ii) SAME STATE.—In filling a vacancy on the Board of Directors pursuant to subsection (a)(1)(D) (other than a vacancy occurring under subsection (c)(1)(B)(ii)), the President may not appoint an individual who is serving as the State bank commissioner or supervisor (or functional equivalent thereof) of the same State as the member most recently appointed pursuant to subsection (a)(1)(D).".

(e) NONCOMPENSATION; TRAVEL EXPENSES.—Section 2 of the Federal Deposit Insurance Act (12 U.S.C. 1812) is amended by adding at the end the following:

"(g) PERSONNEL MATTERS RELATING TO STATE BANK REPRESENTATIVES.—Members of the Board of Directors appointed pursuant to subsection (a)(1)(D)—

"(1) shall serve without compensation; and

"(2) shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board of Directors.".

SUMMARY—STATE BANK REPRESENTATION ACT

1. Short title: "State Bank Representation Act."

2. Add another member to the FDIC Board of Directors, who would be a sitting state banking Supervisor or Commissioner (or the functional equivalent thereof), and who would be a full voting member.

3. This board member would be nominated by the President and confirmed by the Senate.

4. Remuneration would only be for expenses in connection with official duties as a board member; no salary.

5. Term of office would be two years. Such a board member may not be reappointed to the board for this particular seat, nor may a Supervisor from the same state serve for two consecutive terms on the board.

6. If during term of office as a member of the FDIC board the individual ceases to be a state banking Supervisor, then the person would also lose membership on the FDIC Board.•

By Mr. GREGG:

S. 563. A bill to amend the Internal Revenue Code of 1986 to treat recycling facilities as exempt facilities under the tax-exempt bond rules, and for other purposes; to the Committee on Finance.

THE ENVIRONMENTAL INFRASTRUCTURE FINANCING ACT OF 1995

• Mr. GREGG. Mr. President, I introduce the Environmental Infrastructure Financing Act of 1995. The bill will amend the Internal Revenue Code of 1986 to allow recycling facilities to be eligible for tax-exempt bond financing.

A continuing problem in the development of recycling efforts is the need for markets for the materials that are being collected. Processes exist for remanufacturing the recycled materials into new products, but they frequently require extensive capital investment.

An approach that is often attempted is the use of the Federal tax-exempt bond program, which does have a subcategory for solid waste projects. Solid waste recycling facilities should constitute a legitimate application of these funds; however, oertain sections of the Tax Code define solid waste as being "material without value." With recycled materials now being traded as commodities, they do, in fact, have value, making the facilities which might process them ineligible for tax-exempt financing. This definitional problem impedes the construction of recycling facilities and hurts the development of recycling materials markets.

My bill will correct this problem in the Tax Code and allow recycling facilities to obtain tax-exempt financing.

The Environmental Infrastructure Financing Act of 1994 will foster the further development of the recycling industry and promote increased recycling.

Mr. President, I ask unanimous consent that a copy 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. 563

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 "Environmental Infrastructure Financing Act of 1995".

SEC. 2. RECYCLING FACILITIES TREATED AS EXEMPT FACILITIES.

(a) TREATMENT AS EXEMPT FACILITY BOND.—Subsection (a) of section 142 of the Internal Revenue Code of 1986 (defining exempt facility bond) is amended by striking "or" at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting ", or", and by adding at the end the following new paragraph:

"(13) qualified recycling facilities."

(b) QUALIFIED RECYCLING FACILITIES DEFINED.—Section 142 of the Internal Revenue Code of 1986 (defining exempt facility bond) is amended by adding at the end the following new subsection:

"(k) QUALIFIED RECYCLING FACILITIES.—

"(1) IN GENERAL.—For purposes of subsection (a)(13), the term 'qualified recycling facilities' means any facility used exclusively—

"(A) to sort and prepare municipal, industrial, and commercial refuse for recycling, or

"(B) in the recycling of qualified refuse.

"(2) QUALIFIED REFUSE.—For purposes of this subsection, the term 'qualified refuse' means—

"(A) yard waste,

"(B) food waste,

"(C) waste paper and paperboard,

"(D) plastic scrap,

"(E) rubber scrap,

"(F) ferrous and nonferrous scrap metal,

"(G) waste glass,

"(H) construction and demolition waste, and,

"(I) biosolids (sewage sludge).

(3) RECYCLING.—For purposes of this subsection, the term 'recycling' includes either—

"(A) processing (including composting) qualified refuse to a point at which such refuse has commercial value; or

"(B) manufacturing products from qualified refuse when such refuse constitutes at least 40 percent, by weight or volume, of the total materials introduced into the manufacturing process.

"(4) SPECIAL RULE.—Refuse shall not fail to be treated as waste merely because such refuse has a market value at the place such refuse is located only by reason of the value of such refuse for recycling."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.•

By Mr. BIDEN:

S. 564. A bill to confer and confirm Presidential authority to use force abroad, to set forth principles and procedures governing the exercise of that authority, and thereby to facilitate cooperation between the President and Congress in decisions concerning the use or deployment of U.S. Armed Forces abroad in situations of actual or potential hostilities.

USE OF FORCE ACT

Mr. BIDEN. Mr. President, I rise today to introduce a piece of legislation that I worked on for the last several years. As time has passed, I believe my arguments for the legislation in the first instance are even more relevant today than they were then.

This legislation will replace the War Powers Resolution of 1973, and it is designed to provide a framework for joint congressional-Executive decisionmaking about the most solemn decision that a nation can make: to send women and men to fight and die for their country.

Decades ago, a noted scholar, Edwin Corwin, characterized constitutional provisions regarding the foreign policy of the Nation as an invitation to struggle—a struggle between the executive branch and the legislative branch.

Professor Corwin's maxim accurately describes over 200 years of constitutional history—two centuries of tension between the executive and the legislative branches regarding the war power.

But over the past four decades, what was intended as a healthy struggle between the executive and legislative branches has become an extremely excessively divisive and chronically debilitating struggle.

The primary cause, in my view, is that Presidents have pushed the limits of Executive prerogative, Democratic Presidents as well as Republican Presidents. Their rationale has been the supposed burden of Presidential responsibility imposed by the stresses and dangers of the cold war.

The era began in 1950, when President Truman deployed forces to defend South Korea without any congressional authorization.

With elaborate legal argument, Truman asserted an inherent Presidential authority to act unilaterally to protect the broad interests of American foreign policy.

A nearly lone voice of concern, Senate minority leader—Mr. Republican—Robert Taft—known, as I said, as Mr. Republican—declared that the President had usurped authority, in violation of the laws and the Constitution.

But Taft's pronouncements availed him little, a fate that would often befall similar Executive attempts to restrain Executive aggrandizement.

The dissenters were overwhelmed by the proponents of a thesis: The thesis that in the nuclear age—when the fate of the planet itself appeared to rest with two men thousands of miles apart—Congress had little choice, or so it was claimed, but to cede tremendous authority to the Executive.

By the beginning of the 1970's, that thesis had become doctrine.

In 1970, when President Nixon sent United States forces into Cambodia with neither congressional authorization nor even consultation, his accompanying assertions of autonomous Presidential powers were so sweeping and so extreme that the Senate began a search—a search led by Republican Senator Jacob Javits and strongly supported by Democratic Senator and hawk John Stennis—the Senate began a search for some means of rectifying what was now perceived as a dangerous constitutional imbalance in favor of the Executive.

The result was the enactment, in 1973—my first year in the U.S. Senate—of the War Powers Resolution over a Presidential veto.

Today, over two decades later, few would dispute that the War Powers Resolution has failed to fulfill its intent and has been, to state it quite simply, ineffective.

It is commonly said that every President has disputed the constitutionality of the War Powers Act, but that is not wholly true. President Ford took no issue with the act while he was in office.

And President Carter explicitly vowed to comply with its provisions, declaring that he would neither endorse nor challenge its constitutionality.

Moreover, the Carter Justice Department conducted a detailed analysis of the resolution and declared, quite explicitly, that its most critical mechanism—the timetable for congressional authorization of use of force abroad—is fully and unambiguously constitutional.

Unfortunately, under the Ford and Carter administrations, no body of practice under the resolution developed, because the only two military actions of that period—the *Mayaguez* incident under President Ford and Desert One under President Carter—were over almost before they began.

Then came President Reagan and President Bush, who dealt with the resolution pragmatically while declaring their blanket opposition to its provisions.

Their assertion of the doctrine of broad Executive powers—what I call the monarchist viewpoint—is best exemplified by President Bush's statement on the eve of the gulf war.

With half a million American forces standing ready in Saudi Arabia, President Bush petulantly declared that he did not need permission from some old goat in the Congress to kick Saddam out of Kuwait.

Although Mr. Bush eventually sought congressional support in the gulf, he did so reluctantly, and continued to assert that he sought only support, refusing to concede that congressional authorization was a legal necessity.

More recently, the notion of broad Executive power was claimed on the eve of the invasion of Haiti—an invasion that, thankfully, was averted by a last-minute diplomatic initiative.

Last summer, Clinton administration officials characterized the Haiti operation as a mere police action, a semantic dodge designed to avoid the need for congressional authorization.

Some of my Democratic colleagues suggested that the war clause of the Constitution was entirely ceremonial and that the President had virtually unlimited discretion to order an invasion of Haiti. These were some of the same Democrats who stood here on the floor and said President Bush did not have the authority to act in the gulf without congressional assent; proving the axiom that Senators and Congressmen tend to pick what side of their issue they are on depending on the partisan need.

We have the interesting phenomena, Republicans on the floor who said there was a broad range of congressional authority, but when it came to Clinton exercising it, saying, no, he did not have the authority; and Democrats who were on the floor telling President Bush he did not have the authority but saying, no, President Clinton does. To be sure, there were some of my Republicans and Democratic friends who were consistent—who may have questioned the President's policy in Haiti but did not question the right to deploy those troops in the absence of congressional consent.

In my view, the assertions expressed during the Haitian crisis underscore that the doctrine asserted by President Nixon 25 years ago still grips the executive branch. More alarming, the congressional viewpoints I summarized suggest that the legislative surrender of the war power continues, based in part on whether or not the man or woman in power is a man of your party and whether you agree with him on the substance of the action.

With all respect to my colleagues and the administration, I believe this President, the last President, and the Presidents under whom I have served have misread the Constitution. Article I, section 8, clause 11, grants to the Congress the power "To declare War, grant Letters of Marque and Reprisal and make Rules concerning Captures on Land and Water."

To the President, the Constitution provides in article II, section 2, the role of "Commander in Chief of the Army and Navy of the United States." It may fairly be said that with regard to many constitutional provisions, the framers' intent was ambiguous, but not on the war power. Both the contemporaneous evidence and the early construction of these clauses, in my view, do not leave much room for doubt.

The original draft of the U.S. Constitution would have given the Congress the power to "make war." At the Constitutional Convention in Philadelphia, a motion was made to change to "make war," to "declare war."

The reason for the change is very instructive. At the convention, James Madison and Elbridge Gerry argue for an amendment solely in order to permit the President the power "to repel sudden attacks." They were fearful if you said it was the power of the Congress to make war, that could be read to deny the President the authority without congressional power to repel sudden attacks.

Just one delegate at the convention, Pierce Butler of South Carolina, suggested that the President should be given the power to initiate war. All others disagreed. Only one to suggest that the President had the power to initiate war. The rationale for vesting the power to launch war in the U.S. Congress was quite simple: The framers knew their history. The framers' thoughts were dominated by their experience with the British king who had unfettered power to start wars and spend the treasure and blood of his nation. Such powers the framers were determined to deny the President of the United States.

George Mason, for example, explained that he was opposed to giving the power to initiate war to the President because the President, the Executive, he believed, was not to be safely trusted with that power. Even Alexander Hamilton, a staunch advocate of Presidential power, emphasized that the President's power as Commander in Chief would be "much inferior" to the British kings, amounting to "nothing more than the supreme command and direction of the military and naval forces," while that of the British king "extends to the declaring of war and the raising and regulation of fleets and armies—all which [by the U.S.] Constitution would appertain to the legislature."

It is frequently contended by those who favor vast Presidential powers that Congress was granted only ceremonial power to declare war, in effect, a designation to provide fair notice to the opposing States, and legal notice to neutral parties. At least that is what they argue.

But the framers had little interest, it seems, in the ceremonial aspects of war. The real issue was congressional authorization of war. As Hamilton noted in Federalist 25, "The ceremony of a formal denunciation of war has of late fallen into disuse." Indeed, by one historian's account, just 1 war in 10 was formally declared in the years between 1700 and 1870—1 in 10.

The proposition that Congress had the power to initiate all wars except to repel attack on the United States is also strengthened in view of the second part of the war clause. That is the power to "grant Letters of Marque and Reprisal."

Now, most Americans, I daresay most Members of Congress, I daresay most members of Government, do not even know what the "power to grant Letters of Marque and Reprisal" means and why it is in the Constitution. An anachronism today, letters of marque and reprisals were licenses issued by governments, usually to private citizens, but on occasion to government agents, empowering these private citizens or government agents to seize enemy ships or take action on land, short of all-out war.

In essence, it was the 18th century version of what we now regard as limited war or police actions. That is what letters of marque and reprisal were. If you are having trouble with pirates off the coast, you are not looking to declare war. The Federal Government, in this case the Congress, could go out and hire out, give permission to, give a letter of marque and reprisal to a local. Think of it in terms of a local security agency that comes by and patrols your neighborhoods. You could give letters of marque or reprisal and say, "You are authorized under the law, through the Congress, to go seize those pirate ships."

That is what it was about. A leading commentator of the day—that is, the late 1700's—a leading commentator of the day on international law explained the distinction this way: "A perfect war is that which entirely interrupts the tranquility of the state. An imperfect war, on the contrary, is that which does not entirely interrupt the peace. Reprisals are that imperfect kind of war."

So, when we hear people talk about imperfect wars, it is used as a term of art as it was used back in the late 1700's. The framers undoubtedly knew that reprisals or imperfect wars could lead to general or all-out wars. England, for example, had fought five wars between 1652 and 1756 which were preceded by public naval reprisals.

That is, if you gave these letters of marque to someone or a group of people to go out and seize shipping, it was acknowledged that that could lead to a larger war. If the nation from which those ships came decided that it was not in their interest, they may very well send a larger armada and you are at war. You move from that imperfect war to the so-called perfect war—an odd phrase, "perfect war."

Surely, those who met at Philadelphia, all learned men, knew and understood this history of marque and reprisals. Given this understanding, the only logical conclusion that the framers intended by vesting the power to grant these letters of marque and reprisal authorizing imperfect war in the Congress, could be that it was designed to grant to Congress the power to initiate all hostilities, even limited wars.

To review for a second, they changed from "make" to "declare" in the Constitution for the purpose of allowing

the President not to initiate a war, perfect or imperfect, large or small, but for the purpose of allowing the President to respond to a sudden attack.

Then to be sure everyone understood what they meant, they said, "And by the way, we are going to vest in the section of the Constitution that relates to congressional power the exclusive power to the Congress of issuing these letters of marque and reprisal."

So they not only said Congress can only initiate war and the President can only respond, but even limited war only the Congress can initiate.

A comparison of the war clause to related constitutional provisions suggests that this interpretation is the correct one. Unlike other foreign affairs provisions in the Constitution which grant to the President and the Senate the shared power to make treaties and appoint ambassadors, when it comes to the war power the Constitution provides a role for the Senate and the House of Representatives—but not a shared responsibility between the branches.

The inclusion of the House, in particular, suggests a determination to mandate that public consensus be achieved before the initiation of a war.

Think about it. If the Founders thought that they should not give the power to raise taxes to the Senate because we were more like the House of Lords, and that all taxes must be initiated in the House of Representatives, why did they do that? They did that because they knew that taxation could affect people's lives so drastically that it should be a democratic decision and it should be made first and foremost in the people's house, that group of legislators who stand for election every 2 years and are immediately answerable to the public.

If they thought it was so important and so critical that taxes should be determined by the people's house because it had such an impact on the lives of the average citizen, what do you think they thought about the power of a Government to take your son or daughter and send them to war and die? It is illogical to me, and those who say that the President has this exclusive authority, to suggest that they would worry about taxation but not worry about taking a nation to war, which can cost them their lives, their monetary treasure, their lifeblood.

The inclusion of the House in the decision to go to war was because the House was designed to be closely attuned to the views of the Nation and thereby would provide a means for gauging and ensuring public support for any war.

Moreover, with both Chambers involved in the decision to go to war, the initiation of war could necessarily be slowed by the simple fact that securing passage of statutory authorization or a declaration of war through both Houses is potentially a time-consuming and cumbersome process. That is what it was intended to be, because when one goes to war, you cannot say, short of surrender, 2 weeks into it or 1 month into it, "By the way, we made a mistake, we're passing legislation to correct it." You can do that with taxes. You can pass a tax bill and 2 months later, 3 months later say, "We made a mistake and rescind it." You do not rescind a war.

So it was intended—it was intended—in the Constitution that decision to go to war—not to repel attack, to go to war—to initiate war, to alter the state of peace, it was intended that it should be a process that consumed some time.

It is bordering on the irrational, in my view, to suggest that the framers thought the appointment of ambassadors, although an important task, but not of the same consequence as war, that the appointment of ambassadors was so critical that they gave the Senate a veto power over it, but they considered the war powers so trivial that the decision to send Americans to fight and die was left deliberately vague so as to permit the Executive reasonable discretion to launch hostilities at his or her whim.

I think that is irrational for anyone to think that is what the Framers thought, that who we have as Ambassador to England is so important that we are not going to leave it to a President alone, we are going to require the Senate to go along with it, but going to war with England was so trivial that we did not have to consult the United States Senate or did not have to consult the people's House before a President could take us to war. That is, in my humble opinion, an irrational view.

In the same vein, I am continually amazed that many of my colleagues who zealously guard the Senate's power to advise and consent to treaties and to ambassadorial appointments, so cavalierly cede the war power to the Executive. I find that fascinating. What more can impact on the life of the average American than taking the Nation to war? Why would they possibly have left that to the President alone but said, "By the way, when you want to stop a war, when you want to have a treaty, the President has no authority to do that. He has to come to us and get a supermajority."

Does that make any sense? Talk about tortured logic. Yet, we have people on this floor, in the 22 years I have been here—and when I got here, the Vietnam war was still going on; that is one of the reasons I ran for the Senate in the first place—we have Members in both political parties with whom I have served and have great respect saying, "War is up to the President, but who the Ambassador is, you better check with me." War is up to the President. But whether there is a peace treaty, you better check with me.

I would respectfully suggest the reason that many have adopted that position is they do not have the political courage to take a stand on whether or not we should go to war.

In sum, to accept the proposition that the war power is merely ceremonial, or applies only to big wars, is to read much of the war clause out of the U.S. Constitution. And such a reading is supported neither by the plain language of the text or the original intention of the Framers of the Constitution.

In describing the Framers' intent, I hasten to add a caveat. We should always be cautious about our ability to divine the intentions of those who came 200 years before us, particularly when the documentary record is not at all voluminous.

But any doubt about the wisdom of relying on original intent alone, in my view, is dispelled in view of the actions of the early Presidents, early Congresses, and early Supreme Court decisions.

EARLY PRACTICE—SHEDDING LIGHT ON THE FRAMERS' INTENT

Let me speak to that a minute. Advocates of Executive power often assert that Presidents have used force throughout our history without congressional consent. But with all due respect, history does not support that claim.

Indeed, our earliest Presidents, who were involved in the ratification of the Constitution, were extremely cautious about encroaching on Congress' power under the war clause.

Our first President, George Washington, adhered to the view that only Congress could authorize offensive action. Writing in 1793, President Washington stated that offensive operations against an Indian tribe, the Creek Nation, depended on congressional action alone.

Let me quote from what Washington wrote. Washington as President said:

> The Constitution vests the power of declaring war with the Congress; therefore, no offensive expedition of importance can be undertaken until after they have deliberated upon the subject, and authorized such a measure.

That was George Washington.

During the Presidency of John Adams, the United States engaged in an undeclared naval war with France. These military engagements were clearly authorized by the Congress in a series of incremental statutes.

The naval war with France also yielded three important Supreme Court decisions regarding the scope of the war power.

In 1799, Congress authorized the President to intercept any United States vessel headed to France. President Adams subsequently ordered the Navy to seize any ship traveling to or from France. The Supreme Court declared the seizure of a United States

vessel traveling from France to be illegal, thus ruling that Congress had the power not only to authorize limited war but also to limit Presidential power to take military action.

The Court ruled in two other cases bearing on the question of limited war. Wars, the Court said, even if "imperfect," are nonetheless wars.

In still another case, Chief Justice Marshall opined that:

> The whole powers of war [are] by the Constitution . . . vested in the Congress . . . [which] may authorize general hostilities . . . or partial war.

Now, modern monarchists, those who lean and tilt so far to the President on this, refer habitually to the actions of our third President, Thomas Jefferson, in coping with the Barbary pirates. But Jefferson's actions provide little solace to advocates of that position.

In May of 1801, President Jefferson deployed a small squadron of ships to the Mediterranean to deter attacks against American shipping. Acting under the authority of an act of Congress which mandated that six frigates be maintained in the Navy during peacetime, Jefferson instructed the naval commander that if he arrived and found that the Barbary powers had declared war against the United States, to take action if necessary "to protect commerce."

But when he learned that the leader of Tripoli had, in fact, declared war, Jefferson referred the matter to the Congress.

Reporting on a small skirmish won by a U.S. ship, Jefferson noted that the American ship was authorized by the Constitution, without the sanction of Congress, to go beyond the line of defense, and thus the U.S. commander did not take possession of the ship or retain its crew as prisoners of war.

Jefferson sought further guidance from Congress about the next step, and I quote:

> The legislature will doubtless consider whether, by authorizing measures of offence also, [Congress] will . . . place our forces on an equal footing [with the Tripolitan forces].

Congress promptly enacted a statute empowering Jefferson to protect U.S. shipping, and to seize vessels owned by the Tripoli règime. The legislation passed 2 years later gave explicit support for "warlike operations against Tripoli or other Barbary powers."

I believe this episode, and the historical record of actions taken by other early Presidents, has significantly more bearing on the meaning of the war clause than the record of Presidents in the modern era.

The reasons should be obvious. The men who were at Philadelphia and wrote the Constitution—or, as in Jefferson's case, participated in the ratification debates in the States—had a much better understanding of the intended meaning of the constitutional provisions than those of us 200 years later have. They participated.

Their actions while in office should, therefore, be given great weight in interpreting the constitutional clauses in question. As Chief Justice Warren once wrote, "The precedential value of [prior practice] tends to increase in proportion to the proximity" to that Constitutional Convention.

RESTORING THE CONSTITUTIONAL BALANCE

Unfortunately, this constitutional history seems largely forgotten, and the doctrine of Presidential power that arose during the four decades of the cold war continues to remain in vogue—even, to my dismay, among many of my colleagues in the Congress.

To accept this situation requires us to believe that the constitutional imbalance serves our Nation well. But it can hardly be said that it does.

As matters now stand, Congress is denied its proper role in sharing the decision to commit American troops, and the President is deprived of the consensus he needs to help carry that policy through.

Only by establishing an effective war powers mechanism can we ensure that both of these goals are met. More importantly, we will guarantee that the will of the American people will stand behind the commitment of U.S. forces.

The question then is this: How to revise the War Powers Resolution in a manner that gains bipartisan support as well as the support of the Executive?

In the past two decades, a premise has gained wide acceptance that the War Powers Resolution is fatally flawed. Indeed, there are flaws in the resolution, but they need not have been fatal.

For that law was designed—by legislators who were statesmen of a markedly conservative stripe—to embody constitutional principles and to set forth practical procedures.

Ironically, a law designed to improve executive-legislative branch comity on the war power has instead contributed to frequent squabbles about the minutiae of the law's provisions.

In 1988, determining that a review of the War Powers Resolution was in order, the Foreign Relations Committee established a special subcommittee to assume the task.

As chairman of the subcommittee, I conducted an exhaustive series of hearings, the most extensive hearings held in recent times on this subject.

Over the course of 2 months, the subcommittee heard from many distinguished witnesses: Former President Ford, former Secretaries of State and Defense, former Joint Chiefs of Staff, former Members of Congress who drafted the law, and many constitutional scholars.

At the end of that process, I produced a lengthy law review article describing how the War Powers Resolution might be thoroughly rewritten to overcome its actual and perceived liabilities.

I envisaged its replacement by a new act entitled "The Use of Force Act"—which would aim to achieve, at long last, the goal of its predecessor: To restore the balance of power between the executive and legislative branches regarding the war power for purposes of complying with the intent and will of the American people as well as the Constitution.

That effort provided the foundation for the legislation I introduce today. The bill that I offer has many elements; I will briefly summarize the most important.

First, it bears emphasis that my bill would replace the War Powers Resolution with a new version. But I should make clear that I retain its central element: A time-clock mechanism that limits the President's power to use force abroad.

That mechanism, I should repeat, was found to be unambiguously constitutional in a 1980 opinion issued by the Office of Legal Counsel at the Department of Justice.

It is often asserted that the time-clock provision is unworkable, or that it invites our adversaries to make a conflict so painful in the short run so as to induce timidity in the Congress, forcing the President to remove troops.

But with or without a war powers law, American willingness to undertake sustained hostilities will always be subject to democratic pressures. A statutory mechanism is simply a means of delineating procedure.

And the procedure set forth in this legislation assures that if the President wants an early congressional vote on a use of force abroad, his congressional supporters can produce it.

Recent history tells us, of course, that the American people, as well as Congress, rally around the flag—rally around the President—rally around the Commander in Chief—in the early moments of a military deployment.

Second, my bill defuses the specter that a timid Congress can simply sit on its hands and permit the authority for a deployment to expire.

As noted above, it establishes elaborate expedited procedures designed to ensure that a vote will occur. And it explicitly defeats the timid Congress specter by granting to the President the authority he has sought if these procedures nonetheless fail to produce a vote.

Thus, if the President requests authority for a sustained use of force—one outside the realm of emergency—and Congress fails to vote, the President's authority is extended indefinitely.

Third, the legislation delineates what I call the going-in authorities for the President to use force.

One fundamental weakness of the War Powers Resolution is that it fails to acknowledge powers that most scholars agree are inherent Presidential powers, such as the power to repel an armed attack upon the United

States or its Armed Forces, or to rescue Americans abroad.

My legislation corrects this deficiency—and thus avoids the endless dispute over where the exact location of the line between what the President already possesses independently and what Congress was bestowing upon him by legislation—where that line rests.

The bill enumerates five instances where the President may use force:

First, to repel attack on U.S. territory or U.S. forces;

Second, to deal with urgent situations threatening supreme U.S. interests—i.e. the Cuban missile crisis;

Third, to extricate imperiled U.S. citizens;

Fourth, to forestall or retaliate against specific acts of terrorism; and

Fifth, to defend against substantial threats to international sea lanes or airspace.

It may be that no such enumeration can be exhaustive. But it is worth noting that the circumstances set forth would have sanctioned virtually every use of force by the United States since World War II.

This concession of authority is circumscribed by the maintenance of the time-clock provision. After 60 days have passed—2 months—the President's authority would expire, unless 1 of 3 conditions had been met:

First, Congress has declared war or enacted specific statutory authorization; or

Second, the President has requested authority for an extended use of force but Congress has failed to act on that request, notwithstanding the expedited procedures established by this act—that is, Congress, if he asks to continue the force must act to tell him he cannot or it is presumed he can continue—or;

Third, the President has certified the existence of an emergency threatening the supreme national interests of the United States; in which case he can continue the force in place.

The legislation also affirms the importance of consultation between the President and Congress and establishes a new means to facilitate that consultation.

To overcome the common complaint that Presidents must contend with "535 secretaries of state"—that is 535 Members of Congress—the Use of Force Act establishes a congressional leadership group with whom the President is mandated to consult on the use of force.

Another infirmity of the War Powers Resolution is that it fails to define "hostilities." Thus, Presidents frequently engaged in a verbal gymnastics of insisting that "hostilities" were not "imminent." Even when hundreds of thousands of troops were positioned in the Arabian desert opposite Saddam's legions, President Bush argued that they were not in an area of hostilities and, even if they were, there was no prospect of imminent hostilities. Therefore the War Powers Act would not be triggered and engaged.

Therefore, my legislation includes a more precise definition of what constitutes the use of force. And this definition contains two elements:

First, a new commitment of U.S. forces, and second, the deployment is aimed at deterring a specific threat, the forces deployed have incurred or inflicted casualties, or are operating with a substantial possibility of incurring or inflicting casualties.

If those conditions are met then there is a use of force as defined in the law.

Finally, to make the statutory mechanism complete, the Use of Force Act provides a means for judicial review.

Like many of my colleagues, I am reluctant to inject the judiciary into decisions that should be made by the political branches. Therefore, the provision is extremely limited: It empowers a three-judge panel to decide only whether the time-clock mechanism has been triggered.

I have no illusions that enacting this legislation will be easy. The experience of the War Powers Resolution gives witness to the difficulty of finding the proper balance between the executive and legislative branches on war powers.

But I am determined to try. The status quo, with Presidents asserting broad executive powers, and Congress often content to surrender its constitutional powers, serves neither branch, and clearly does not serve the American people.

More fundamentally, it does not serve the men and women who risk their lives to defend our interests. For that, ultimately, must be the test of any war powers law.

Mr. President, some would argue now that the cold war is over there is less need for this delineation of authority, this new set of ground rules. I would argue nothing could be further from the truth. We are more likely to be pulled into hostilities—although not a world war III in all probability. More Americans have been engaged in areas of hostility, have been killed, and have been put on the battlefield since the cold war has ended than all during the cold war but for Korea and Vietnam, in little parts of the world all over the world: Bosnia, Somalia, and Haiti. What happens in a decade, a year from now—in the Ukraine, Byelarus, Russia—or any number of places where there might be hostilities and Americans or entire divisions of Americans may be called to action?

So, Mr. President, I think to have an ordered plan to diminish the bickering between the executive and legislative branches on this issue is more needed today than it has been at any time.

Mr. President, I ask unanimous consent that the text of the bill that I have sent to the desk and the accompanying section-by-section analysis be included in the RECORD at this point.

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

S. 564

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 "Use of Force Act".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Congressional findings.
Sec. 4. Statement of purpose.
Sec. 5. Definitions.

TITLE I—GENERAL PROVISIONS

Sec. 101. Authority and governing principles.
Sec. 102. Consultation.
Sec. 103. Reporting requirements and referral of reports.
Sec. 104. Conditions for extended use of force.
Sec. 105. Measures eligible for congressional priority procedures.
Sec. 106. Funding limitations.
Sec. 107. Judicial review.
Sec. 108. Interpretation.
Sec. 109. Severability.
Sec. 110. Repeal of the War Powers Resolution.

TITLE II—EXPEDITED PROCEDURES

Sec. 201. Congressional priority procedures.
Sec. 202. Repeal of obsolete expedited procedures.

SEC. 3. CONGRESSIONAL FINDINGS.

The Congress affirms that—

(1) the provisions of the United States Constitution compel the President and Congress to engage actively and jointly in decisions to use force abroad;

(2) joint deliberation by the two branches will contribute to sound decisions and to the public support necessary to sustain any use of force abroad; and

(3) a statutory framework, devised to promote consultation and timely authorization as may be needed for specific uses of force, can facilitate cooperation between the Congress and the President in such decisionmaking.

SEC. 4. STATEMENT OF PURPOSE.

(a) IN GENERAL.—The purpose of this Act is to confer and confirm Presidential authority to use force abroad, to set forth principles and procedures governing the exercise of that authority, and thereby to facilitate cooperation between the President and Congress in decisions concerning the use or deployment of United States Armed Forces abroad in situations of actual or potential hostilities.

(b) EXCLUSIVITY OF PROVISIONS.—Because this Act confirms all of the President's inherent constitutional authority to use force abroad and confers additional authority, this Act applies to all uses of force abroad by the United States.

SEC. 5. DEFINITIONS.

As used in this Act—

(1) a "use of force abroad" occurs when—

(A) United States Armed Forces are—

(i) introduced into a foreign country,

(ii) deployed to expand significantly the United States military presence in a foreign country, or

(iii) committed to new missions or objectives in a foreign country, or in international airspace, or on the high seas; and

(B) such forces—

(i) have been deployed to deter an identified threat, or a substantial danger, of military action by other forces; or

(ii) have incurred or inflicted casualties or are operating with a substantial possibility of incurring or inflicting casualties;

(2) the term "foreign country" means any land outside the United States, its territorial waters as recognized by the United States, and the airspace above such land and waters;

(3) the term "high seas" means all waters outside the territorial sea of the United States and outside the territorial sea, as recognized by the United States, of any other nation;

(4) the term "international terrorism" means activities that—

(A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or any State;

(B) appear to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by assassination or kidnapping; and

(C) transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum;

(5) the term "United States" means the several States, the District of Columbia, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, American Samoa, Guam, the United States Virgin Islands, and any other possession of the United States; and

(6) the term "Use of Force Report" means the report described in section 103(a).

TITLE I—GENERAL PROVISIONS

SEC. 101. AUTHORITY AND GOVERNING PRINCIPLES.

(a) AUTHORITY.—In the absence of a declaration of war or statutory authorization for a specific use of force, the President, through powers vested by the Constitution of the United States and by this Act, is authorized to use force abroad in accordance with this Act—

(1) to repel an armed attack upon the United States or its armed forces;

(2) to respond to a foreign military threat that severely and directly jeopardizes the supreme national interests of the United States under emergency conditions that do not permit sufficient time for Congress to consider statutory authorization or a declaration of war;

(3) to extricate citizens and nationals of the United States located abroad from situations involving a direct and imminent threat to their lives;

(4) to forestall an imminent act of international terrorism directed at citizens or nationals of the United States or to retaliate against the perpetrators of a specific act of international terrorism directed at such citizens or nationals; and

(5) to protect internationally recognized rights of innocent and free passage in the air and on the seas in circumstances where the violation, or threat of violation, of such rights poses a substantial danger to the safety of American citizens or the national security of the United States.

(b) GOVERNING PRINCIPLES.—In exercising the authority set forth in subsection (a), the President shall, without limitation on the constitutional power of Commander in Chief, adhere rigorously to principles of necessity and proportionality, as follows:

(1) PRINCIPLES OF NECESSITY:

(A) Force may not be used for purposes of aggression.

(B) Before the use of force abroad, the President shall have determined, with due consideration to the implications under international law, that the objective could not have been achieved satisfactorily by means other than the use of force.

(2) PRINCIPLES OF PROPORTIONALITY:

(A) The use of force shall be exercised with levels of force, in a manner, and for a duration essential to and directly connected with the achievement of the objective.

(B) The diplomatic, military, economic, and humanitarian consequences of such action shall be in reasonable proportion to the benefits of the objective.

SEC. 102. CONSULTATION.

(a) PRIOR CONSULTATION REQUIRED.—Except where an emergency exists that does not permit sufficient time to consult Congress, the President shall seek the advice of the Congress before any use of force abroad.

(b) CONGRESSIONAL LEADERSHIP GROUP.—(1) To facilitate consultation between the President and the Congress, there is established within the Congress the Congressional Leadership Group on the Use of Force Abroad (hereafter in this Act referred to as the "Congressional Leadership Group").

(2) The Congressional Leadership Group shall be composed of—

(A) the Speaker of the House of Representatives and the President pro tempore of the Senate;

(B) the Majority Leader and the Minority Leader of the Senate and the Majority Leader and the Minority Leader of the House of Representatives;

(C) the chairman and ranking minority member of each of the following committees of the Senate: the Committee on Foreign Relations, the Committee on Armed Services, and the Select Committee on Intelligence; and

(D) the chairman and ranking minority member of each of the following committees of the House of Representatives: the Committee on International Relations, the Committee on National Security, and the Permanent Select Committee on Intelligence.

(3) The Speaker of the House of Representatives and the Majority Leader of the Senate shall each serve as co-chairman of the Congressional Leadership Group.

(c) REGULAR CONSULTATIONS.—(1) Except as the parties may otherwise determine, whenever Congress is in session, meetings shall be held, in open or closed session, for the purpose of facilitating consultation between Congress and the President on foreign and national security policy, as follows:

(A) The President shall meet at least once every four months with the Congressional Leadership Group.

(B) The Secretary of State shall meet at least once every two months with the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

(C) The Secretary of Defense shall meet at least once every two months with the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives.

(D) The Director of Central Intelligence shall meet at least once every two months with the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

(2) Such consultation shall have, among its primary purposes—

(A) identifying potential situations in which the use of force abroad might be necessary and examining thoroughly the advisability and lawfulness of such use of force; and

(B) in those instances in which a use of force abroad has already been undertaken, discussing how such use of force complies with the objectives and the authority required to be cited in the appropriate Use of Force Report and the governing principles set forth in section 101(b).

(d) EMERGENCY CONSULTATIONS.—Under emergency circumstances affecting United States national security interests, the President should meet promptly with the Congressional Leadership Group on his own initiative or upon receipt of a special request from its co-chairmen that is made on their own initiative or pursuant to a request from a majority of the members of the Congressional Leadership Group.

SEC. 103. REPORTING REQUIREMENTS AND REFERRAL OF REPORTS.

(a) USE OF FORCE REPORT REQUIRED.—Not later than 48 hours after commencing a use of force abroad, the President shall submit to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report stating—

(1) the objective of such use of force;

(2) in the absence of a declaration of war or specific statutory authorization for such use of force, the specific paragraph or paragraphs of section 101(a) setting forth the authority for such use of force; and

(3) the manner in which such use of force complies, and will continue to comply with, the governing principles set forth in section 101(b).

Any such report shall be known as a Use of Force Report and shall state that it is submitted pursuant to this subsection.

(b) PERIODIC REPORTING REQUIRED.—Whenever force is used abroad, the President shall, so long as the United States Armed Forces continue to be involved in the use of force, report to Congress periodically on the status, scope, and expected duration of such use of force. Such reports shall be submitted at intervals to be determined jointly by the President and the Congressional Leadership Group.

(c) REFERRAL OF REPORTS.—Each report transmitted under this section shall be immediately referred to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

(d) RECONVENING CONGRESS.—If, when a report is transmitted under this section, the Congress has adjourned sine die or has adjourned for any period in excess of three calendar days, the Speaker of the House of Representatives and the Majority Leader of the Senate, if they deem it advisable (or if petitioned by a majority of the members of the Congressional Leadership Group or by 30 percent of the membership of either House of Congress) shall jointly request the President to convene Congress in order that it may consider the report and take appropriate action pursuant to this Act.

SEC. 104. CONDITIONS FOR EXTENDED USE OF FORCE.

The President may continue a use of force abroad for longer than 60 calendar days after

the date by which the appropriate Use of Force Report is required to be submitted only if—

(1) Congress has declared war or provided specific statutory authorization for the use of force abroad beyond such period;

(2) the President has requested that Congress enact a joint resolution constituting a declaration of war or statutory authorization under section 105(a) but such joint resolution has not been subject to a vote in each House of Congress, notwithstanding the expedited procedures to which such joint resolution would be entitled; or

(3) the President has determined and certified to the Speaker of the House of Representatives and the President pro tempore of the Senate that an emergency exists that threatens the supreme national interests of the United States and requires the President to exceed such period of limitation.

SEC. 105. MEASURES ELIGIBLE FOR CONGRESSIONAL PRIORITY PROCEDURES.

(a) ELIGIBLE JOINT RESOLUTIONS.—A joint resolution shall be entitled to the expedited procedures set forth in section 201—

(1) if such resolution—

(A) is introduced in a House of Congress by a Member of Congress pursuant to a request by the President made in writing to that Member, or

(B) is introduced in a House of Congress and satisfies the cosponsorship criteria set forth in subsection (c); and—

(2) if such resolution—

(A) constitutes a declaration of war or specific statutory authorization within the meaning of this Act, or

(B) requires the President to terminate, limit, or refrain from a use of force abroad.

(b) ELIGIBLE CONCURRENT RESOLUTIONS.—A concurrent resolution shall be entitled to the expedited procedures set forth in section 201 if such resolution satisfies the cosponsorship criteria set forth in subsection (c) and contains a finding that—

(1) a use of force abroad began on a specific date or that a Use of Force Report was required to be submitted;

(2) a use of force abroad has exceeded the period of limitation set forth in section 104;

(3) the President has acted outside the authority of section 101(a) or abused the authority of section 104(3); or

(4) a use of force is otherwise being conducted in a manner inconsistent with the provisions of this Act.

(c) COSPONSORSHIP CRITERIA.—A joint resolution described in subsection (a)(1)(B) or a concurrent resolution described in subsection (b) is a resolution for purposes of section 201 if such resolution has been cosponsored—

(1) by a majority of the members of the Congressional Leadership Group who are members of the House of Congress in which it is introduced; or

(2) by 30 percent of the membership of the House of Congress in which it is introduced.

SEC. 106. FUNDING LIMITATIONS.

(a) PROHIBITION.—No funds made available under any provision of law may be obligated or expended for any use of force abroad inconsistent with the provisions of this Act.

(b) POINT OF ORDER.—(1) Whenever the Congress adopts a concurrent resolution making a finding under paragraph (2), (3), or (4) of section 105(b), it shall thereafter not be in order in either House of Congress to consider any bill or joint resolution or any amendment thereto, or any report of a committee of conference, which authorizes or provides budget authority to carry out such use of force.

(2) Any committee of either House of Congress that reports any bill or joint resolution, and any committee of conference which submits any conference report to either such House, authorizing or providing budget authority which has the effect of providing resources to carry out any such use of force, shall include in the accompanying committee report or joint statement, as the case may be, a statement that budget authority for that purpose is authorized or provided in such bill, resolution, or conference report.

SEC. 107. JUDICIAL REVIEW.

(a) STANDING.—(1) Any Member of Congress may bring an action in the United States District Court for the District of Columbia for declaratory judgment on the grounds that the provisions of this Act have been violated.

(2) A copy of any complaint in an action brought under paragraph (1) shall be promptly delivered to the Secretary of the Senate and the Clerk of the House of Representatives, and each House of Congress shall have the right to intervene in such action.

(b) THREE-JUDGE COURT.—Any action brought under subsection (a) shall be heard and determined by a three-judge court in accordance with section 2284 of title 28, United States Code.

(c) JUSTICIABILITY.—(1) In any action brought under subsection (a), the United States District Court and the United States Supreme Court, if applicable, shall not refuse to make a determination on the merits based upon the doctrine of political question, remedial discretion, equitable discretion, ripeness, or any other finding of nonjusticiability, unless such refusal is required by Article III of the Constitution.

(2) Notwithstanding the number, position, or political party affiliation of any party to an action brought under subsection (a), it is the intent of Congress that the United States District Court and, if applicable, the United States Supreme Court infer that Congress would disapprove of any use of force inconsistent with the provisions of this Act and find that an impasse exists between Congress and the Executive which requires judicial resolution.

(d) JUDICIAL REMEDIES.—If the United States District Court, in an action brought under subsection (a), finds that a Use of Force Report was required to have been submitted under this Act but was not submitted, it shall issue an order declaring that the period set forth in section 104 has begun on the date of the United States District Court's order or on a previous date, as may be determined by the United States District Court.

(e) APPEAL TO SUPREME COURT.—Notwithstanding any other provision of law, any order entered by the United States District Court in an action brought under subsection (a), including any finding that a Use of Force Report was or was not required to have been submitted to the Congress, shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 days after such order is entered, and the jurisdictional statement shall be filed within 30 days after such order is entered. No stay of an order issued pursuant to an action brought under this section shall be issued by a single Justice of the Supreme Court.

(f) EXPEDITED JUDICIAL CONSIDERATION.—It shall be the duty of the District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite, to the greatest possible extent consistent with Article III of the Constitution, the disposition of any matter brought under this section.

SEC. 108. INTERPRETATION.

(a) CONSTRUCTION.—Nothing in this Act may be construed as requiring any use of force abroad.

(b) SPECIFIC AUTHORIZATION REQUIRED.—Authority to use force may not be inferred—

(1) from any provision of law, unless such provision states that it is intended to constitute specific statutory authorization within the meaning of this Act; or

(2) from any treaty heretofore or hereafter ratified unless such treaty is implemented by a statute stating that it is intended to constitute specific statutory authorization within the meaning of this Act.

(c) STATUS OF CERTAIN CONGRESSIONAL ACTIONS.—The disapproval by Congress of, or the failure of Congress to approve, a measure—

(1) terminating, limiting, or prohibiting a use of force; or

(2) containing a finding described in section 105(b);

may not be construed as indicating congressional authorization or approval of, or acquiescence in, a use of force abroad, or as a congressional finding that a use of force abroad is being conducted in a manner consistent with this Act.

SEC. 109. SEVERABILITY.

(a) SEVERABILITY.—Except as provided in subsection (b), if any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to any other person or circumstance shall not be affected thereby.

(b) EXCEPTION.—If section 101(b), 103, 104, or 106 of this Act or the application thereof to any person or circumstance is held invalid, section 101(a) of this Act shall be deemed invalid and the application thereof to any other person or circumstance shall be null and void.

SEC. 110. REPEAL OF THE WAR POWERS RESOLUTION.

The War Powers Resolution (50 U.S.C. 1541 et seq.; Public Law 93–148), relating to the exercise of war powers by the President under the Constitution, is hereby repealed.

TITLE II—EXPEDITED PROCEDURES

SEC. 201. CONGRESSIONAL PRIORITY PROCEDURES.

(a) DEFINITIONS.—For purposes of this section—

(1) the term "resolution" means any resolution described in subsection (a) or (b) of section 105; and

(2) the term "session days" means days on which the respective House of Congress is in session.

(b) REFERRAL OF RESOLUTIONS.—A resolution introduced in the House of Representatives shall be referred to the Committee on International Relations of the House of Representatives. A resolution introduced in the Senate shall be referred to the Committee on Foreign Relations of the Senate.

(c) DISCHARGE OF COMMITTEE.—(1) If the committee to which is referred a resolution has not reported such a resolution (or an identical resolution) at the end of 7 calendar days after its introduction, such committee shall be discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the House of Congress involved.

(2) After a committee reports or is discharged from a resolution, no other resolution with respect to the same use of force

may be reported by or be discharged from such committee while the first resolution is before the respective House of Congress (including remaining on the calendar), a committee of conference, or the President. This paragraph may not be construed to prohibit concurrent consideration of a joint resolution described in section 105(a) and a concurrent resolution described in section 105(b).

(d) CONSIDERATION OF RESOLUTIONS.—(1)(A) Whenever the committee to which a resolution is referred has reported, or has been discharged under subsection (c) from further consideration of such resolution, notwithstanding any rule or precedent of the Senate, including Rule 22, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House of Congress to move to proceed to the consideration of the resolution and, except as provided in subparagraph (B) of this paragraph or paragraph (2) of this subsection (insofar as it related to germaneness and relevancy of amendments), all points of order against the resolution and consideration of the resolution are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall be in order, except that such motion may not be entered for future disposition. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House of Congress, to the exclusion of all other business, until disposed of, except as otherwise provided in subsection (e)(1).

(B) Whenever a point of order is raised in the Senate against the privileged status of a resolution that has been laid before the Senate and been initially identified as privileged for consideration under this section upon its introduction pursuant to section 105, such point of order shall be submitted directly to the Senate. The point of order, "The resolution is not privileged under the Use of Force Act", shall be decided by the yeas and the nays after four hours of debate, equally divided between, and controlled by, the Member raising the point of order and the manager of the resolution, except that in the event the manager is in favor of such point of order, the time in opposition thereto shall be controlled by the Minority Leader or his designee. Such point of order shall not be considered to establish precedent for determination of future cases.

(2)(A)(i) Consideration in a House of Congress of the resolution, and all amendments and debatable motions in connection therewith, shall be limited to not more than 12 hours, which, except as otherwise provided in this section, shall be equally divided between, and controlled by, the Majority Leader and the Minority Leader, or by their designees.

(ii) The Majority Leader or the Minority Leader or their designees may, from the time under their control on the resolution, allot additional time to any Senator during the consideration of any amendment, debatable motion, or appeal.

(B) Only amendments which are germane and relevant to the resolution are in order. Debate on any amendment to the resolution shall be limited to 2 hours, except that debate on any amendment to an amendment shall be limited to 1 hour. The time of debate for each amendment shall be equally divided between, and controlled by, the mover of the amendment and the manager of the resolution, except that in the event the manager is in favor of any such amendment, the time in opposition thereto shall be controlled by the Minority Leader or his designee.

(C) One amendment by the Minority Leader is in order to be offered under a one-hour time limitation immediately following the expiration of the 12-hour time limitation if the Minority Leader has had no opportunity to offer an amendment to the resolution thereto. One amendment may be offered to the amendment by the Minority Leader under the preceding sentence, and debate shall be limited on such amendment to one-half hour which shall be equally divided between, and controlled by, the mover of the amendment and the manager of the resolution, except that in the event the manager is in favor of any such amendment, the time in opposition thereto shall be controlled by the Minority Leader or his designee.

(D) A motion to postpone or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is in order, except that such motion may not be entered for future disposition, and debate on such motion shall be limited to 1 hour.

(3) Whenever all the time for debate on a resolution has been used or yielded back, no further amendments may be proposed, except as provided in paragraph (2)(C), and the vote on the adoption of the resolution shall occur without any intervening motion or amendment, except that a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House of Congress may occur immediately before such vote.

(4) Appeals from the decisions of the Chair relating to the application of the Rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be limited to one-half hour of debate, equally divided between, and controlled by, the Member making the appeal and the manager of the resolution, except that in the event the manager is in favor of any such appeal, the time in opposition thereto shall be controlled by the Minority Leader or his designee.

(e) TREATMENT OF OTHER HOUSE'S RESOLUTION.—(1) Except as provided in paragraph (2), if, before the passage by one House of a resolution of that House, that House receives from the other House a resolution, then the following procedures shall apply:

(A) The resolution of the sending House shall not be referred to a committee in the receiving House.

(B) With respect to a resolution of the House receiving the resolution, the procedure in that House shall be the same as if no resolution had been received from the sending House, except that the resolution of the sending House shall be considered to have been read for the third time.

(C) If the resolutions of the sending and receiving Houses are identical, the vote on final passage shall be on the resolution of the sending House.

(D) If such resolutions are not identical—

(i) the vote on final passage shall be on the resolution of the sending House, with the text of the resolution of the receiving House inserted in lieu of the text of the resolution of the sending House;

(ii) such vote on final passage shall occur without debate or any intervening action; and

(iii) the resolution shall be returned to the sending House for proceedings under subsection (g).

(E) Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution originated in the receiving House.

(2) If one House receives from the other House a resolution before any such resolution is introduced in the first House, then the resolution received shall be referred, in the case of the House of Representatives, to the Committee on International Relations and, in the case of the Senate, to the Committee on Foreign Relations, and the procedures in that House with respect to that resolution shall be the same under this section as if the resolution received had been introduced in that House.

(f) TREATMENT OF IDENTICAL RESOLUTIONS.—If one House receives from the other House a resolution after the first House has disposed of an identical resolution, it shall be in order to proceed by nondebatable motion to consideration of the resolution received by the first House, and that received resolution shall be disposed of without debate and without amendment.

(g) PROCEDURES APPLICABLE TO AMENDMENTS BETWEEN THE HOUSES OF CONGRESS.—The following procedures shall apply to dispose of amendments between the Houses of Congress:

(1) Upon receipt by a House of Congress of a message from the other House with respect to a resolution, it is in order for any Member of the House receiving the message to move to proceed to the consideration of the respective resolution. Such motion shall be disposed of in the same manner as a motion under subsection (d)(1)(A). Such a motion is not in order after conferees have been appointed.

(2)(A) The time for debate in a House of Congress on any motion required for the disposition of an amendment by the other House to the resolution shall not exceed 2 hours, equally divided between, and controlled by, the mover of the motion and manager of the resolution at each stage of the proceedings between the two Houses, except that in the event the manager is in favor of any such motion, the time in opposition thereto shall be controlled by the Minority Leader or his designee.

(B) The time for debate for each amendment to a motion shall be limited to one-half hour.

(C) Only motions proposing amendments which are germane and relevant are in order.

(h) PROCEDURES APPLICABLE TO CONFERENCE REPORTS AND PRESIDENTIAL ACTION.—(1) Either House of Congress may disagree to an amendment or amendments made by the other House to a resolution or may insist upon its amendment or amendments to a resolution, and request a conference with the other House at anytime. In the case of any disagreement between the two Houses of Congress with respect to an amendment or amendments to a resolution which is not resolved within 2 session days after a House of Congress first amends the resolution originated by the other House, each House shall be deemed to have requested and accepted a conference with the other House. Upon the request or acceptance of a conference, in the case of the Senate, the President pro tempore shall appoint conferees and, in the case of the House of Representatives, the Speaker of the House shall appoint conferees.

(2) In the event the conferees are unable to agree within 72 hours after the second House is notified that the first House has agreed to conference, or after each House is deemed to have agreed to conference, they shall report

back to their respective House in disagreement.

(3) Notwithstanding any rule in either House of Congress concerning the printing of conference reports in the Congressional Record or concerning any delay in the consideration of such reports, such report, including a report filed or returned in disagreement, shall be acted on in the House of Representatives or the Senate not later than 2 session days after the first House files the report or, in the case of the Senate acting first, the report is first made available on the desks of the Senators.

(4) Debate in a House of Congress on a conference report or a report filed or returned in disagreement in any such resolution shall be limited to 3 hours, equally divided between the Majority Leader and the Minority Leader, and their designees.

(5) In the case of a conference report returned to a House of Congress in disagreement, an amendment to the amendment in disagreement is only in order if it is germane and relevant. The time for debate for such an amendment shall be limited to one-half hour, to be equally divided between, and controlled by, the mover of the amendment and the manager of the resolution, except that in the event the manager is in favor of any such amendment, the time in opposition thereto shall be controlled by the Minority Leader or his designee.

(6) If a resolution is vetoed by the President, the time for debate in consideration of the veto message on such measure shall be limited to 20 hours in each House of Congress, equally divided between, and controlled by, the Majority Leader and the Minority Leader, and their designees.

(1) RULES OF THE SENATE AND THE HOUSE.—This section is enacted by the Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SEC. 202. REPEAL OF OBSOLETE EXPEDITED PROCEDURES.

Section 1013 of the Department of State Authorization Act, Fiscal Years 1984 and 1985 (50 U.S.C. 1546a), relating to expedited procedures for certain joint resolutions and bills, is repealed.

USE OF FORCE ACT—SECTION-BY-SECTION ANALYSIS

Section 1. Short Title. The title of the bill is the "Use of Force Act (UFA)."

Section 2. Table of Contents.

Section 3. Findings. This section sets forth three findings regarding the need to provide a statutory framework to facilitate joint decisionmaking between Congress and the President regarding decisions to use force abroad.

Section 4. Statement of Purpose. The key phrase in this section is "confer and confirm Presidential authority." The Use of Force Act is designed to bridge the long-standing—and, for all practical purposes, unresolvable—dispute over precisely what constitutes the President's "inherent" authority to use force. Whereas the War Powers Resolution purported to delineate the President's constitutional authority and to grant no more, the Use of Force Act sets forth a range of authorities that are practical for the modern age and sufficiently broad to subsume all presidential authorities deemed "inherent" by any reasonable constitutional interpretation.

Section 5. Definitions. This section defines a number of terms, including the term "use of force abroad," thus correcting a major flaw of the War Powers Resolution, which left undefined the term "hostilities."

As defined in the Use of Force Act, a "use of force abroad" comprises two prongs:

(1) a deployment of U.S. armed forces (either a new introduction of forces, a significant expansion of the U.S. military presence in a country, or a commitment to a new mission or objective); and

(2) the deployment is aimed at deterring an identified threat, or the forces deployed are incurring or inflicting casualties (or are operating with a substantial possibility of incurring or inflicting casualties.

TITLE I—GENERAL PROVISIONS

Section 101. Authority and Governing Principles. This section sets forth the Presidential authorities being "conferred and confirmed." Based on the Constitution and this Act, the President may use force—

(1) to repel an attack on U.S. territory or U.S. forces;

(2) to deal with urgent situations threatening supreme U.S. interests;

(3) to extricate imperiled U.S. citizens;

(4) to forestall or retaliate against specific acts of terrorism;

(5) to defend against substantial threats to international sea lanes or airspace.

Against a complaint that this list is excessively permissive, it should be emphasized that these are the President's initial authorities to undertake a use of force—so-called "going in" authorities—and that the "staying in" conditions set forth in section 104 will, in most cases, bear heavily on the President's original decision.

This section also sets forth two governing principles; necessity and proportionality. Although unavoidably imprecise in definition, these principles set important criteria against which any use of force can be evaluated.

Section 102. Consultation. Section 102 affirms the importance of consultation between the President and Congress and establishes a new means to facilitate it. To overcome the common complaint that Presidents must contend with "535 secretaries of state," the UFA establishes a Congressional Leadership Group with whom the President is mandated to consult on the use of force.

A framework of regular consultations between specified Executive branch officials and relevant congressional committees is also mandated in order to establish a "norm" of consultative interaction and in hope of overcoming what many find to be the overly theatrical public-hearing process that has superseded the more frank and informal consultations of earlier years.

Note: An alternative to the Use of Force Act is to repeal (or effectively repeal) the War Powers Resolution and leave in its place only a Congressional Leadership Group. (This is the essence of S.J. Res. 323, 100th Congress, legislation to amend the War Powers Resolution introduced by Senators Byrd, Warner, Nunn, and Mitchell in 1988.) This approach, which relies on "consultation and the Constitution," avoids the complexities of enacting legislation such as the UFA but fails to solve chronic problems of procedure or authority, leaving matters of process and power to be debated anew as each crisis arises. In contrast, the Use of Force Act would perform one of the valuable functions of law, which is to guide individual and institutional behavior.

Section 103. Reporting Requirements. Section 103 requires that the President report in writing to the Congress concerning any use of force, not later than 48 hours after commencing a use of force abroad.

Section 104. Conditions for Extended Use of Force. Section 104 sets forth the "staying in" conditions: that is, the conditions that must be met if the President is to sustain a use of force he has begun under the authorities set forth in section 101. A use of force may extend beyond 60 days only if—

(1) Congress has declared war or enacted specific statutory authorization;

(2) the President has requested authority for an extended use of force but Congress has failed to act on that request (notwithstanding the expedited procedures established by Title II of this Act);

(3) the President has certified the existence of an emergency threatening the supreme national interests of the United States.

The second and third conditions are designed to provide sound means other than a declaration of war or the enactment of specific statutory authority by which the President may engage in an extended use of force. Through these conditions, the Use of Force Act avoids two principal criticisms of the War Powers Resolution: (1) that Congress could irresponsibly require a force withdrawal simply through inaction; and (2) that the law might, under certain cricumstances, unconstitutionally deny the President the use of his "inherent" authority.

To defuse the specter of a President hamstrung by a Congress too timid or inept to face its responsibilities, the UFA uses two means: first, it establishes elaborate expedited procedures designed to ensure that a vote will occur, second, it explicitly defeats the "timid Congress" specter by granting to the President the authority he has sought if these procedures nonetheless fail to produce a vote. Thus, if the President requests authority for a sustained use of force—one outside the realm of emergency—and Congress fails to vote, the President's authority is extended indefinitely.

The final condition should satisfy all but proponents of an extreme "monarchist" interpretation under which the President has the constitutional authority to use force as he sees fit. Under all other interpretations, the concept of an "inherent" authority depends upon the element of emergency: the need for the President to act under urgent circumstances to defend the nation's security and its citizens. If so, the UFA protects any "inherent" presidential authority by affirming his ability to act for up to 60 days under the broad-ranging authorities in section 101 and, in the event he is prepared to certify an extended national emergency, to exercise the authority available to him through the final condition of section 104.

Section 105. Measures Eligible for Congressional Priority Procedures. This section establishes criteria by which joint and concurrent resolutions become eligible for the expedited procedures created by Title II of the UFA.

A joint resolution that declares war or provides specific statutory authorization—or one that terminates, limits, or prohibits a use of force—becomes eligible if it is introduced: (1) pursuant to a written request by

the President to any one member of Congress; (2) if cosponsored by a majority of the members of the Congressional leadership Group in the house where introduced; or (3) if cosponsored by 30 percent of the members of either house. Thus, there is almost no conceivable instance in which a President can be denied a prompt vote: he need only ask one member of Congress to introduce a resolution on his behalf.

A concurrent resolution becomes eligible if it meets either of the cosponsorship criteria cited above and contains a finding that a use of force abroad began on a certain date, or has exceeded the 60 day limitation, or has been undertaken outside the authority provided by section 101, or is being conducted in a manner inconsistent with the governing principles set forth in section 101.

While having no direct legal effect, the passage of a concurrent resolution under the UFA could have considerable significance: politically, it would represent a clear, prompt, and formal congressional repudiation of a presidential action; within Congress, it would trigger parliamentary rules blocking further consideration of measures providing funds for the use of force in question (as provided by section 106 of the UFA); and juridically, it would become a consideration in any action brought by a member of Congress for declaratory judgment and injunctive relief (as envisaged by section 107 of the UFA).

Section 106. Funding Limitations. This section prohibits the expenditure of funds for any use of force inconsistent with the UFA. Further, this section exercises the power of Congress to make its own rules by providing that a point of order will lie against any measure containing funds to perpetuate a use of force that Congress, by concurrent resolution, has found to be illegitimate.

Section 107. Judicial Review. This section permits judicial review of any action brought by a Member of Congress on the grounds that the UFA has been violated. It does so by—

(1) granting standing to any Member of Congress who brings suit in the U.S. District Court for the District of Columbia;

(2) providing that neither the District Court nor the Supreme Court may refuse to make a determination on the merits based on certain judicial doctrines, such as political question or ripeness (doctrines invoked previously by courts to avoid deciding cases regarding the war power);

(3) prescribing the judicial remedies available to the District Court; and

(4) creating a right of direct appeal to the Supreme Court and encouraging expeditious consideration of such appeal.

It bears emphasis that the remedy prescribed is modest, and does not risk unwarranted interference of the judicial branch in a decision better reposed in the political branches. The bill provides only that the court may declare that the 60-day period set forth in Section 104 has begun.

Section 108. Interpretation. This section clarifies several points of interpretation, including these: that authority to use force is not derived from other statutes or from treaties (which create international obligations but not authority in a domestic, constitutional context); and that the failure of Congress to pass any joint or concurrent resolution concerning a particular use of force may not be construed as indicating congressional authorization or approval.

Section 109. Severability. This section stipulates that certain sections of the UFA would be null and void, and others not affected, if specified provisions of the UFA were held by the Courts to be invalid.

Section 110. Repeal of WPR. Section 110 repeals the War Powers Resolution of 1973.

TITLE II—EXPEDITED PROCEDURES

Section 201. Priority Procedures. Section 201 provides for the expedited parliamentary procedures that are integral to the functioning of the Act. (These procedures are drawn from the war powers legislation cited earlier, introduced by Senator Robert Byrd et al. in 1988.)

Section 202. Repeal of Obsolete Expedited Procedures. Section 202 repeals other expedited procedures provided for in existing law.

Mr. BIDEN. Mr. President, I thank the Chair for being so gracious as to not only sit there, but to pay attention to what I had to say. I am flattered he would listen. I hope that he and others will engage their significant legislative skills in trying to work out a feasible war powers mechanism—whether it is exactly what I have proposed or something else—so we avoid the kind of gridlock that has occurred already in the last several years.

I thank the Chair. I thank my good friend from California who has been waiting to be recognized.

I yield the floor.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, thank you very much.

I want to say to my friend from Delaware that it is very important that he continue to work on this matter of the War Powers Act because what happens to us so often is we get into a discussion about it just when we are in the middle of a conflict. That is not the time that is appropriate, and this is.

So I just wanted to thank him for his leadership.

By Mr. ROCKEFELLER (for himself, Mr. GORTON, Mr. MCCONNELL, Mr. LIEBERMAN, Mr. DODD, Mr. PRESSLER, Mr. HATCH, Mr. EXON, Mr. INHOFE, Mrs. HUTCHISON, and Mr. CHAFEE):

S. 565. A bill to regulate interstate commerce by providing for a uniform product liability law, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE PRODUCT LIABILITY FAIRNESS ACT OF 1995

Mr. ROCKEFELLER. Mr. President, today I am pleased to introduce the Product Liability Fairness Act of 1995 with my esteemed colleague from Washington, Senator GORTON. Senator GORTON and I have joined together to introduce this much needed legislation to improve our Nation's product liability laws with a bipartisan group of our colleagues, Mr. MCCONNELL, Mr. LIEBERMAN, Mr. DODD, Mr. PRESSLER, Mr. HATCH, Mr. EXON, Mr. INHOFE, Mrs. HUTCHISON, and Mr. CHAFEE. We believe the time has come to reform our current system so that injured people are more likely to be compensated and so that businesses are not crushed by the costs of nonmeritorious inappropriate lawsuits.

Senator GORTON and I have worked diligently over recent months to hone this product liability reform legislation in order to insure that it strikes the right balance between the interests of both consumers and business, and recognizing that under our current system, legal professionals are most often the biggest and often sole winners in product liability cases. Adjustments were made to reflect substantive and other concerns which we concluded were obstacles to the enactment of this necessary legislation. We believe we have significantly improved the legislation from earlier drafts and been responsive to the issues which prevented earlier enactment of this legislation.

Before I review the reasons why I believe reform of this system is imperative and what has motivated me to work so hard to refine this bill, year after year, I want to take a moment to express my deep admiration for the work of the Senator from Washington and that of his staff. I have great respect for Senator GORTON's intellect and insight, and want to acknowledge his contribution to the improvement in this legislation—and the role he will play in pushing it to final enactment. It is a privilege to work with the distinguished new chairman of the Commerce Committee in crafting this year's bill.

Our bill will encourage alternative dispute resolution as a way of getting parties to have their cases heard without going through the time and expense of a court trial. It will apply different responsibilities to a product seller as opposed to a manufacturer to avoid the kind of lawsuits that cast a wide net in the hopes of catching a cash cow. Our bill will give consumers more time to pursue legal action and it will allow consumers greater awards for punitive damages.

This effort is nothing new for me. For years I have called for legal reforms to make the system more efficient, less costly, and fairer to consumers and business alike. I am tired of West Virginia businesspeople and workers and consumers paying the price for this inequitable, ineffective legal tangle. Paying higher costs for things or being denied new products because manufacturers are scared to assume the exposure that comes with it. And then, when a problem does arise, being forced to spend ridiculous amounts of money and invest years in the hopes of maybe getting some satisfaction.

The product liability system is broken, and it is hurting the people of West Virginia, and Washington, and every State in between. The Rockefeller-Gorton bill aims to reform the laws so product liability is not an anchor around the American economy.

Our approach is bipartisan and balanced and, I think, far-removed from the extreme bill in the House that is long on special interest needs and short on public interest fairness.

If today's product liability laws achieve one thing, it is that it is an equal opportunity victimizer. Injured consumers oftentimes find it impossible to get a just and prompt resolution, and just as frequently, blameless manufacturers are forced to spend thousands of dollars on baseless lawsuits. The system frequently allows negligent companies to avoid penalties and even rewards undeserving plaintiffs.

Product liability law should deter wasteful suits and discipline culpable practices but not foster hours of waste and endless litigation.

Under the patchwork system we now have, depending on which of the 51 different jurisdictions you are in, product liability is not more reliable than a roll of the dice. Today a consumer, seeking fair compensation for harm done by a manufacturer must brace for a legal ordeal, often tilted in favor of business. Consumers generally recover just one-third of their actual damages. And that is when they can recover damages at all after fighting their way through statutes of limitation and corporate shell games that make assigning true liability ofttimes impossible. If a consumer can plow through this maze, they must be able to endure years of litigation that wrack up legal fees faster than a taxi meter in rush-hour traffic.

And businesses are little better off. Perhaps the biggest manufacturers can ride out costly litigation with less financial drain than consumers, but businessowners face a dizzying number of lawsuits too often without merit. The result? Manufacturers abandon research and development on new products that could invite future lawsuits, and prices on products are inflated to compensate for liability insurance or huge legal retainers. Price inflation passed on to consumers who are now doubly squeezed by the liability labyrinth.

The Product Liability Fairness Act aims to correct this. Today, Senator GORTON and I introduce our bipartisan bill, with an impressive group of Senate cosponsors, and expect to begin hearings in his Commerce Subcommittee on Consumer Affairs in about a month.

Just the other day, the Washington Post quoted a business executive who said, basically, that American businesses can be lumped into two groups: those that have been sued and those that will be sued. That is no way for American industry to operate and it results in pitting consumers against business to the detriment of both. The Rockefeller-Gorton bill is a step at easing this tension and restoring some common sense to the American legal system.

Mr. President, I ask unanimous consent that the text of the bill and a summary be printed in the RECORD.

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

S. 565

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 "Product Liability Fairness Act of 1995".

SEC. 2. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) CLAIMANT.—The term "claimant" means any person who brings a product liability action and any person on whose behalf such an action is brought. If an action is brought through or on behalf of—

(A) an estate, the term includes the decedent; or

(B) a minor or incompetent, the term includes the legal guardian of the minor or incompetent.

(2) CLAIMANT'S BENEFITS.—The term "claimant's benefits" means an amount equal to the sum of—

(A) the amount paid to an employee as workers' compensation benefits; and

(B) the present value of all workers' compensation benefits to which the employee is or would be entitled at the time of the determination of the claimant's benefits, as determined by the appropriate workers' compensation authority for harm caused to an employee by a product.

(3) CLEAR AND CONVINCING EVIDENCE.—

(A) IN GENERAL.—Subject to subparagraph (A), the term "clear and convincing evidence" is that measure of 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.

(B) DEGREE OF PROOF.—The degree of proof required to satisfy the standard of clear and convincing evidence shall be—

(i) greater than the degree of proof required to meet the standard of preponderance of the evidence; and

(ii) less than the degree of proof required to meet the standard of proof beyond a reasonable doubt.

(4) COMMERCIAL LOSS.—The term "commercial loss" means any loss incurred in the course of an ongoing business enterprise consisting of providing goods or services for compensation.

(5) DURABLE GOOD.—The term "durable good" means any product, or any component of any such product, which has a normal life expectancy of 3 or more years or is of a character subject to allowance for depreciation under the Internal Revenue Code of 1986, and which is—

(A) used in a trade or business;

(B) held for the production of income; or

(C) sold or donated to a governmental or private entity for the production of goods, training, demonstration, or any other similar purpose.

(6) ECONOMIC LOSS.—The term "economic loss" means any pecuniary loss resulting from harm (including any medical expense loss, work loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities), to the extent that recovery for the loss is permitted under applicable State law.

(7) HARM.—The term "harm" means any physical injury, illness, disease, or death caused by a product. The term does not include commercial loss or loss or damage to a product itself.

(8) INSURER.—The term "insurer" means the employer of a claimant, if the employer is self-insured, or the workers' compensation insurer of an employer.

(9) MANUFACTURER.—The term "manufacturer" means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product), and who designs or formulates the product (or component part of the product), or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, constructs, designs, or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another person; or

(C) any product seller that is not described in subparagraph (B) that holds itself out as a manufacturer to the user of the product.

(10) NONECONOMIC LOSS.—The term "noneconomic loss"—

(A) means subjective, nonmonetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation; and

(B) does not include economic loss.

(11) PERSON.—The term "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(12) PRODUCT.—

(A) IN GENERAL.—The term "product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state that—

(i) is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(ii) is produced for introduction into trade or commerce;

(iii) has intrinsic economic value; and

(iv) is intended for sale or lease to persons for commercial or personal use.

(B) EXCLUSION.—The term "product" does not include—

(i) tissue, organs, blood, and blood products used for therapeutic or medical purposes, except to the extent that such tissue, organs, blood, and blood products (or the provision thereof) are subject, under applicable State law, to a standard of liability other than negligence; and

(ii) electricity, water delivered by a utility, natural gas, or steam.

(13) PRODUCT LIABILITY ACTION.—The term "product liability action" means a civil action brought on any theory for harm caused by a product.

(14) PRODUCT SELLER.—

(A) IN GENERAL.—The term "product seller" means a person who—

(i) in the course of a business conducted for that purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce; or

(ii) installs, repairs, or maintains the harm-causing aspect of the product.

(B) EXCLUSION.—The term "product seller" 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 a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who—

(I) acts in only a financial capacity with respect to the sale of a product; and

(II) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor.

(15) STATE.—The term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, or any political subdivision thereof.

(16) TIME OF DELIVERY.—The term "time of delivery" means the time when a product is delivered to the first purchaser or lessee of the product that was not involved in manufacturing or selling the product, or using the product as a component part of another product to be sold.

SEC. 3. APPLICABILITY; PREEMPTION.

(a) APPLICABILITY.—

(1) ACTIONS COVERED.—Subject to paragraph (2), this Act applies to any product liability action commenced on or after the date of enactment of this Act, without regard to whether the harm that is the subject of the action or the conduct that caused the harm occurred before such date of enactment.

(2) ACTIONS EXCLUDED.—

(A) ACTIONS FOR DAMAGE TO PRODUCT OR COMMERCIAL LOSS.—A civil action brought for loss or damage to a product itself or for commercial loss, shall not be subject to the provisions of this Act governing product liability actions, but shall be subject to any applicable commercial or contract law.

(B) ACTIONS FOR NEGLIGENT ENTRUSTMENT.—A civil action for negligent entrustment shall not be subject to the provisions of this Act governing product liability actions, but shall be subject to any applicable State law.

(b) SCOPE OF PREEMPTION.—

(1) IN GENERAL.—This Act supersedes a State law only to the extent that State law applies to an issue covered under this Act.

(2) ISSUES NOT COVERED UNDER THIS ACT.—Any issue that is not covered under this Act, including any standard of liability applicable to a manufacturer, shall not be subject to this Act, but shall be subject to applicable Federal or State law.

(c) STATUTORY CONSTRUCTION.—Nothing in this Act may be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any law;

(2) supersede any Federal law, except the Act of April 22, 1908 (35 Stat. 65 et seq., chapter 149; 45 U.S.C. 51 et seq.) (commonly known as the "Federal Employers' Liability Act") and the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.);

(3) waive or affect any defense of sovereign immunity asserted by the United States;

(4) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(5) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation;

(6) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum; or

(7) supersede any statutory or common law, including any law providing for an action to abate a nuisance, that authorizes a State or person to institute an action for civil damages or civil penalties, cleanup costs, injunctions, restitution, cost recovery, punitive damages, or any other form of relief relating to contamination or pollution of the environment (as defined in section 101(8) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601(8)) or the threat of such contamination or pollution.

(d) CONSTRUCTION.—To promote uniformity of law in the various jurisdictions, this Act shall be construed and applied after consideration of its legislative history.

(e) EFFECT OF COURT OF APPEALS DECISIONS.—Notwithstanding any other provision of law, any decision of a circuit court of appeals interpreting a provision of this Act (except to the extent that the decision is overruled or otherwise modified by the Supreme Court) shall be considered a controlling precedent with respect to any subsequent decision made concerning the interpretation of such provision by any Federal or State court within the geographical boundaries of the area under the jurisdiction of the circuit court of appeals.

SEC. 4. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

(a) IN GENERAL.—

(1) SERVICE OF OFFER.—A claimant or a defendant in a product liability action that is subject to this Act may, not later than 60 days after the service of the initial complaint of the claimant or the applicable deadline for a responsive pleading (whichever is later), serve upon an adverse party an offer to proceed pursuant to any voluntary, nonbinding alternative dispute resolution procedure established or recognized under the law of the State in which the product liability action is brought or under the rules of the court in which such action is maintained.

(2) WRITTEN NOTICE OF ACCEPTANCE OR REJECTION.—Except as provided in paragraph (3), not later than 10 days after the service of an offer to proceed under paragraph (1), an offeree shall file a written notice of acceptance or rejection of the offer.

(3) EXTENSION.—The court may, upon motion by an offeree made prior to the expiration of the 10-day period specified in paragraph (2), extend the period for filing a written notice under such paragraph for a period of not more than 60 days after the date of expiration of the period specified in paragraph (2). Discovery may be permitted during such period.

(b) DEFENDANT'S PENALTY FOR UNREASONABLE REFUSAL.—

(1) IN GENERAL.—The court shall assess reasonable attorney's fees (calculated in accordance with paragraph (2)) and costs against the offeree, if—

(A) a defendant as an offeree refuses to proceed pursuant to the alternative dispute resolution procedure referred to subsection (a)(1);

(B) final judgment is entered against the defendant for harm caused by the product that is the subject of the action; and

(C) the refusal by the defendant to proceed pursuant to such alternative dispute resolution was unreasonable or not made in good faith.

(2) REASONABLE ATTORNEY'S FEES.—For purposes of this subsection, a reasonable attorney's fee shall be calculated on the basis of an hourly rate, which shall not exceed the hourly rate that is considered acceptable in the community in which the attorney practices law, taking into consideration the qualifications and experience of the attorney and the complexity of the case.

(c) GOOD FAITH REFUSAL.—In determining whether the refusal of an offeree to proceed pursuant to the alternative dispute procedure referred to in subsection (a)(1) was unreasonable or not made in good faith, the court shall consider such factors as the court considers appropriate.

SEC. 5. LIABILITY RULES APPLICABLE TO PRODUCT SELLERS.

(a) GENERAL RULE.—

(1) IN GENERAL.—In any product liability action that is subject to this Act filed by a claimant for harm caused by a product, a product seller other than a manufacturer shall be liable to a claimant, only if the claimant establishes—

(A) that—

(i) the product that allegedly caused the harm that is the subject of the complaint was sold by the product seller;

(ii) the product seller failed to exercise reasonable care with respect to the product; and

(iii) the failure to exercise reasonable care was a proximate cause of harm to the claimant;

(B) that—

(i) the product seller made an express warranty applicable to the product that allegedly caused the harm that is the subject of the complaint, independent of any express warranty made by a manufacturer as to the same product;

(ii) the product failed to conform to the warranty; and

(iii) the failure of the product to conform to the warranty caused harm to the claimant; or

(C) that—

(i) the product seller engaged in intentional wrongdoing, as determined under applicable State law; and

(ii) such intentional wrongdoing was a proximate cause of the harm that is the subject of the complaint.

(2) REASONABLE OPPORTUNITY FOR INSPECTION.—For purposes of paragraph (1)(A)(ii), a product seller shall not be considered to have failed to exercise reasonable care with respect to a product based upon an alleged failure to inspect a product if the product seller had no reasonable opportunity to inspect the product that allegedly caused harm to the claimant.

(b) SPECIAL RULE.—A product seller shall be deemed to be liable as a manufacturer of a product for harm caused by the product if—

(1) the manufacturer is not subject to service of process under the laws of any State in which the action may be brought; or

(2) the court determines that the claimant would be unable to enforce a judgment against the manufacturer.

SEC. 6. DEFENSES INVOLVING INTOXICATING ALCOHOL OR DRUGS.

(a) GENERAL RULE.—Notwithstanding any other provision of law, a defendant in a product liability action that is subject to this Act shall have a complete defense in the action if the defendant proves that—

(1) the claimant was under the influence of intoxicating alcohol or any drug that may not lawfully be sold over-the-counter without a prescription, and was not prescribed by a physician for use by the claimant; and

(2) the claimant, as a result of the influence of the alcohol or drug, was more than 50

percent responsible for the accident or event which resulted in the harm to the claimant.

(b) CONSTRUCTION.—For purposes of this section, the determination of whether a person was intoxicated or was under the influence of intoxicating alcohol or any drug shall be made pursuant to applicable State law.

SEC. 7. REDUCTION FOR MISUSE OR ALTERATION OF PRODUCT.

(a) GENERAL RULE.—

(1) IN GENERAL.—Except as provided in subsection (c), in a product liability action that is subject to this Act, the damages for which a defendant is otherwise liable under applicable State law shall be reduced by the percentage of responsibility for the harm to the claimant attributable to misuse or alteration of a product by any person if the defendant establishes that such percentage of the harm was proximately caused by a use or alteration of a product—

(A) in violation of, or contrary to, the express warnings or instructions of the defendant if the warnings or instructions are determined to be adequate pursuant to applicable State law; or

(B) involving a risk of harm which was known or should have been known by the ordinary person who uses or consumes the product with the knowledge common to the class of persons who used or would be reasonably anticipated to use the product.

(2) USE INTENDED BY A MANUFACTURER IS NOT MISUSE OR ALTERATION.—For the purposes of this Act, a use of a product that is intended by the manufacturer of the product does not constitute a misuse or alteration of the product.

(b) STATE LAW.—Notwithstanding section 3(b), subsection (a) of this section shall supersede State law concerning misuse or alteration of a product only to the extent that State law is inconsistent with such subsection.

(c) WORKPLACE INJURY.—Notwithstanding subsection (a), the amount of damages for which a defendant is otherwise liable under State law shall not be reduced by the application of this section with respect to the conduct of any employer or coemployee of the plaintiff who is, under applicable State law concerning workplace injuries, immune from being subject to an action by the claimant.

SEC. 8. UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES.

(a) GENERAL RULE.—Punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant in a product liability action that is subject to this Act if the claimant establishes by clear and convincing evidence that the harm that is the subject of the action was the result of conduct that was carried out by the defendant with a conscious, flagrant indifference to the safety of others.

(b) LIMITATION ON AMOUNT.—The amount of punitive damages that may be awarded for a claim in any product liability action that is subject to this Act shall not exceed 3 times the amount awarded to the claimant for the economic injury on which the claim is based, or $250,000, whichever is greater. This subsection shall be applied by the court and the application of this subsection shall not be disclosed to the jury.

(c) BIFURCATION AT REQUEST OF EITHER PARTY.—

(1) IN GENERAL.—At the request of either party, the trier of fact in a product liability action that is subject to this Act shall consider in a separate proceeding whether punitive damages are to be awarded for the harm that is the subject of the action and the amount of the award.

(2) ADMISSIBLE EVIDENCE.—

(A) INADMISSIBILITY OF EVIDENCE RELATIVE ONLY TO A CLAIM OF PUNITIVE DAMAGES IN A PROCEEDING CONCERNING COMPENSATORY DAMAGES.—If either party requests a separate proceeding under paragraph (1), in any proceeding to determine whether the claimant may be awarded compensatory damages, any evidence that is relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible.

(B) PROCEEDING WITH RESPECT TO PUNITIVE DAMAGES.—Evidence that is admissible in the separate proceeding under paragraph (1)—

(i) may include evidence of the profits of the defendant, if any, from the alleged wrongdoing; and

(ii) shall not include evidence of the overall assets of the defendant.

SEC. 9. UNIFORM TIME LIMITATIONS ON LIABILITY.

(a) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (b), a product liability action that is subject to this Act may be filed not later than 2 years after the date on which the claimant discovered or, in the exercise of reasonable care, should have discovered, the harm that is the subject of the action and the cause of the harm.

(2) EXCEPTIONS.—

(A) PERSON WITH A LEGAL DISABILITY.—A person with a legal disability (as determined under applicable law) may file a product liability action that is subject to this Act not later than 2 years after the date on which the person ceases to have the legal disability.

(B) EFFECT OF STAY OR INJUNCTION.—If the commencement of a civil action that is subject to this Act is stayed or enjoined, the running of the statute of limitations under this section shall be suspended until the end of the period that the stay or injunction is in effect.

(b) STATUTE OF REPOSE.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), no product liability action that is subject to this Act concerning a product that is a durable good alleged to have caused harm (other than toxic harm) may be filed after the 20-year period beginning at the time of delivery of the product.

(2) STATE LAW.—Notwithstanding paragraph (1), if pursuant to an applicable State law, an action described in such paragraph is required to be filed during a period that is shorter than the 20-year period specified in such paragraph, the State law shall apply with respect to such period.

(3) EXCEPTION.—A motor vehicle, vessel, aircraft, or train that is used primarily to transport passengers for hire shall not be subject to this subsection.

(c) TRANSITIONAL PROVISION RELATING TO EXTENSION OF PERIOD FOR BRINGING CERTAIN ACTIONS.—If any provision of subsection (a) or (b) shortens the period during which a product liability action that could be otherwise brought pursuant to another provision of law, the claimant may, notwithstanding subsections (a) and (b), bring the product liability action pursuant to this Act not later than 1 year after the date of enactment of this Act.

SEC. 10. SEVERAL LIABILITY FOR NONECONOMIC LOSS.

(a) GENERAL RULE.—In a product liability action that is subject to this Act, the liability of each defendant for noneconomic loss shall be several only and shall not be joint.

(b) AMOUNT OF LIABILITY.—

(1) IN GENERAL.—Each defendant shall be liable only for the amount of noneconomic loss allocated to the defendant in direct proportion to the percentage of responsibility of the defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which the defendant is liable. The court shall render a separate judgment against each defendant in an amount determined pursuant to the preceding sentence.

(2) PERCENTAGE OF RESPONSIBILITY.—For purposes of determining the amount of noneconomic loss allocated to a defendant under this section, the trier of fact shall determine the percentage of responsibility of each person responsible for the amount of noneconomic loss caused to the claimant, whether or not such person is a party to the action.

SEC. 11. WORKERS' COMPENSATION SUBROGATION STANDARDS.

(a) GENERAL RULE.—

(1) RIGHT OF SUBROGATION.—

(A) IN GENERAL.—An insurer shall have a right of subrogation against a manufacturer or product seller to recover any claimant's benefits relating to harm that is the subject of a product liability action that is subject to this Act.

(B) WRITTEN NOTIFICATION.—To assert a right of subrogation under subparagraph (A), the insurer shall provide written notice to the court in which the product liability action is brought.

(C) INSURER NOT REQUIRED TO BE A PARTY.—An insurer shall not be required to be a necessary and proper party in a product liability action covered under subparagraph (A).

(2) SETTLEMENTS AND OTHER LEGAL PROCEEDINGS.—

(A) IN GENERAL.—In any proceeding relating to harm or settlement with the manufacturer or product seller by a claimant who files a product liability action that is subject to this Act, an insurer may participate to assert a right of subrogation for claimant's benefits with respect to any payment made by the manufacturer or product seller by reason of such harm, without regard to whether the payment is made—

(i) as part of a settlement;

(ii) in satisfaction of judgment;

(iii) as consideration for a covenant not to sue; or

(iv) in another manner.

(B) WRITTEN CONSENT.—Except as provided in subparagraph (C)—

(i) an employee shall not make any settlement with or accept any payment from the manufacturer or product seller without the written consent of the insurer; and

(ii) no release to or agreement with the manufacturer or product seller described in clauses (i) through (iv) of subparagraph (A) shall be valid or enforceable for any purpose without the consent of the insurer.

(C) EXEMPTION.—Subparagraph (B) shall not apply in any case in which the insurer has been compensated for the full amount of the claimant's benefits.

(3) HARM RESULTING FROM ACTION OF EMPLOYER OR COEMPLOYEE.—

(A) IN GENERAL.—If, with respect to a product liability action that is subject to this Act, the manufacturer or product seller attempts to persuade the trier of fact that the harm to the claimant was caused by the fault of the employer of the claimant or any coemployee of the claimant, the issue of that fault shall be submitted to the trier of fact, but only after the manufacturer or product seller has provided timely written notice to the employer.

(B) RIGHTS OF EMPLOYER.—

(i) IN GENERAL.—Notwithstanding any other provision of law, with respect to an issue of fault submitted to a trier of fact pursuant to subparagraph (A), an employer shall, in the same manner as any party in the action (even if the employer is not a named party in the action), have the right to—

(I) appear;

(II) be represented;

(III) introduce evidence;

(IV) cross-examine adverse witnesses; and

(V) present arguments to the trier of fact.

(ii) LAST ISSUE.—The issue of harm resulting from an action of an employer or coemployee shall be the last issue that is presented to the trier of fact.

(C) REDUCTION OF DAMAGES.—If the trier of fact finds by clear and convincing evidence that the harm to the claimant that is the subject of the product liability action was caused by the fault of the employer or a coemployee of the claimant—

(i) the court shall reduce by the amount of the claimant's benefits—

(I) the damages awarded against the manufacturer or product seller; and

(II) any corresponding insurer's subrogation lien; and

(ii) the manufacturer or product seller shall have no further right by way of contribution or otherwise against the employer.

(D) CERTAIN RIGHTS OF SUBROGATION NOT AFFECTED.—Notwithstanding a finding by the trier of fact described in subparagraph (C), the insurer shall not lose any right of subrogation related to any—

(i) intentional tort committed against the claimant by a coemployee; or

(ii) act committed by a coemployee outside the scope of normal work practices.

(b) ATTORNEY'S FEES.—If, in a product liability action that is subject to this section, the court finds that harm to a claimant was not caused by the fault of the employer or a coemployee of the claimant, the manufacturer or product seller shall reimburse the insurer for reasonable attorney's fees and court costs incurred by the insurer in the action, as determined by the court.

SEC. 12. FEDERAL CAUSE OF ACTION PRECLUDED.

The district courts of the United States shall not have jurisdiction under section 1331 or 1337 of title 28, United States Code, over any product liability action covered under this Act.

SUMMARY OF THE PRODUCT LIABILITY FAIRNESS ACT

Alternative Dispute Resolution (ADR): Either party may offer to participate in a voluntary, non-binding state-approved ADR procedure. If a defendant unreasonably refuses to participate and a judgment is entered for the claimant, the defendant must pay the claimant's reasonable legal fees and costs. There is no penalty for claimants who refuse to participate in an ADR procedure. No penalty may be assessed against a defendant unless judgment is entered for the claimant.

Product Sellers: Product sellers will be liable only for their own negligence or failure to comply with an express warranty. However, if the manufacturer cannot be brought into court or is unable to pay a judgment, the seller shall be liable as if it were a manufacturer. This assures that injured persons will always have available an avenue for recovery.

Alcohol and Drugs: The defendant has an absolute defense if the plaintiff was under the influence of intoxicating alcohol or illegal drugs and the condition was more than 50 percent responsible for plaintiff's injuries.

Misuse and Alteration: The bill limits a defendant liability if the product user has misused or altered the product in an unforeseeable manner.

Punitive Damages: Punitive damages may be awarded if a plaintiff proves, by clear and convincing evidence, that the harm was caused by defendant's "conscious, flagrant indifference to the safety of others." To streamline litigation, trials may be bifurcated so the punitive damages phase is separate from the proceedings on compensatory damages. Courts may award punitive damages up to three times economic damages, or $250,000, whichever is greater.

Statute of Limitations: The pro-plaintiff statute of limitations is two years, which begins to run when the claimant reasonably should have discovered both the harm and cause.

Statute of Repose: The statute of repose is for capital and durable goods used in the workplace, and is set at 20 years.

Joint and Several Liability: The bill abolishes joint liability with respect to non-economic damages, such as pain and suffering. States are permitted to provide joint liability for economic damages, such as medical expenses and lost wages, so that these damages are always fully compensated in all cases.

Workers' Compensation Offset: An employer's right to recover worker's compensation benefits from a manufacturer whose product allegedly harmed a worker is preserved unless the manufacturer can prove, by clear and convincing evidence, that the employer caused the injury.

Mr. GORTON. Mr. President, I am pleased to join with Senator ROCKEFELLER to introduce legislation that will bring common sense back to America's product liability system. The Product Liability Fairness Act of 1995 is a bipartisan proposal that takes a moderate, sensible approach to product liability reform.

As an attorney myself, I recognize that America's trial lawyers would like to see me disbarred for introducing this bill.

It should come as no surprise that they are planning to spend $20 million to defeat this legislation. They're making millions off the current system, and the legislation we're introducing today will put an end to the lawyers' financial free-for-all.

Consider just a couple of cases from my own State of Washington. Connelly Water Skis of Lynnwood pays $345,000 a year for liability insurance even though they have never lost a liability case. They paid more than $83,000 in legal expenses to defend themselves in a case in which the plaintiff has asked be dismissed. They paid more than $12,000 to defend themselves in a case in which no Connelly product was involved.

Commercial Plastics of Seattle, which manufactures candy dispensers, has been sued in a case involving a drunken woman who pulled a unit off a grocery store shelf on New Year's Eve. She wasn't hurt, but she is suing for mental anguish caused by the embarrassment of the incident.

Bayliner Boats of Everett manufactures a 25-foot hardtop boat with the steering station inside. The plaintiff sawed a hole through the hardtop—kind of like a sunroof. He was sitting on the top driving the boat with his feet. He saw an oncoming boat and tried to honk the horn with his toe. He turned the boat to the left with his feet, and shifted his weight to the right to counter the turn. He fell overboard, was injured, and is now suing Bayliner.

Keep in mind that these examples come from a State where limits on punitive damages are already in place.

Does it make sense for consumers to pay higher prices for water skis or other equipment because the person used the product incorrectly? Does it make sense for consumers to pay higher costs for products because someone did something that defies all common sense? Does it make sense for consumers to pay higher prices for products because some inebriated person injures, and even embarrasses him or herself?

And most importantly, does it make sense that trial attorneys are ripping off consumers around the country when they make millions of dollars off these cases?

Out of every dollar spent on product litigation, more than 50 percent of the money goes to the lawyers. They're the only ones winning anything. Their opposition to this legislation is only about protecting their fees—not protecting consumers.

Consider the Chicago law firm that issued a bulletin to its clients stating: "We are pleased to announce that we obtained for our client the largest verdict ever for an arm amputation: $7.8 million."

Consider the new Florida company, called "Went For It," that researches the names of accident victims and sells them to lawyers.

Consider the New York lawyer found guilty of using a pickax to enlarge a pothole before he photographed it for a client with a personal injury claim.

It's outrageous.

This country desperately needs a fair and efficient product liability system. A fair and efficient product liability system should have consistent standards and yield predictable results. It should award damages in proportion to the harm suffered and those damages should be paid only by those responsible. A fair and efficient system should award damages in a timely manner without incurring large, wasteful transaction costs.

The status quo defended mightily by the trial lawyers is far from fair or efficient. Consumers, those injured by faulty products, and American businesses all suffer as a result of selfish lawyers.

Fair compensation is not awarded in a timely fashion. Cases drag on for

years. Over 20 percent of seriously injured persons receive no compensation for 5 years. A 1989 GAO study says that the average case takes nearly 3 years to resolve, and longer if there is an appeal. When compensation is awarded, transaction costs—such as attorney's fees—absorb too much money that should have gone to injured persons.

Not only does the present product liability system generate excessive costs and delay, it does not compensate injured persons in proportion to their losses. If a person's injuries are minor, they can expect to receive a windfall of nearly nine times their losses. If their injuries are severe, they should expect to receive only 15 percent of their losses. A severely injured person cannot afford to gamble on the outcome of lengthy litigation. As a result, many are forced to settle for an amount far less than their injuries merit.

Injured persons are not the only ones that are treated unfairly by the tort system. That system imposes inordinate costs on the U.S. economy. Domestic manufacturers face product liability costs up to 20 to 50 times higher than those paid by foreign competitors.

These excessive costs put American business at a competitive disadvantage in world markets. Important sectors of our domestic economy are losing substantial market shares to foreign competitors. For example, the Association of Manufacturing Technology estimates its member companies have lost, in recent years, nearly 25 percent of their market share to foreign competitors. Much of this loss is attributed to the excessive costs of the current product liability system, which wastes vital resources and inhibits the development and marketing of innovative products. The U.S. machine tool industry spends seven times more on product liability costs than on research and development.

When the job creators have to pay insurance premiums instead of salaries, we've got a lot of people on unemployment for no good reason. Listen to the small business owner in Hoquiam who pays more in product liability premiums than he does in Federal taxes. Listen to the small business owner in Spokane who says his insurance premiums often equal his before-tax profits.

This is outrageous.

Innovation is also squelched because manufacturers decide not to market new products due to these excessive transaction costs and the possibility of unjustified, unpredictable but nonetheless crushing liability. These concerns further stifle innovation because scientific research essential for advanced product development, is foregone.

For instance, promising AIDS vaccines have been shelved. New hazardous waste cleanup technologies have been shelved. Asbestos substitutes have been shelved. The list of valuable products and life-saving medicines that have been shelved and kept from the market goes on, and on, and on, and on.

The current system is clearly broken, and it must be fixed. I hope that my colleagues will join with Senator ROCKEFELLER and me in supporting a bill that seeks in a balanced way to introduce fairness and efficiency to our product liability system.

Mr. MCCONNELL. Mr. President, I am pleased to join my colleagues in the introduction of the Product Liability Reform Act of 1995. Our litigation system needs repair; less than half—43 cents to be precise—of every dollar spent in the liability system goes to injured victims. More than half of every dollar represents transactions costs—lawyers' fees, the cost of keeping the courts running, and other associated expenses of the legal system. Something is seriously wrong with a system that pays out more to those who run the legal system than to those who need it for dispute resolution.

And, litigation costs drain billions of dollars from our economy. We know there is a litigation tax associated with putting goods and services in the stream of commerce. For example, the price, on average, of an 8-foot ladder is $119.33. But the actual cost is only $94.47, with the litigation tax representing 25 percent of the cost. And, the litigation tax for a heart pacemaker is 20 percent, driving the cost up an additional $3,000. (Source: Newsweek, Oct. 25, 1993, reprinting from, "The 96 Billion Dollar Game," Philip Hermann.)

This litigation tax impedes innovation and invention. Companies hesitate to put products on the market because of the high risk of litigation. That means fewer choices for consumers and a shrinking share of the global market for American companies.

And unless we fix the problems of our legal system, the situation is bound to get worse. Longer delays in the courts, increased inefficiency and unpredictability in getting compensation to victims, and more burdens on productivity and invention.

This bill is a significant step in the right direction. It offers a national answer to a nationwide problem—uniformity and certainty in America's product liability laws.

The bill will not prevent those injured by defective products from receiving fair compensation for their injuries. Rather, it will offer some protection for those parties who had no connection to the defects in the product from unfairly and unreasonably having to pay the tab in a lawsuit. But, make no mistake about it, those who are responsible for the defects will be held accountable for the injuries they cause.

In addition, this bill restores the element of punishment to punitive damages. In the current environment, the quest for punitive damages is like taking a chance on the lottery—some plaintiffs win big and many win nothing at all. Often times, the award of punitive damages bears no relationship to the injuries suffered. The bill will link punitive damages to the economic loss by providing that where punitive damages are awarded, they should be awarded in an amount of three times the economic loss or $250,000, whichever is greater.

The time for this bill is long overdue. I look forward to its prompt consideration in the Commerce Committee and speedy action on the Senate floor.

Mr. LIEBERMAN. Mr. President, I am proud to join a broad bipartisan group of eight Senators led by my distinguished colleagues, Senators ROCKEFELLER and GORTON, in introducing a bill to address one of the most important issues facing this Congress—product liability reform. This is my third effort to pass much-needed changes to the product liability system and, after years of frustration, I believe we are finally going to succeed. This year's bill builds on last year's effort and is the fairest and strongest bill possible.

No one should be praising the status quo. The current system is inefficient, unpredictable, costly, slow, and inequitable. And everyone pays: plaintiffs, defendants, manufacturers, product sellers, and consumers. This bill addresses these problems by making a number of balanced and limited changes intended to reduce transaction costs, provide greater certainty to everyone, and increasing the competitiveness of U.S. firms. I urge my colleagues to support this bill.

Mr. President, I did not join the fight for product liability reform until my second year in the Senate. I came here as a former State attorney general who had been active in consumer protection. I knew that some consumer groups opposed Federal product liability legislation, and as a former State official, I was hesitant to step into an area that had traditionally been the province of State law. In fact, as attorney general of Connecticut and a member of the National Association of Attorneys General, I voted for resolutions opposing earlier Federal product liability legislation that would have swept away virtually all State product liability laws and repealed the doctrine of strict liability for product defects.

But as I traveled around the State of Connecticut, this problem—product liability litigation—kept coming up in my discussions with small business men and women, with small and large manufacturing companies, and with plant managers. They told me of problems they had experienced with the product liability system, of the expense of defending yourself even when you win, of the cost of settlements to avoid paying litigation costs, and of the time and energy that product liability suits

diverted away from the business of designing new products and bringing them to market.

One of my favorite examples concerns an experience of Mr. Robert Lyons, who runs the Bilco Co. in New Haven, CT. Bilco, a small company, manufactures roof hatch doors. Several years ago, Mr. Lyons and his colleagues at Bilco invented an ingenious safety feature called the LadderUP Safety Post. This device attached to the ladder that led to the roof hatch. When the hatch was opened, the LadderUP Safety Post would automatically extend through the opening to a height several feet above the level of the roof. This allowed a person climbing out of the top of the hatch to hold on to the pole as he or she stepped up onto the roof.

After Bilco put the LadderUP Safety Post on the market, Bilco was sued by a person who had fallen when using a Bilco hatch without the device. The plaintiff argued that Bilco should only have sold its roof hatch with a LadderUP device, and that Bilco should not have permitted its customers simply to buy a hatch. The plaintiff also argued that Bilco should have more widely advertised its product. Despite the fact that anyone who uses a ladder surely must know that you have to be careful when climbing on the top rungs, and the fact that the builder had chosen not to buy or retrofit the hatch with a LadderUP device, Bilco ended up paying $20,000 to settle this case out of court, judging that to be cheaper than going through full litigation.

Now there are some people who will say, so what is wrong with that? After all, a person who was injured received $20,000 to help compensate for his injuries. But the flaw with the reasoning should be apparent. Private businesses cannot print money. A $20,000 payment here was $20,000 less to be invested in new plant equipment, in developing new products, or hiring new people. And what did Mr. Lyons and Bilco actually do to deserve having pay $20,000? They invented and put on the market a new product, a new safety device. They did not build the building with the roof hatch, they did not install the hatch, they were not the ones who decided to forego purchasing a LadderUP Safety Post for use with the hatch. All they did was to build a better mousetrap. And for that, a lawyer beat a path to their door.

The injustice of this case points out a fundamental problem with our product liability system. At a time when we need to be rebuilding our country's manufacturing base, to be promoting innovation in our manufacturing sector, to be designing, building and bringing to market the next generation of high-quality, highvalue added products the world will need, our liability system chills innovation like a bucket of cold water.

The debate should really center around consumers, because it is consumers who suffer because of this system, not simply businesses. Consumers are the ones who have to pay higher prices in order to cover product liability-related costs. If a ladder costs 20 percent more because of liability-related costs, consumers—not businesses—end up paying that 20 percent premium.

Consumers are also the ones who suffer when valuable innovations do not occur, or when needed products like life-saving medical devices or earthquake shock absorbers do not come to market because no one will supply the necessary raw materials.

Last term, at a hearing on product liability and sales of raw materials for medical devices, Mr. Mark Reily described what life would be like for his then 9-year-old son, Thomas Reily, if he could no longer obtain a replacement for the silicone shunt in Thomas' head: "The fluid builds pressure inside the head, like steam building inside a locked pressure cooker. If left untreated, it is a well-documented fact that the patient will initially suffer severe brain damage, become comatose and ultimately die." Mr. Reily pleaded for us to reform our product liability laws to ensure that raw materials for Thomas' shunt will continue to be available to the shunt's makers. Mark and Thomas Reily are consumers who are being hurt, not helped, by our product liability system.

The point that Mr. Reily and his son drove home is that the best interests of consumers as a whole are not always identical to the interests of people who are seeking compensation. The people who suffer or die because a new drug or medical device was never developed, or was delayed in its development, are hurt as surely as those who suffer because a device malfunctioned or a drug was improperly designed. These silent victims of our product liability system's chilling effect on innovation are consumers whose interests also deserve protection.

Of course, even for its putative beneficiaries, people who are injured by defective products, the legal system hardly can be said to work well. GAO, in its five-State survey, found that product liability cases took an average of 2½ years just to reach trial. If the case was appealed, it took, on average, another year to resolve. This is a very long time for an injured person to wait for compensation.

In some instances too, our product liability laws have erected barriers to suit that just do not make sense. For example, in some States, the statute of limitations—the time within which a lawsuit can be brought—begins to run even though the injured person did not know they were injured and could not have known that the product was the cause. In those States, the time in which to bring a suit can expire before the claimant knows or could ever know there is a suite to bring.

Mr. President, no one will argue that this bill will cure all the ills in our product liability system. That would require a gargantuan overhaul and I doubt we can reach agreement as to what that would look like. But we can, I believe, work to enact a balanced package of reforms that works incrementally to eliminate the worst aspects of our current system, to restore some balance to our product liability system. I believe this bill is just such a balanced package.

For people injured by defective products, this bill makes a set of very important and beneficial changes. First, it enacts uniform, nationwide statute of limitations of 2 years from the date the claimant knew or should have discovered both the fact he or she was injured and the cause of the injury. Injured people will no longer lose the right to sue before they knew both that they were hurt and that a specific product caused their injury.

Second, this bill will force defendants to enter alternative dispute resolution processes which can resolve a case in months rather than years. If the defendant unreasonably refuses to enter into ADR, it can be liable for all of claimant's costs and attorney's fees. On the other hand, if a plaintiff unreasonably refuses to enter ADR, she will suffer no penalty.

For workers who face possible injury in the workplace, this bill will reform the product liability system to give employers a stronger incentive to provide a safe workplace. Under current law, an employer is often permitted to recoup the entire amount of workers compensation benefits paid to an employee who was injured by a defective machine, even if the employer contributed significantly to the injury by, for example, running the machine at excessive speeds or removing safety equipment. This essentially means that an employer can end up paying nothing despite the fact that their misconduct was a significant cause of the injury.

This bill would change this. When an employer is found, by clear and convincing evidence, to be partly responsible for an injury, the employer loses recoupment in proportion to its contribution to the injury. This does not change the amount of money going to the injured person, but it makes the employer responsible for its conduct.

For manufacturers, this bill reforms the product liability system to establish a nationwide standard for punitive damages of proof of conscious, flagrant indifference to public safety by clear and convincing evidence. The clear and convincing evidence standard is already the law in over 25 States. Punitive damages in these product liability cases would also be limited to the greater of $250,000 or three times the

amount of economic damages. The American College of Trial Lawyers and ALI support this provision. It will bring some reasonable limits to what too often just results in windfalls to particular claimants instead of the original purpose—punishing defendant's wrongful behavior.

Manufacturers of durable goods—goods with life expectancy over 3 years that are used in the workplace—will also be assured that they cannot be sued more than 20 years after they deliver a product. This will bring an end to suits such as the one in which Otis Elevator was sued over a 75-year-old elevator that had been modified and maintained by a number of different owners and repair persons through the decades. By the way, this same provision will not apply to household goods such as refrigerators, and is only intended to cover those workplace injuries that are already covered by workers compensation.

Manufacturers will also have some protection against "deep pocket" liability. While the bill still permits States to hold all defendants jointly liable for economic damages such as lost wages, foregone future earnings, past and future medical bills, and cost of replacement services, noneconomic damages such as pain and suffering will be apportioned among codefendants on the basis of each defendant's contribution to the harm. In addition, if the plaintiff misused or altered a product, or used the product under the influence of drugs or alcohol, the manufacturers share of the damages will also be reduced.

For wholesalers and retailers, they will, in the majority of cases, be relieved of the threat that they can be held liable for the actions of others. Under current law, for example, the owner of the corner hardware store could be sued for injuries resulting from a power saw just as if she was the manufacturer of a power saw, even if she had no input in the design or assembly of the power saw and had done nothing other than to inspect a sample to make sure there were no obvious flaws and to put the items on the shelf.

For our American economy and industrial base, passage of this product liability reform legislation will move us back to promoting innovation and the development and commercialization of new products. Passing this bill will create and save jobs here, not overseas.

After years of debate, this compromise bill balances important issues: It is pro-business and pro-consumer. It is pro-innovation and pro-safety. But most importantly, it finally balances the scales of justice properly to ensure that victims of defective products remain compensated while consumers receive the best products available. It is incremental reform. And it is a key component of any strategy for long-term economic growth, and for rebuilding our country's manufacturing base.

Let me say finally, that in the upcoming months, this bill will be debated over and over. In that rhetoric and inevitable soundbites, one thing should not be lost. This bill does not absolve a company from making an unsafe product. If a company has made a defective product, it must be held fully accountable. Period. But when a company does follow the rules and makes a safe product, it should not have to settle frivolous claims simply to avoid the expense of litigation and protect against the risk that a huge and irrational judgment will be awarded against it.

The time has come for us to move forward, to give this balanced package a chance for full consideration by this body. We owe it to the American people to look beyond the rhetoric. We owe it to the American people to pass this bill. Mr. President, I urge my colleagues to support and enact these overdue reforms.

Mr. DODD. Mr. President, I am pleased to join with the bipartisan group of Senators who are original cosponsors of the Product Liability Fairness Act of 1995. I would also like to commend Senators ROCKEFELLER, GORTON, and LIEBERMAN for all of their hard work on this legislation.

The current product liability system simply does not serve anyone well. The American people know the problem—the results in a product liability case depend primarily on a person's ability to afford a good lawyer. That's true whether you are a consumer injured by an unsafe product, or a businessperson trying to defend yourself against an unjustified lawsuit.

For consumers, the studies show that injured people must wait too long for fair compensation. A recent study by the General Accounting Office found that cases take about 3 years to be resolved—longer if there is an appeal.

Other studies show dramatically different compensation for similar injuries incurred in the very same way. Wealthier and better educated people fare far better than low-income people and less well-educated people.

So the present system is not serving the needs of our injured citizens. At the same time, it's not serving the needs of American businesses. They are reluctant to introduce new products because they are not sure what kind of liability they will face under the laws of 55 States and territories.

This uncertainty is particularly difficult for small businesses, who cannot afford the huge legal costs of the present system. And these are not legal costs that fall only on unscrupulous manufacturers—many companies have run up enormous legal bills only to be vindicated by the courts. Of course, those victories are hollow at best.

And what happens if an American business is afraid to innovate, or forced to defer investment on research and development? Are those only problems for particular businesses, and unworthy of serious attention—of course not. If American businesses are unable to bring innovative products to the marketplace, or forced to take helpful products off the market, we all lose.

The search for an AIDS vaccine is a good example. At least one company, Biogen in Massachusetts, terminated its investment in an AIDS vaccine because of product liability fears.

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

The American Medical Association has documented this problem:

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

Is our country well-served by a system that prevents contraceptives, and other critical medical products, from coming to the market? Who benefits from that result?

And if the present system is not working—if it helps neither people who are injured by products nor the businesses who are trying to develop life-saving products—what should we do? Should we simply give up and walk away? Should we say that there's nothing we can do—the problem's too big for us too handle? Of course not—we owe it to the American people to try to do better.

With passage of the Product Liability Fairness Act we will do better. This legislation may not solve all of the problems in the product liability system, but it will improve that system for everyone—for the injured people who need fast and fair compensation, for consumers who need quality products to choose from, for those businesses who are at the cutting edge of international competition, and for workers who depend on a strong economy to support their families. The moderate reforms in this measure will reduce the abuses in the current system without eliminating solid protections for those who are victimized by defective or dangerous products.

Let me highlight some of the key provisions. First, this measure will provide a more uniform system of product liability. Since about 70 percent of all products move between States, it makes sense to have a federal system for resolving disputes. With Federal rules in place, there will be more certainty in the system, and the excessive

costs in the present system should come down.

The provisions in the bill that encourage alternative dispute resolution will also help reduce the costs in the current system. Currently, too much money goes to transaction costs, primarily lawyers fees, and not enough goes to victims. A 1993 survey of the Association of Manufacturing Technology found that every 100 claims filed against its members cost a total of $10.2 million. Out of that total, the victims received only $2.3 million with the rest of the money going to legal fees and other costs. Clearly, we need to implement a better system in which the money goes to those who need it—injured people.

Most importantly, and I cannot emphasize this enough, the moderate reforms in this bill offer a balanced approach to the needs of both consumers and businesses. Consumers will benefit, for example, from a statute of limitations provision that preserves a claim until 2 years after the consumer should have discovered the harm and the cause. In many cases, injured people are not sure what caused their injuries and, under the current system, they lose their ability to sue. With this legislation, people injured by products will have adequate time to bring a lawsuit.

Businesses will also benefit from this legislation. For example, in order to recover punitive damages, the plaintiff will have to prove, by clear and convincing evidence, that the harm was caused by the defendant's "conscious, flagrant indifference to the safety of others." This provision will allow defendants to have a clear understanding of when they may be subject to this quasi-criminal penalty.

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

Furthermore, product sellers will only be liable for their own negligence or failure to comply with an express warranty. But as an added protection for injured people, this rule will not apply if the manufacturer cannot be brought into court or if the claimant would be unable to enforce a judgment against the manufacturer. This provision will eliminate the need for sellers to hire lawyers in a high percentage of the roughly 95 percent of the cases where they are presently not found to be at fault.

Mr. President, this is an issue that many of us have spent a great deal of time on. My involvement dates back to 1986, when I worked on a reform proposal with our distinguished former colleague, Senator Danforth. We did not get very far with that bill. But the effort to improve the product liability system has gained momentum in recent years, and I am optimistic that we can pass this legislation during this Congress.

Because of the enormous costs associated with the product liability system, both economic and social, we must address this issue with the seriousness that it deserves. Unfortunately, in the past, some have characterized the debate as a battle between the manufacturers and the insurance companies on the one side, and consumers and trial attorneys on the other. Some have viewed this legislation in antagonistic terms, with one side winning and one side losing.

Of course, the problem is much more complex than that and the solution will be much more complex. As this bill moves forward, we will hear from many concerned citizens who can help us refine this legislation. I also look forward to working with my colleagues and the Clinton administration to strengthen this measure. But our Nation cannot afford to maintain the status quo, and this bill will take us a long way toward a fairer product liability system.

Mr. PRESSLER. Mr. President, I am pleased to be an original cosponsor of this important legislation. Our existing product liability system is a disaster. It is inefficient and unfair. The Senate Committee on Commerce, Science, and Transportation has long recognized these problems and has reported favorably a reform bill in six previous Congresses.

The Product Liability Fairness Act of 1995 is a balanced bill that will make substantial progress in addressing the many problems with our current system. This bill is good for consumers, good for businesses—especially small businesses—and good for those legitimately injured by faulty products.

I thank Senator GORTON and Senator ROCKEFELLER for their excellent work in preparing this bill. Their solid working relationship on this issue is indicative of the bipartisan support for these essential reforms.

Mr. President, I have long been a supporter of product liability reform and will make every effort to advance the reform effort.

Mr. HATCH. Mr. President, I am extremely pleased to cosponsor the Product Liability Fairness Act of 1995 with Senators ROCKEFELLER and GORTON, and many others. I commend their longstanding leadership on this issue.

This act represents a truly bipartisan effort to correct what many have long recognized to be malfunctions in our product liability system. We want American business to grow, to provide more jobs and more affordable consumer goods, and to continue to make medical and technological breakthroughs that benefit the people of Utah and all Americans. We can do that as well as make sure those who are wrongfully harmed in the marketplace are properly compensated, if we go about it in a rational way.

Under the current system, however, American manufacturers have been forced to devote far too many resources to the costs of product liability actions, and consumers have ultimately had to bear those costs. Punitive damage awards have particularly grown out of control and have crippled our manufacturers, distributors, and retailers. We have all heard about astronomical punitive damage awards for spilled coffee and other horror stories. What we often fail to focus on is where these terrific sums are coming from and the insidious economic damage that is caused by forcing the reallocation of millions of dollars away from productive, job creating uses.

The long and short of it is that the current system is harming both companies, workers, and consumers and is desperately in need of the reforms we propose today.

Let no one misunderstand what this bill does. It does not prevent injured people from being compensated for the harms caused to them by defective products. I strongly believe that those who are unfortunate enough to be harmed by defective products should have appropriate remedies and should be compensated for the harm they suffer.

However, product liability law as it stands today is severely skewed. What this law does is correct certain specific inequities in the law as it stands and make those corrections uniform nationwide. Many States, for example, have already enacted reforms at the State level that are similar to those we introduce today.

Under the law as it stands in many other States, however, manufacturers and others can be held responsible for striking amounts of damages for harm that they did not cause—just because another party cannot or will not pay its fair share. In addition, juries may award runaway amounts of punitive damages for a relatively small amount of harm, and courts can lack the power to adequately restrict those awards once made.

The threat alone of excessive punitive damages can force parties to settle under conditions in which they otherwise would not. Finally, as in numerous other areas of the law, litigation costs in product liability cases continue to soar.

All of this harms our economy. It removes companies' incentives to invest and discourages them from researching and developing newer and safer products. It limits the amount companies can spend on wages, research, and technology. All of this hurts consumers and workers. Litigation costs and the higher insurance costs that companies

must pay to cover their expected liability are ultimately passed on to consumers. Of the cost of a simple ladder, for example, a shocking 20 percent goes to paying the costs of product liability litigation. Those costs impact the prices we pay for all sorts of other goods and services that we need and use everyday, and prevent the development and marketing of products we would like to use but cannot because companies are afraid to develop them.

These problems cannot be addressed comprehensively without a uniform, nationwide solution. I look forward to working with my colleagues to get this bill to the President.

Mr. President, I should also note that I expect to introduce civil justice reform which goes beyond product liability issues in the near future.

By Mr. AKAKA (for himself and Mr. INOUYE):

S. 566. A bill for the relief of Richard M. Sakakida; to the Committee on Armed Services.

PRIVATE RELIEF LEGISLATION

• Mr. AKAKA. Mr. President, in behalf of myself and Senator INOUYE, I am reintroducing today legislation I offered in the previous Congress for the private relief of Richard Motoso Sakakida of Fremont, CA. My bill would require the military to review whether the retired lieutenant colonel deserves the Congressional Medal of Honor, Distinguished Service Cross, or Silver Star for actions related to his service in the Philippines during World War II.

Despite many courageous and daring actions he undertook as an Army undercover agent before and during the Japanese occupation of the islands, Colonel Sakakida has never been officially recognized for his service there, largely because much of his work was classified, and therefore unknown, until well after the war. Despite efforts undertaken in his behalf by fellow veterans and Members of Congress to accord him the honors he deserves, the Army has refused to consider his case, citing a statute limiting the Medal of Honor or Distinguished Service Cross to those whose recommendations are received within 2 years of the act justifying the awards, or, in the case of World War II veterans, by 1951.

Mr. President, I believe a brief review of Colonel Sakakida's wartime exploits will convince my colleagues of the need to enact this legislation.

In March 1941, 9 months before the Japanese attack on Pearl Harbor, Richard Sakakida, the son of Japanese parents who immigrated to Hawaii at the beginning of the century, and another nisei from Hawaii became the first Japanese-Americans recruited to the Army's Counter Intelligence Police [CIP]. This unit would later become the Army Counter Intelligence Corps, or CIC.

Sworn in as a sergeant. Sakakida was sent to the Philippines, then an American possession; his mission was to spy on Japanese with possible connections to the Japanese military. There, Sakakida was able to masquerade as a draft evader from Hawaii and talk himself into being admitted to an all-Japanese residential hotel in Manila. Under cover of a prearranged job, and without any prior training or experience, he succeeded in establishing a clandestine intelligence collection operation out of his hotel room. As a measure of the success of his penetration of the Japanese community, Sakakida was even offered a post with the Japanese consulate in Mindanao.

The outbreak of war abruptly ended that possibility. Instead of returning to the American side, Sakakida was asked to stay with the Japanese community to continue his work. He relied on sheer resourcefulness to talk his way past unwitting American and Filipino security guards at the gate to the emergency Japanese relocation compound, where Japanese nationals were being detained. His vulnerability was compounded by the fact that only a few men were aware of his secret work. In fact, he was eventually arrested on spy charges by the Philippine Constabulary and subjected to punishing interrogation at Bilibid Prison. Throughout the ordeal Sakakida maintained his cover story, as he was later able to do with his Japanese captors.

Fortuitously, he was eventually recognized by a Filipino agent who was aware of his undercover status; unfortunately, this also compromised his cover among Philippine authorities. A ruse involving his return to the Japanese compound and unceremonious arrest by American agents was staged in an attempt to maintain his cover in the Japanese community, but the rapid advance of the Japanese Army ended hopes for his return to the Japanese. For the first time since he arrived in the islands, he reentered the American fold.

Back in military uniform with the CIP, Sargent Sakakida was tasked with interrogating Japanese civilians and POW's in Manila, Bataan, and Corregidor. He translated Japanese diaries and Bataan, and Corregidor. He translated Japanese diaries and combat documents, prepared propaganda leaflets in Japanese, and called upon the Japanese to surrender in loudspeaker broadcasts. He also monitored Japanese air-ground communications and deciphered enemy codes. At Bataan, he singled out and translated a key captured Japanese document that led to the destruction of a large battalion-size force that was attempting a landing there. It was one of the few, perhaps only, major American battlefield successes in a string of setbacks that led to the downfall of Bataan.

When the final surrender of the Philippines became imminent at Corregidor in 1942, General MacArthur ordered Sakakida's evacuation to Australia. In spite of the prospect of certain imprisonment, possible torture, and perhaps execution at the hands of the Japanese, he chose to give up his seat on one of the last escape aircraft to a nisei lawyer. Sakakida was aware that the lawyer had a family and for various reasons would have faced serious reprisals had he been captured. As a result, by his own hand, Sakakida became the only Japanese-American to be captured by the Japanese forces in the Philippines.

Sakakida spent 6 months in a Manila prison, where he would be mercilessly interrogated and tortured. His situation was compounded by the fact that, under existing Japanese law, everyone of Japanese ancestry was considered a citizen of the empire; thus, Sakakida was viewed as a traitor. He was strung up by the arms in such a way that his shoulders were literally dislocated. His captors forced water into him, and struck his swollen stomach repeatedly; they also burned his body with lighted cigarettes. Incredibly, through it all, Sakakida would adhere to his story that he was a civilian forced to work for the U.S. Army.

After being tortured, Sakakida spent more time in Bilibid Prison, where he underwent more interrogation for alleged treason. When treason charges against him were dropped, he was assigned to work for the Japanese judge advocate of the 14th Army Headquarters, although Japanese counterintelligence agents continued their attempts to elicit his true identity through trick questions and other stratagems. He took advantage of his position to aid secretly a number of allied prisoners of war who were being held there for trial for attempting to escape; Sakakida smuggled food to them and imaginatively interpreted for them during their trials. One of these men, a naval officer who was later to become an Oklahoma supreme court justice, believes he escaped execution only through Sakakida's intervention and assistance during the trial.

During this time, he established contact with the Filipino guerrilla underground, through which he funnelled important Japanese troop and shipping information to MacArthur in Australia. Sakakida's reporting from Manila also contributed to the destruction of a major Japanese task force headed for Davao by American submarines that lay in wait for the convoy. The huge Japanese setback abruptly ended the Japanese advance toward Australia, saving it from an invasion.

Sakakida then engineered a daring prison break from Mantinlupa Prison that freed the guerrilla leader Ernest Tupas and 500 of his men. Sakakida himself chose to remain behind in

order to continue his intelligence activities from the enemy's midst. Thereafter, Sakakida was able to relay additional tactical information to MacArthur through the guerrillas.

After American forces invaded the Philippines, Sakakida escaped from the retreating Japanese forces at Baguio. During a firefight between American and Japanese troops, he suffered shrapnel wounds in the stomach. For the next several months Sakakida wandered alone in the jungle, living off the land, debilitated by his wound. He finally happened upon American troops, whom he eventually convinced of his identity. At that point, he was informed that the war was over.

Mr. President, this is a thumbnail sketch of Richard Sakakida's record of service in the Philippines. Naturally, it cannot do justice to the full tale of his courage, daring, sacrifice, and endurance. I have omitted many other incidents that displayed Sakakida's courage and fortitude. In fact, for a variety of reasons, including the secrecy surrounding his intelligence activities, his story has never been told in its entirety until relatively recently.

Mr. President, because Sakakida's activities were classified, few were in a position to recommend him for the Medal of Honor or other high award for valor. Much of what we know is largely anecdotal, because circumstances dictated that the presence of any official records would be damaging not only to his personal safety but also to the diplomatic and military efforts of the United States. Now, time has lifted the veil of secrecy, but many of the records of his activities are missing or were never kept; in addition, many witnesses who could have spoken of his exploits were either killed during the war or have since passed away in the period between the end of the war and the vitiation of the official blackout on Sakakida's operations. In spite of this catch-22 situation, I believe that ample evidence exists to support the awarding of the Congressional Medal of Honor to Colonel Sakakida. I believe this especially in view of the fact that the whole of his activities is informed by a supreme consistency, validated by objective events, that only the truth bears.

Nevertheless, after Colonel Sakakida's story was publicly revealed several years ago, and his record formally brought to the Army's attention by fellow veterans as well as by my Hawaii colleague, Representative PATSY MINK, the Army's Military Awards Branch refused to consider him for the Medal of Honor. The Army, citing the statute I have referred to earlier, stated that Sakakida's recommendation must have been submitted through official military channels shortly after the end of the war, by 1951. The Army refused to consider the special circumstances surrounding Sakakida's case, namely, that the nature of his intelligence work prevented his story from being appropriately considered prior to the delimiting date. In fact, as I have alluded to before, he was officially enjoined from talking about his intelligence activities during World War II until 1972, more than 20 years after the statutory deadline, when they were declassified and he was no longer bound by his secrecy oath. As a result, Colonel Sakakida's contributions to the allied victory have been overlooked by history and by his country.

This is a tragic oversight. Colonel Sakakida has been inducted into the Military Intelligence Hall of Fame. He has been honored repeatedly by his Japanese-American comrades-in-arms, notably members of the all-Nisei Military Intelligence Service and the 100th Infantry Battalion/442d Regimental Combat Team. At least one book, and chapters in many others, has been devoted to his wartime accomplishments. And, he has been awarded four different medals by the Philippine Government, including the Philippine Legion of Honor Award.

Thus, it seems that everyone but our own Government has recognized Colonel Sakakida's heroic military service in the Philippines. Indeed, the Army has never accorded Sakakida a single award or commendation for bravery associated with his undercover work in the archipelago.

Mr. President, I cannot help wondering if Colonel Sakakida's ethnic heritage has had something to do with this slight. While the Army apparently does not keep statistics on the ethnic breakdown of valor awards, one could make the case that Japanese-Americans have been underdecorated with respect to the Medal of Honor.

According to the book, "Nisei: The Quiet Americans," by Bill Hosokawa, no Japanese-American had been awarded a Medal of Honor at the end of World War II. It was only when a member of the all-Nisei 100th/442d, the most highly decorated military unit in American history made this known to Congress that the medal was awarded posthumously to one of its members.

Hosokawa noted that a number of the Japanese-Americans in the 100th/442d were recommended for the Medal of Honor, but in each case, somewhere along the line, the request was denied and the lesser, Distinguished Service Cross presented instead. As of the late 1960s, according to Hosokawa, only one other Japanese-American received the Medal of Honor, for his service in the Korean war. I have been unable to find data on Vietnam or post-Vietnam conflicts, which is significant in itself. I have no doubt Nisei like Colonel Sakakida suffered racial prejudice at the onset of hostilities with Japan; the unjust internment of Japanese-Americans is proof enough of this.

There have been other allegations of discrimination in the medal awarding process. Apparently, only one black American received the Medal of Honor for World War I service, and that happened only after the Army conducted research to determine if there had been any barriers to black soldiers in the medal recognition process. And, recently, a retired lieutenant colonel who is African-American alleged he was denied the Medal of Honor for his heroics in Korea because of discrimination.

The Army has contracted a second study on black winners of the Medal of Honor in World War II that will presumably throw additional light on this sensitive subject. However, I also understand there are no plans to study Asian-Americans or any other ethnic group.

In any event, Mr. President, whether Colonel Sakakida is a victim of discrimination, an outdated law, or merely circumstance, his record is compelling enough to warrant formal review.

My bill would accomplish this by authorizing the President to award the Medal of Honor, Distinguished Service Cross, or Silver Star to Colonel Sakakida. The award would be made on the basis of a positive review of his military records by the Secretary of the Army, free of any statutory time restrictions that may pertain to these awards.

Let me stress that this bill does not direct the President to award the Medal of Honor to Colonel Sakakida outright, but to do so only if a review of his records determines that he is indeed deserving of the Nation's highest military decoration.

This bill has the strong support of the Japanese-American veterans organizations as well as the Japanese-American community at large. I also have a letter of support from the Philippine Embassy for this effort. I ask unanimous consent that these messages of support, as well as a copy of the bill, be included in the RECORD at the conclusion of my remarks.

Mr. President, I do not offer this legislation entirely in Richard Sakakida's behalf. For Richard Sakakida is already amply bestowed with badges of honor—in the scars that deface his body, in the medication he takes to dull the constant pain he suffers from his wounds, and in the silent knowledge that he rendered extraordinary services to the Nation in its time of need. Rather, I offer this legislation in our collective behalf. For, in honoring individuals such as Richard Sakakida, we honor ourselves—by reaffirming the value of the freedoms that men and women like him have sacrificed so much to preserve.

In closing, I should note that since I last introduced this bill, Colonel Sakakida has suffered serious health problems. It is therefore important that Congress act with dispatch, if

Colonel Sakakida is to be appropriately honored for his courageous actions.

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:

JAPANESE AMERICAN CITIZENS LEAGUE,
San Francisco, CA, January 31, 1995.

Hon. DANIEL K. AKAKA,
U.S. Senate, Washington, DC.

DEAR SENATOR AKAKA: The Japanese American Citizens League (JACL), the largest Asian Pacific American civil rights organization in the United States, strongly supports your legislative initiative to require the United States Army to consider awarding the Congressional Medal of Honor to retired Air Force Lieutenant Colonel Richard M. Sakakida in recognition of his work as a Military Intelligence Service (MIS) Officer.

LTC Sakakida was among the first to be recruited for the all-Nisei MIS unit which provided invaluable intelligence support to combat units throughout the Pacific during World War II. His extraordinary exploits while serving as an undercover agent in the Philippines are legendary and have been well chronicled. The government of the Philippines recently awarded him the Philippine Legion of Honor for his heroic actions as an undercover agent. He was also honored by being installed in the MIS Hall of Fame.

LTC Sakakida is worthy of recognition by the United States Army for his meritorious service to the military effort during World War II. JACL enthusiastically supports your efforts to secure proper acknowledgement for him.

Sincerely yours,

RANDALL SENZAKI,
Executive Director.

JAPANESE AMERICAN CITIZENS LEAGUE,
Washington, DC, July 28, 1994.

Hon. DANIEL K. AKAKA,
U.S. Senate, Washington, DC.

DEAR SENATOR AKAKA: The Japanese American Citizens League (JACL), the nation's largest Asian Pacific American civil rights organization, strongly supports your legislative initiative to require the United States Army to consider awarding the Congressional Medal of Honor, or other appropriate medal of valor, to retired Air Force Lieutenant Colonel Richard M. Sakakida in recognition of his work as a Military Intelligence Service (MIS) Officer.

Colonel Sakakida was among the first to be recruited for the all-Nisei MIS unit which provided invaluable intelligence support to combat units throughout the Pacific during World War II. His extraordinary exploits while serving as an undercover agent in the Philippines are legendary and have been well chronicled. The government of the Philippines recently awarded him the Philippine Legion of Honor for his heroic actions as an undercover agent. He was also honored by being installed in the MIS Hall of Fame.

Colonel Sakakida is worthy of recognition by the United States Army for his meritorious service to the military effort during World War II. JACL enthusiastically applauds your efforts to secure proper acknowledgement for him.

Please let me know if there is anything we can do to support your efforts.

Sincerely yours,

KAREN K. NARASAKI,
Washington, DC Representative.

NATIONAL ASIAN PACIFIC AMERICAN LEGAL CONSORTIUM,
Washington, DC, August 1, 1994.

Hon. DANIEL K. AKAKA,
U.S. Senate, Washington, DC.

DEAR SENATOR AKAKA: On behalf of the National Asian Pacific American Legal Consortium, I am writing to support your efforts to require the U.S. Army to consider awarding the Congressional Medal of Honor, or other appropriate medal of valor, to retired Air Force Lieutenant Colonel Richard M. Sakakida for his heroic efforts in the Philippines during World War II.

As one of the first to be recruited into the all-nisei Military intelligence Service, which provided invaluable intelligence support to combat units during World War II throughout the Pacific, Lieutenant Colonel Sakakida is one of the most eminent of a group of men whose contributions to the Allied victory never have been fully acknowledged or appreciated.

Lieutenant Colonel Sakakida's incredible exploits while serving as an undercover agent in the Philipines are legendary indeed. His story has been related in several histories and recollections about World War II. In addition, he is a member of the Military Intelligence Hall of Fame and a recipient of the Philippine Legion of Honor. It is time the U.S. government offered similar recognition for the tremendous sacrifices by this brave man.

Thank you again for your efforts to secure proper recognition for Lieutenant Colonel Sakakida. The Consortium fully supports your initiative.

The National Asian Pacific American Legal Consortium is a not-for-profit, nonpartisan organization whose mission is to advance the legal and civil rights of Asian Pacific Americans through litigation, advocacy, public education, and public policy development.

Very truly yours,

PHILIP TAJITSU NASH, ESQ.,
Executive Director.

442ND VETERANS CLUB,
Honolulu, HI, July 27, 1994.

Hon. DANIEL AKAKA,
U.S. Senate, Washington DC.

DEAR SENATOR AKAKA: The 442nd Veterans Club supports your efforts to require the U.S. Army to consider awarding the Congressional Medal of Honor, or other appropriate medal of valor, to retired Air Force Lt. Colonel Richard M. Sakakida for his heroic efforts in the Philippines during World War II.

As one of the first to be recruited into the all-Nisei Military Intelligence Service, which provided invaluable intelligence support to combat units during World War II throughout the Pacific, Lt. Colonel Sakakida is one of the most eminent of a group of men whose contributions to the Allied victory never have been fully appreciated.

Lt. Col. Sakakida incredible exploits while serving as an undercover agent in the Philippines are the stuff of legend. His story has been related in several histories and recollections about World War II. In addition, he is a member of the Military Intelligence Hall of Fame and a recipient of the Philippine Legion of Honor. It is time the United States government offered similar recognition for the tremendous sacrifices by this brave man.

Thank you again for your efforts to secure proper recognition for Lt. Col. Sakakida. The 442nd fully supports your initiative.

Sincerely,

HENRY KUNIYUKI,
President.

ROCKY MOUNTAIN MILITARY INTELLIGENCE SERVICE VETERANS CLUB,
Denver, CO, February 10, 1995.

Hon. DANIEL K. AKAKA,
U.S. Senate, Washington, DC.

DEAR SENATOR AKAKA: Our MIS Veterans club is pleased to resubmit a letter in behalf of your efforts to gain belated but deserved official recognition for Richard Sakakida for his heroic military actions before and during World War II in the Philippines. Clearly Richard Sakakida's efforts and contributions toward a just victory deserve the highest awards that a grateful nation can bestow.

It is perhaps fitting to recognize that our nation is a great social experiment—proving to a world torn by ethnic and cultural strife that citizens from diverse origins and environments can live together and can demonstrate their courage and loyalty to that experiment. Our heroes can come from a variety of sources, and Richard Sakakida's humble but somewhat typical background adds to that variety. It is also fitting that this nation should seek out, recognize and honor those who rise above their challenges to add their names to our roster of heroes. It is unfortunate that the passage of time often dims our ardor for recognition because too often we are a nation of instantaneous celebrities. It is also unfortunate that there are no official records of Richard Sakakida's exploits because the circumstances of his actions precluded their presence. These conditions do not however diminish the magnitude and heroism of his actions and this nation can do no less than to acknowledge his valiant contributions.

All of our club members share a military intelligence background and we have lived with the knowledge that the use of a foreign language in a military confrontation is not given adequate recognition. The ability to use that language is often the crucial difference between success and failure of a military operation. Richard Sakakida's language skills enabled him to earn significant military gains as well as his own survival in an extended and tense situation. We heartily endorse and encourage your efforts to gain belated but hard earned recognition for Richard Sakakida.

Sincerely,

DR. SUEO ITO,
President.

ROCKY MOUNTAIN MILITARY INTELLIGENCE SERVICE VETERANS CLUB,
Denver, CO, August 14, 1994.

Hon. DANIEL K. AKAKA,
U.S. Senate, Washington, DC.

DEAR SENATOR AKAKA: Our MIS Veterans Club has been advised of your very laudable efforts in getting official recognition for Richard Sakakida for his valiant and largely unheralded military efforts before and during World War II in the Philippines. Clearly Richard Sakakida's heroic actions merit the highest recognition that this nation can bestow.

We recognize that the accounts of Sakakida's contributions are largely anecdotal because his circumstances dictated that the presence of any official records would be damaging not only to his personal safety but also to the diplomatic and military efforts of the United States. Also his actions during and after capture by the Japanese precluded any written records.

Our club is composed of veterans with a Military Intelligence background and we all recognize the important contributions made by the citizens of the United States through their knowledge and use of language. We

therefore heartily endorse and encourage your efforts in securing belated but well-earned recognition for Richard Sakakida.

Sincerely,

Dr. SUEO ITO,
President.

444D VETERANS CLUB,
Honolulu, HI, January 26, 1995.

Hon. DANIEL AKAKA,
U.S. Senate, Hart Senate Office Building, Washington, D.C.

DEAR SENATOR AKAKA: The 442nd Veterans Club supports your efforts to require the U.S. Army to consider awarding the Congressional Medal of Honor, or other appropriate medal of valor, to retired Air Force Lt. Colonel Richard M. Sakakida for his heroic efforts in the Philippines during World War II.

As one of the first to be recruited into the all-Nisei Military Intelligence Service, which provided invaluable intelligence support to combat units during World War II throughout the Pacific, Lt. Colonel Sakakida is one of the most eminent of a group of men whose contributions to the Allied victory never have been fully appreciated.

Lt. Col. incredible exploits while serving as an undercover agent in the Philippines are the stuff of legend. His story has been related in several histories and recollections about World War II. In addition, he is a member of the Military Intelligence Hall of Fame and a recipient of the Philippines Legion of Honor. It is time the United States government offered similar recognition for the tremendous sacrifices by this brave man.

Thank you again for your efforts to secure proper recognition for Lt. Col. Sakakida. The 442nd fully supports your initiative.

Sincerely,

HENRY KUNIYUKI,
President.

JAPANESE-AMERICAN VETERANS ASSOCIATION OF WASHINGTON, D.C.,
Vienna, VA, July 5, 1994.

Hon. DANIEL K. AKAKA,
U.S. Senator from Hawaii, Hart Senate Office Building, Washington, D.C.

DEAR SENATOR AKAKA: The Japanese American Veterans Association of Washington, D.C. stands in complete support of your effort to have our country award its highest military decoration to Lt. Col. Richard M. Sakakida, USAF (Ret.), for his extraordinary service to country and his heroic acts of self-sacrifice while in the Philippines as an undercover agent of the U.S. Army during World War II.

A review of the remarkable deeds and unshakable devotion to duty through the most inhuman of treatment and adverse conditions ranks Lt. Col. Sakakida among those who have served "above and beyond" the call of duty.

The passage of years or the resultant lack of the necessary documentation must not be the basis of denying a great American soldier his due recognition by a nation which he served to loyally and courageously.

Sincerely,

SUNAO ISHIO,
Col. AUS (Ret.),
President.

JAPANESE-AMERICAN VETERANS ASSOCIATION OF WASHINGTON, DC,
Vienna, VA, January 28, 1995.

Hon. DANIEL K. AKAKA,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR AKAKA: The Japanese-American Veterans Association of Washington, D.C., whose members include many veterans of the Military Intelligence Service of the United States Army in the Pacific Theater of Operations during World War II, enthusiastically supports your legislative efforts to encourage the Department of Defense to consider the awarding of the Congressional Medal of Honor to LTC. Richard M. Sakakida, USAF (Ret), in recognition of his heroic deeds as an officer of the US Armed Forces in the Philippines during WW II.

The Japanese American Veterans Association of Washington, D.C. has been very aware of LTC Sakakida's heroic efforts and, accordingly, honored him as one of the first recipients of its American Patriot Award in October of 1993.

LTC Sakakida has been honored with numerous commendations for his dedicated and noteworthy services and the Congressional Medal of Honor would most certainly be the culmination of national recognition of this gallant warrior's efforts.

The Japanese American Veterans Association of Washington, D.C. appreciates and commends your efforts to obtain proper acknowledgement and commendation for LTC Sakakida, which he so rightfully deserves.

If there is anything more we can do to support your efforts, please do not hesitate to call me.

Sincerely yours,

HENRY S. WAKABAYASHI
Colonel USAR (Ret.),
President.

JAPANESE-AMERICAN VETERANS ASSOCIATION,
January 21, 1995.

DANIEL K. AKAKA,
U.S. Senator from Hawaii.

DEAR SENATOR AKAKA: I consider it a great honor to support the effort to have the highest military award bestowed upon Lt. Col. Richard M. Sakakida, one of the forgotten and unsung heroes of World War II.

In more ways than one, Lt. Col. Sakakida placed devotion to duty and country above all else, disregarding any personal harm or danger to himself. When the opportunity came for him to evacuate from the Philippines for Australia as part of General MacArthur's group, he turned it down to give his place to a fellow nisei. He knew full well the horrible fate that awaited him as a prisoner of the Japanese, yet he felt that he would be more useful by remaining behind. Lt. Col. Sakakida suffered months of indescribable torture, but he never broke. Eventually his captors accepted his cover story that he was an army deserter and was given a certain degree of freedom and responsibility. He continued to gather and send valuable information on the Japanese forces to General MacArthur's HQ in Australia through the Filipino guerrilla network. One of the most vital pieces of intelligence which he sent was about the formation of a Japanese invasion task force against Australia. Corroboration of this plan by other sources resulted in a successful Allied action against this invasion effort. While working with the guerrillas, Lt. Col. Sakakida planned and carried out the escape of several hundred Filipino Guerrillas from the prison camp. He managed to escape with a group of guerrillas, but was wounded in the stomach and separated from them in the process. Already severely wounded, Lt. Col. Sakakida's indomitable will to survive carried him through to eventual rescue by U.S. forces.

The requirement of documentation should be waived in this case because of the highly classified nature of the undercover work involved and because of the lapse of over half a century since these events occurred. It should be noted that the Philippine Government has recognized Lt. Col. Sakakida's service in the Philippine liberation campaign and has awarded him the Legion of Honor (Degree of Legionnaire).

Lt. Col. Sakakida's unparalleled and unselfish service to his country under the most adverse of situations with complete disregard for personal safety and survival is certainly "above and beyond" the call of duty. It calls for his country's gratitude and recognition by the awarding of the highest military decoration commensurate with his service record.

Sincerely,

SUNAO (PHIL) ISHIO
Col. AUS (Ret.),
Founder and First President.

M.I.S. ASSOCIATION OF NORTHERN CALIFORNIA, INC.,
San Francisco, CA, January 25, 1995.

Hon. DANIEL K. AKAKA,
U.S. Senator from Hawaii, Hart Senate Office Building, Washington, DC.

DEAR SENATOR AKAKA: This letter is in our support of a private bill for LTC. (Ret) Richard M. Sakakida to award him the Congressional Medal of Honor, or other appropriate medal for valor in recognition for his meritorious services as an undercover Military Intelligence Service (MIS) agent in the Philippines during World War II.

On behalf of the M.I.S. Association of Northern California, I wish to express our wholehearted appreciation and support your worthwhile and meaningful special legislation. Richard Sakakida is a member of our organization and over the past four years, we have endeavored to tell his story and seek recognition of his extraordinary service to his country in time of war. As you may know, he was the keynote speaker of the 50th MIS Anniversary Reunion in San Francisco/Monterey in November 1991. In April 1994 a videotape was made, entitled "Mission to Manila—The Richard Sakakida Story". A copy was delivered to your office.

Also, for the past three years, members of MIS NORCAL have been engaged in two separate actions concerning Richard Sakakida recommendation for the Award of Purple Heart for wounds sustained in the Philippines during WWII and an award for Valor. The latter is for heroic personal sacrifice, including the risk of his own life, to protect and save the lives of fellow American servicemen, while he, himself as a POW of the Japanese Military Forces. We have an unsung hero in our midst, and we welcome this opportunity to assist and support you in obtaining recognition for the highest military decoration of our country for Richard Sakakida.

Sincerely,

THOMAS T. SASAKI,
President.

MIS NORTHWEST,
Seattle, WA, July 9, 1994.

Hon. DANIEL K. AKAKA,
U.S. Senator from Hawaii, Hart Senate Office Building, Washington, DC.

DEAR SENATOR AKAKA: The Military Intelligence Service (MIS) Northwest Association wholeheartedly supports the effort to bestow upon Lt. Col. USAF (Ret.) Richard Sakakida the Congressional Medal of Honor.

We understand that this effort has been going on for a number of years without success mainly because of the passage of time

and the lack of necessary documentation. Richard Sakakida is a unique American Hero. Time should not be a factor. It is never too late to acknowledge his heroic actions in the Philippines as a CIC agent which could only be classified as services performed "above and beyond the call of duty."

Documentation of his exploits should be properly recorded in the annals of U.S. military intelligence. Any lack of needed documentation could be supplemented by the records of the Philippine government which saw fit to award him the Philippine Legion of Honor medal. Additional documentation could be mustered from some of the 500 Filipino resistance fighters that he liberated.

We appreciate and endorse your effort to have the U.S. Army rightfully recognize the heroism of Richard Sakakida.

Yours truly,

KENICHI (KEN) SATO,
President.

MIS-NORTHWEST ASSOCIATION,
Seattle, WA, January 28, 1995.

Hon. DANIEL K. AKAKA,
U.S. Senator from Hawaii, Hart Senate Office Building, Washington, DC.

DEAR SENATOR AKAKA: The Military Intelligence Service (MIS) Northwest Association wholeheartedly supports the effort to bestow upon Lt. Col. USAF (Ret.) Richard Sakakida the Congressional Medal of Honor or other appropriate medal for valor in recognition for his meritorious service during WW II.

We understand that this effort has been going on for a number of years without success mainly because of the passage of time and the lack of necessary documentation. Richard Sakakida is a unique American Hero. Time should not be a factor. It is never too late to acknowledge his heroic actions in the Philippines as an undercover Military Intelligence Service (MIS) agent which could only be classified as services performed "above and beyond the call of duty."

Documentation of his exploits should be properly recorded in the annals of U.S. military intelligence. Any lack of needed documentation could be supplemented by the records of the Philippine Government which saw fit to award him the Philippine Legion of Honor medal. Additional documentation could be mustered from some of the 500 Filipino resistance fighters that he liberated.

We appreciate and endorse your effort to introduce legislation to rightfully recognize the heroism of LTC Richard Sakakida.

Yours truly,

KENICHI (KEN) SATO,
President.

M.I.S. ASSOCIATION OF NORTHERN CALIFORNIA, INC.,
San Francisco, CA, July 14, 1994.

Hon. DANIEL K. AKAKA,
U.S. Senator from Hawaii, Hart Senate Office Building, Washington, DC.

DEAR SENATOR AKAKA: I am in receipt of a letter from Mr. Sunao Ishio, President of the Japanese American Veterans Association of Washington, D.C. (JAVA) In this letter he describes your initiative with the backing of other concerned members of Congress, to introduce a private bill for LTC. (Ret.) Richard M. Sakakida to award him the Congressional Medal of Honor.

On behalf of the M.I.S. Association of Northern California, I wish to express our wholehearted appreciation and support your worthwhile and meaningful special legislation. Richard Sakakida is a member of our organization and over the past three years, we have endeavored to tell his story and seek recognition of his extraordinary service to his country in time of war. As you may know, he was the keynote speaker of the 50th MIS Anniversary Reunion in San Francisco/Monterey in November 1991. In April 1994 a videotape was made, entitled "Mission to Manila—The Richard Sakakida Story". A copy was delivered to your office.

Also, for the past two years, members of MIS NORCAL have been engaged in two separate actions concerning Richard Sakakida recommendation for the Award of Purple Heart for wounds sustained in the Philippines during WWII and an award for Valor. The latter is for heroic personal sacrifice, including the risk of his own life, to protect and save the lives of fellow American servicemen, while he, himself as a POW of the Japanese Military Forces. We have an unsung hero in our midst, and we welcome this opportunity to assist and support you in obtaining recognition for the highest military decoration of our country for Richard Sakakida.

Sincerely,

THOMAS T. SASAKI,
President.

CHICAGO-NISEI POST NO. 1183,
Chicago, IL, August 4, 1994.

Hon. DANIEL K. AKAKA,
U.S. Senate,
Washington, DC.

DEAR SENATOR AKAKA: As an American Legion Post consisting primarily of Nisei veterans of World War II (and subsequent conflicts), we point with considerable pride at the accomplishments of Richard Sakakida, whose remarkable achievements during WWII went unheralded until recently.

By way of further background, enclosed is an article which appeared in a CIC Journal in 1991. Those of us who met him at recent linguist reunions were overwhelmed with the story.

Further delay in recognition of his heroic exploits would be unconscionable, and we are in full support of your introduction of a private Bill to award him (albeit belatedly) the Congressional Medal of Honor.

Very truly yours,

SAM YOSHINARI,
Post Commander.

OFFICE OF VETERANS AFFAIRS,
EMBASSY OF THE PHILIPPINES,
Washington, DC, July 25, 1994.

Mr. JOHN A. TAGAMI,
Legislative Assistant, Office of Senator Daniel K. Akaka, Washington, DC.

DEAR MR. TAGAMI: In August 1993 I recommended the award of Philippine Legion of Honor to Lt. Col. Richard Sakakida on the basis of the Military Intelligence report compiled by Diane L. Hamn, (copy enclosed). My recommendation was addressed to his Excellency President Fidel V. Ramos, President of the Philippines through the Secretary of National Defense. This was referred to G2, Armed Forces of the Philippines which went over the attached report. I do not know what exactly happened. I can only surmise that the herein report had been confirmed by records we have in the Philippines and President Fidel V. Ramos approved the award.

Let me tell you that at one time, I was informed that the recommendation may not be approved because of the prescriptive period during which the achievement may be recognized. I made appropriate representation that this prescriptive period may be waived, my reason being that the recommendation for the award could not be made earlier because the record of Lt. Col. Sakakida had been declassified very much later.

I understand from Ms. Barbara Joseph that the same objection is being raised in connection with this award of Congressional Medal of Honor. Maybe the same argument may be used.

Sincerely yours,

TAGUMPAY A. NANADIEGO,
BGen, AFP (Ret), Special Presidential Representative/Head, Office of Veterans Affairs, WDC.

Falls Church, VA, February 27, 1995.

Hon. DANIEL K. AKAKA,
U.S. Senate,
Washington, DC.

DEAR SENATOR AKAKA: If you recall, His Excellency President Fidel V. Ramos of the Republic of the Philippines approved the award of the Philippine Legion of Honor (Degree of Legionnaire) to Lt Colonel Richard M. Sakakida, USAF (Ret) for his role in the Philippine campaign during WWII. The formal presentation was held at the Carlos P. Romulo Hall of the Philippine Embassy, Washington, D.C. on April 15, 1994. You were represented at the awarding ceremony by Mr. John Tagami who read your message and that of Senator Daniel Inouye.

I am enclosing herewith a copy of the General Orders issued by the General Headquarters, Armed Forces of the Philippines announcing the award.

In my private capacity as a former enlisted man in the 31st Division (PA) called and ordered into the service of the United States Army Forces in the Far East (USAFFE) in 1942 and as a guerrilla intelligence officer of the Vera's Tayabas Guerrillas, a combat batallion which was recognized by the Sixth Army, USA in 1945, I join in the recommendations for the award of the Congressional Medal of Honor to LtCol. Sakakida.

Enclosed is a brief summary on LtCol. Sakakida's role in the Philippine campaign which is chronicled in the intelligence operation reports of the Armed Forces of the Philippines.

Sincerely,

TAGUMPAY A. NANADIEGO,
BrigGeneral, AFP (Ret).

AWARD OF THE PHILIPPINE LEGION OF HONOR—(DEGREE OF LEGIONNAIRE)

By direction of the President, pursuant to paragraph 1-6e, Section II, Chapter 1, Armed Forces of the Philippines Regulations G 131-053, this Headquarters, dated 1 July 1986, the PHILIPPINE LEGION OF HONOR in the degree of Legionnaire is hereby awarded to Mr. Richard M. Sakakida for exceptionally meritorious conduct in the performance of outstanding service to the Filipino—American freedom fighters as the United States undercover counterintelligence agent from 22 April 1941 to 20 September 1945. At the outbreak of World War II, then Sergeant Sakakida was shipped out from Honolulu to the Philippines to monitor the activities of the Japanese community in Manila. When Corregidor surrendered to the Japanese Imperial Forces in 1942, he was taken as prisoner of war, was tortured and brought to Bilibid Prison. Later, he was utilized as interpreter for court martial proceedings for American and Filipino prisoners and on many occasions, interceded on behalf of the POWs by translating testimony in their favor. He engineered and successfully carried out a daring prison break from Muntinlupa Prison, releasing over 500 Filipino guerrillas with the assistance of some Filipinos. In July 1945, after his escape from prison, he was wounded in a skirmish between Filipino guerrillas and Japanese forces. He rejoined

General Douglas MacArthur's returning forces in the liberation of the Philippines after a long trek across miles of jungle terrain. By these achievements, Mr. Sakakida contributed immeasurably to the liberation of the Philippines, thereby earning for himself the respect and admiration of the Filipino people.

By Order of the Secretary of National Defense.

LISANDRO C ABADIA,
General, AFP, Chief of Staff.

RICHARD M. SAKAKIDA

Richard Sakakida's undercover intelligence work during World War II parallels Arthur Komori's in that both were from Hawaii and were selected over a number of candidates in March 1941 for the secret CIP (Counter Intelligence Police) undercover mission, until they sneaked ashore in Manila.

Once landed, Sakakida, pretending to be a draft evader from Hawaii, checked into the Nishikawa Hotel. He soon got a clerical job there checking passports and filling out passport entry forms of visiting Japanese. He obtained valuable information during this time. He even found work as a sales representative of Sears Roebuck to complete his cover, while he wove himself into the fabric of Manila's Japanese business community, passing on his findings to CIP chief, Major Nelson Raymond. One of Sakakida's assignments was to befriend a Nisei serving as local advisor to the Japanese Consulate in Manila and collect information from that source.

On December 8, 1941, when the Japanese bombed Manila and the United States declared war on Japan, Sakakida, as previously planned, voluntarily turned himself in at the Nippon Club Evacuation Center with the rest of the Japanese in Manila. One day, Sakakida, escorted by the Philippine Constabulary, went marketing for foodstuff for the other detainees. When he stopped at the Nishikawa Hotel to pick up his belongings, the Filipino Secret Service arrested him as a spy and hauled him to Philippine Constabulary headquarters for interrogation. U.S. CIP agents eventually rescued him.

Back in military uniform with the CIP Sakakida interrogated Japanese civilians until December 23, 1941, when the advancing Japanese Army forced the evacuation of the American military in Manila to Bataan and Corregidor. On Bataan, Sakakida interrogated Japanese POWs, translated Japanese diaries and combat documents, prepared propaganda leaflets in Japanese, and called upon the Japanese to surrender by loudspeaker broadcasts Assisting Army Signal Intelligence, he monitored Japanese air-ground communications and deciphered Japanese codes. He preformed critical intelligence work in Malinta Tunnel on Corregidor which came under intense daily bombing by Japanese planes.

After three months of bitter fighting, the lack of relief supplies and replacements forced the exhausted, malnourished, disease-ridden Americans to capitulate. Bataan fell on April 8, 1942, and 76,000 defeated American and Filipino troops embarked upon the infamous "Bataan Death March" that killed over half their numbers. General MacArthur ordered the evacuation to Australia of his two valuable Nisei linguists, Komori and Sakakida, but the latter chose to give up his seat on the escape aircraft to a civilian Nisei. With no chance, therefore to escape, Sakakida became one of General Wainwright's tragic survivors of Corregidor to surrender to the Japanese Army.

As the only American Nisei POW known to have been captured by the Japanese, Sakakida spent six months incarcerated on Corregidor. The Kenpei Tai quizzed him mercilessly and tortured him. Sakakida steadfastly endured, adhering to his story of being a civilian, forced to work for the U.S. Army after the war began. In December 1942, Sakakida was thrown into Bilibid Prison. The enemy questioned Sakakida's renunciation of his Japanese citizenship prior to the war but, because he was born of Japanese parents, considered he could be tried for treason. He faced an almost certain death sentence if tried before a Japanese military tribunal. The Japanese 14th Army HQ verified from the Foreign Minister that Sakakida's Japanese citizenship had indeed been voided (fortuitously, Sakakida's mother had cancelled his dual citizenship in August 1941 after his departure). On February 11, 1943, "Kigensetsu," (Empire Day), Sakakida was advised the treason charge would be dropped. Despite the hideous torture suffered at the hands of his Japanese captors, the marks of which remain evident today, Richard Sakakida never broke down and never revealed his undercover role and mission against the Japanese.

Sakakida was then assigned to work for Chief Judge Advocate Col. Nishiharu and remained under continued surveillance, subjected to periodic attempts at entrapment to elicit his true identity. During this period, Sakakida established contact with the Filipino guerrilla underground through which he managed to funnel vital military information to MacArthur's HQ in Australia. His most crucial report cited Japanese troop and shipping activity. The report also advised of preparations for an invasion of Australia to be launched from Davao, Mindanao, by the Japanese 35th Army with 15 troop transports and destroyers. Sakakida later learned from an officer of the sole surviving ship that American submarines had annihilated that convoy, probably reported in WW II history as the Battle of the Bismarck Sea.

Sakakida also engineered a daring prison break from Muntinglupa Prison by disguising as a Japanese security officer. The escape freed guerrilla leader Ernesto Tupas and 500 of his men. Tupas escaped to the Rizal mountains, where he established radio contact with MacArthur's HQ through which Sakakida could relay more tactical information gleaned from the 14th Army HQ where he worked. This could be the only instance in World War II where a U.S. Military intelligence agent relayed information from the very heart of the enemy's headquarters.

After October 1944, when the American forces invaded Leyte and American planes bombed Manila, inflicting heavy damage, General Yamashita moved his headquarters north to Baguio. As the American invading forces encircled the beleagured Yamashita's 14th Army, Sakakida encountered increasing hostility from his captors and decided to make his break. In June 1945, he escaped from the retreating Japanese forces and fled into the hills where he joined a band of guerrillas. During a firefight between the guerrillas and the Japanese a shell fragment hit Sakakida in the stomach. The retreating guerrillas had to abandon him. For the next several months, Sakakida wandered alone through the mountainous jungle, scrounging for food from the wild. He was weakened with his stomach wound and ravaged by malaria, dysentery and beriberi. His hair and beard grew long and wild; insect bites and sores covered his skin. His clothes hung in tatters; semi-starvation emaciated him.

One day, unaware that the war had already ended, he saw a group of approaching soldiers wearing unfamiliar uniforms and deep helmets, unlike the pie-plated American helmets of 1942. He thought they were Germans. But his heart leaped as he heard them speaking English. Sakakida emerged from his jungle hiding, waving his arms and yelling "Don't shoot!" and then fervently convinced the dubious American GIs that this ragged and haggard Japanese-looking soldier was an American sergeant captured by the Japanese at Corregidor. He begged them to call the CIC to verify his claim. Two hours later two CIC lieutenants drove up in a jeep, leaped out to identify him and welcomed him back to the CIC ranks. They took him back to the field office of the 441st Detachment where Sgt. Richard Sakakida was home at last. His long, lonely, fearful, tortuous ordeal as an undercover agent in the Philippines finally ended. On July 1, 1988, Lt. Col. Richard Sakakida was inducted into the Military Intelligence Hall of Fame at Fort Huachuca, Arizona.●

ADDITIONAL COSPONSORS

S. 44

At the request of Mr. REID, the names of the Senator from Washington [Mr. GORTON), the Senator from New Mexico [Mr. BINGAMAN], and the Senator from Colorado [Mr. CAMPBELL] were added as cosponsors of S. 44, a bill to amend title 4 of the United States Code to limit State taxation of certain pension income.

S. 145

At the request of Mr. GRAMM, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 145, a bill to provide appropriate protection for the constitutional guarantee of private property rights, and for other purposes.

S. 190

At the request of Mr. PRESSLER, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 190, a bill to amend the Fair Labor Standards Act of 1938 to exempt employees who perform certain court reporting duties from the compensatory time requirements applicable to certain public agencies, and for other purposes.

S. 216

At the request of Mr. HATCH, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 216, a bill to repeal the reduction in the deductible portion of expenses for business meals and entertainment.

S. 240

At the request of Mr. DOMENICI, the name of the Senator from Oregon [Mr. HATFIELD] was added as a cosponsor of S. 240, a bill to amend the Securities Exchange Act of 1934 to establish a filing deadline and to provide certain safeguards to ensure that the interests of investors are well protected under the implied private action provisions of the Act.

S. 256

At the request of Mr. DOLE, the name of the Senator from Idaho [Mr. KEMPTHORNE] was added as a cosponsor of S. 256, a bill to amend title 10, United States Code, to establish procedures for determining the status of certain missing members of the Armed Forces and certain civilians, and for other purposes.

S. 327

At the request of Mr. HATCH, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 327, a bill to amend the Internal Revenue Code of 1986 to provide clarification for the deductibility of expenses incurred by a taxpayer in connection with the business use of the home.

S. 374

At the request of Mr. KOHL, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of S. 374, a bill to amend chapter 111 of title 28, United States Code, relating to protective orders, sealing of cases, disclosures of discovery information in civil actions, and for other purposes.

S. 403

At the request of Mr. AKAKA, the names of the Senator from Vermont [Mr. LEAHY] and the Senator from North Dakota [Mr. DORGAN] were added as cosponsors of S. 403, a bill to amend title 38, United States Code, to provide for the organization and administration of the Readjustment Counseling Service, to improve eligibility for readjustment counseling and related counseling, and for other purposes.

S. 447

At the request of Mr. INHOFE, the name of the Senator from Wyoming [Mr. THOMAS] was added as a cosponsor of S. 447, a bill to provide tax incentives to encourage production of oil and gas within the United States, and for other purposes.

S. 503

At the request of Mrs. HUTCHISON, the names of the Senator from South Dakota [Mr. PRESSLER] and the Senator from California [Mrs. FEINSTEIN] were added as cosponsors of S. 503, a bill to amend the Endangered Species Act of 1973 to impose a moratorium on the listing of species as endangered or threatened and the designation of critical habitat in order to ensure that constitutionally protected private property rights are not infringed, and for other purposes.

S. 530

At the request of Mr. GREGG, the name of the Senator from Kentucky [Mr. MCCONNELL] was added as a cosponsor of S. 530, a bill to amend the Fair Labor Standards Act of 1938 to permit State and local government workers to perform volunteer services for their employer without requiring the employer to pay overtime compensation, and for other purposes.

SENATE CONCURRENT RESOLUTION 3

At the request of Mr. SIMON, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of Senate Concurrent Resolution 3, a concurrent resolution relative to Taiwan and the United Nations.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BOND. 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 Wednesday, March 15, 1995, for purposes of conducting a full committee business meeting which is scheduled to begin at 9:30 a.m. The purpose of this meeting is to consider pending calendar business.

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

COMMITTEE ON FINANCE

Mr. BOND. Mr. President, I ask unanimous consent that the Finance Committee be permitted to meet Wednesday, March 15, 1995, in room 215 of the Dirksen Senate Office Building, beginning at 9:30 a.m., to conduct a markup on H.R. 831.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. BOND. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, March 15, 1995, beginning at 2:30 p.m., in room 485 of the Russell Senate Office Building on S. 349, a bill to reauthorize appropriations for the Navajo-Hopi Relocation Housing Program.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. BOND. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a hearing on effective health care reform in a changing marketplace, during the session of the Senate Wednesday, March 15, 1995, at 9:30 a.m.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. BOND. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet for the session of the Senate Wednesday, March 15, 1995, at 2 p.m. to hold a closed hearing on intelligence matters.

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

SUBCOMMITTEE ON AIRLAND FORCES

Mr. BOND. Mr. President, I ask unanimous consent that the Subcommittee on Airland Forces of the Committee on Armed Services be authorized to meet at 9:30 a.m. on Wednesday, March 15, 1995, in open session, to receive testimony on Army Force modernization in review of the defense authorization request for fiscal year 1996 and the future years defense program.

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

SUBCOMMITTEE ON OCEANS AND FISHERIES

Mr. BOND. Mr. President, I ask unanimous consent that the Oceans and Fisheries Subcommittee of the Committee on Commerce, Science, and Transportation be authorized to meet on March 15, 1995, at 3 p.m. on the Coast Guard authorization for fiscal year 1996.

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

SUBCOMMITTEE ON SUPERFUND, WASTE CONTROL, AND RISK ASSESSMENT

Mr. BOND. Mr. President, I ask unanimous consent that the Subcommittee on Superfund, Waste Control, and Risk Assessment be granted permission to meet Wednesday, March 15, at 9 a.m. to consider S. 534, a bill to amend the Solid Waste Disposal Act to provide flow control authority and authority for States to limit the interstate transportation of municipal solid waste.

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

ADDITIONAL STATEMENTS

TRIBUTE TO MRS. ALICE SPARKS

• Mr. MCCONNELL. Mr. President, I rise today to pay tribute to an outstanding Kentuckian who was recently honored with the Kentucky Enquirer's Woman of the Year award. Mrs. Alice Sparks of Crescent Springs, KY, has dedicated her time and energy for the betterment of northern Kentucky and its citizens.

Mrs. Sparks has made it common practice to work hard for the causes that she deems important. She has always strived to make a difference, especially when it comes to education. This interest in education has been acknowledged by her appointment to chair the Northern Kentucky University board of regents.

In addition, Mrs. Sparks has been politically active for the past 40 years. Often, her political interest has been combined with her interest in education. In particular, she helped usher in the Kentucky Education Reform Act, a major piece of legislation in my State.

Mr. President, I ask my colleagues to join me in paying tribute to Alice Sparks, the Kentucky Enquirer's Woman of the Year. I know that Mrs. Sparks will continue to display the leadership and dedication that she has demonstrated so capably in the past.

Mr. President, I ask that the Enquirer's March 6, 1995, article on Alice Sparks be printed in the RECORD.

The article follows:

[From the Kentucky Enquirer, Mar. 6, 1995]

SPARKS FLIES INTO ADVENTURES WITH APLOMB

(By Krista Ramsey)

Alice Sparks sits contentedly behind her desk in a nondescript corner of the WCET-TV (Channel 48) studios, and it's hard to imagine that a week earlier the 60-year-old was swimming with the piranhas in the Amazon.

It's not much easier to picture her tearing across the explosive Brazil-Colombia border in a Volkswagen caravan.

It was "just for fun," she says of the escapade, the third in a series of adventure vacations that have taken her to Tanzania and the mountains of Costa Rica. Back at the WCET studios, she says, is where the real pressure lies.

For 11 years, the Crescent Sprints resident and WCET trustee has been scheduling chairman for the Action Auction, the station's annual April fund-raiser. From her office, she routes more than 4,400 items to be sold over a 10-day period.

"I'm laid back in a lot of ways, but I'm also dead serious," she says of the auction. "Don't get in my way when we go on the air."

No one does.

Sparks is granite sheathed in satin. She has the savvy of a political trench worker sweetened with the smile of a homecoming queen.

When the cause is right—and the cause is always education—Sparks can be found in the back halls of WCET lining up auction chattel, or in the back rooms of the state Capitol in Frankfort, lobbying for legislative support.

As state legislative chair for the Kentucky PTA from 1988 to 1993, Sparks served as midwife as the Commonwealth gave birth to the Kentucky Education Reform Act (KERA) of 1990.

The legislation changed everything, from how schools are funded to how students are arranged in classes. It sparked controversies, which never deterred Sparks.

"I like all of KERA," she says firmly. "I can see the results. There are now more opportunities for parental involvement in the schools than ever before." Status quo wasn't good enough, she says. The Commonwealth was ready to take a risk.

Sparks is comfortable with risk, piranha and otherwise.

"I like to gamble," she admits conspiratorially, leaning across her desk. "My father liked to gamble. In the summer, we'd play cards all night." The itch still sends Sparks off on periodic trips to Las Vegas, and to play the ponies locally.

Besides how to spot a good poker hand, Sparks' father taught her to like another kind of risk. He was a printer at the Louisville Courier-Journal, and became an international representative for the printers union. A staunch Democrat, he always was concerned with social issues, she remembers.

The political bug bit his daughter as well, but the Republican strain. Her entry into Kentucky politics began nearly 40 years ago, when she left college and went to work as a social secretary for Mildred Chandler, wife of former Gov. A.B. "Happy" Chandler.

"The Chandlers made me a member of the family," she says. "I had an apartment right by the mansion. I learned a lot. I met a lot of influential people."

Later, she served on the Kenton County Republican Executive Committee, and is a member of the local and statewide Women's Political Caucus and the Kenton County Republican Women's Club.

In 1992, she earned an appointment to the Northern Kentucky University Board of Regents. Two years later, she became the first woman to chair the board. When Sparks speaks of NKU, she uses the collegial "we."

"We're playing the third-place team," she says of men's basketball. "We need a new science building," she says of the university as a whole.

Sparks' involvement with a cause, says W. Wayne Godwin, general manager of WCET, is paid for with "personal currency."

"Alice gives her causes her dedication, energy and thoroughness," Godwin says. "She works at an institutional level—as a trustee or board member—but she always stays focused on the personal level."

Sparks works so hard that the thought of spare time makes her nervous, she says. She has cut back on socializing to make room for more causes, but chooses carefully. Many, like her membership on the board of the Greater Cincinnati Film Commission, are a chance to make sure Northern Kentucky is well represented.

In daily life, little fazes Sparks. She bounced through her South American trip in turbulent skies without complaint. On her return, she was gracious about finding a stuffed wildebeest in her family room, a gift of her son-in-law.

She knows who she is, what she can do and what she's after. She's used to moving things along, from goods at the Action Auction to play on a golf course.

"I do still golf, especially at benefits," she says. "But I always stand on the green and admit I cheat. I don't have time to worry about a bad lie. I just kick it out."•

THE WELCOME AND THE UNWELCOME

• Mr. SIMON. Mr. President, yesterday my colleague Senator MURKOWSKI and I rose to speak about the U.S. Government's shameful treatment of the democratically-elected leader of loyal friend of the United States. We were speaking of President Lee Teng-hui of Taiwan, who has been informed that, despite an invitation, he will not be admitted to the U.S. to attend his class reunion at Cornell this June. To admit President Lee, we are told, could jeopardize important interests we have in a key bilateral relationship, our relationship with China.

Sometimes, though, the U.S. is prepared to run such risks. Despite strong objections from the United Kingdom, our longstanding ally, we have admitted Gerry Adams, the leader of the Sinn Fein, to our country. Indeed, Mr. Adams is receiving a level of attention that a head of state might envy; he will even be welcomed to the White House on St. Patrick's Day.

I recognize the need to take risks for peace sometimes; the possibility of a fair and lasting solution in Northern Ireland may be worth taking a few chances for. But shouldn't we also be willing to take a few chances for Taiwan, a country that, in its adoption of democratic principles and its commitment to free market economics, can serve a model to many other countries in Asia? Other countries including, I would stress, China itself.

An editorial in today's Wall Street Journal does a particularly good job of highlighting the inconsistency between the welcome the U.S. extends to Mr. Adams, and the insulting brush off we give President Lee. I ask that the editorial "Two Visitors" be printed in the RECORD.

The editorial follows:

REVIEW AND OUTLOOK—TWO VISITORS

Gerry Adams can tour the United States, but Lee Teng-hui can't. Gerry Adams will be feted and celebrated Friday at the White House, but when Lee Teng-hui's plane landed in Honolulu last year, the U.S. government told him to gas up and get out. The Gerry Adams who is being treated like a head of state by the Clinton Administration is the leader of Sinn Fein, the political arm of the Irish Republican Army. The Lee Teng-hui who has been treated like an international pariah by the Administration is the democratically elected President of the Republic of China, or Taiwan. The disparate treatment of these two men tells an awful lot about the politics and instincts of the Clinton presidency.

Gerry Adams's face will be all over the news for his Saint Paddy's Day party with Bill O'Clinton at the White House, so we'll start with the background on the less-publicized President of Taiwan.

Cornell University has invited President Lee to come to the school's Ithaca, N.Y., campus this June to address and attend an alumni reunion. In 1968, Mr. Lee received his doctorate in agricultural economics from Cornell. The following year, the American Association of Agricultural Economics gave Mr. Lee's doctoral dissertation, on the sources of Taiwan's growth, its highest honor. In 1990, Taiwan's voters freely elected Mr. Lee as their President. He has moved forcefully to liberalize Taiwan's political system, arresting corrupt members of his own party. Last year, The Asian Wall Street Journal editorialized: "Out of nothing, Taiwan's people have created an economic superpower relative to its population, as well as Asia's most rambunctious democracy and a model for neighbors who are bent on shedding authoritarian ways."

Asked last month about President Lee's visit to Ithaca, Secretary of State Christopher, who professes to wanting closer links with Taiwan, said that "under the present circumstances" he couldn't see it happening. The Administration doesn't want to rile its relationship with Beijing. The Communist Chinese don't recognize Taiwan and threaten all manner of retaliation against anyone who even thinks about doing so. That includes a speech to agricultural economists in upstate New York. This, Secretary Christopher testified, is a "difficult issue."

Sinn Fein's Gerry Adams, meanwhile, gets the red carpet treatment at 1600 Pennsylvania Avenue. Mr. Adams assures his American audiences that the IRA is out of the business of blowing body parts across the streets of London. He promises the doubters that if people give him money, it won't be used to buy more guns, bullets and bombs for the high-strung lads of the IRA.

Now before the Irish American communities of Queens and Boston get too roiled over our skepticism toward Northern Ireland's most famous altar boy, we suggest they take their grievances to John Bruton, who is Irish enough to be the Prime Minister of Ireland. He, too, will be at Bill Clinton's St. Patrick's Day party for Gerry Adams, and he has a message for the two statesmen:

The IRA has to give up its arms. "This is an item on the agenda that must be dealt with," Premier Bruton said Monday in Dublin. "It's a very serious matter. There are genuine fears felt by members of the community that have been at the receiving end of the violence."

We don't at all doubt that somewhere amid the Friday merriment, Mr. Clinton will ask Mr. Adams to give up the guns and that Mr. Adams will tell the President that is surely the IRA's intent, all other matters being equal.

It is hard to know precisely what motivates Mr. Clinton to lionize a Gerry Adams and snub a Lee Tenghut. The deference to China doesn't fully wash, because when Britain—our former ally in several huge wars this century—expressed its displeasure over the Adams meeting, the White House essentially told the Brits to lump it. Perhaps the end of the Cold War has liberated liberal heads of state into a state of lightheadedness about such matters. We note also this week that France's President Francois Mitterrand has been entertaining Fidel Castro at the Elysees Palace.

But it's still said that Bill Clinton has a great sense of self-preservation. So if he's willing to personally embrace Gerry Adams while stiffing the Prime Minister of England and forbidding the President of Taiwan to spend three days with his classmates in Ithaca, there must be something in it somewhere for him.●

THE PAPERWORK REDUCTION ACT OF 1995—MESSAGE FROM THE HOUSE

Mr. DOLE. Madam President, I ask that the Chair lay before the Senate a message from the House of Representatives on:

(S. 244) An act to further the goals of the Paperwork Reduction Act to have Federal agencies become more responsible and publicly accountable for reducing the burden of Federal paperwork on the public, and for other purposes, to the Committee on Governmental Affairs.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 244) entitled "An Act to further the goals of the Paperwork Reduction Act to have Federal agencies become more responsible and publicly accountable for reducing the burden of Federal paperwork on the public, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Paperwork Reduction Act of 1995".

SEC. 2. COORDINATION OF FEDERAL INFORMATION POLICY.

Chapter 35 of title 44, United States Code, is amended to read as follows:

"CHAPTER 35—COORDINATION OF FEDERAL INFORMATION POLICY

"Sec.
"3501. Purposes.
"3502. Definitions.
"3503. Office of Information and Regulatory Affairs.
"3504. Authority and functions of Director.
"3505. Assignment of tasks and deadlines.
"3506. Federal agency responsibilities.
"3507. Public information collection activities; submission to Director; approval and delegation.
"3508. Determination of necessity for information; hearing.
"3509. Designation of central collection agency.
"3510. Cooperation of agencies in making information available.
"3511. Establishment and operation of Government Information Locator Service.
"3512. Public protection.
"3513. Director review of agency activities; reporting; agency response.
"3514. Responsiveness to Congress.
"3515. Administrative powers.
"3516. Rules and regulations.
"3517. Consultation with other agencies and the public.
"3518. Effect on existing laws and regulations.
"3519. Access to information.
"3520. Authorization of appropriations.

"§3501. Purposes

"The purposes of this chapter are to—

"(1) minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of information by or for the Federal Government;

"(2) ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government;

"(3) coordinate, integrate, and to the extent practicable and appropriate, make uniform Federal information resources management policies and practices as a means to improve the productivity, efficiency, and effectiveness of Government programs, including the reduction of information collection burdens on the public and the improvement of service delivery to the public;

"(4) improve the quality and use of Federal information to strengthen decisionmaking, accountability, and openness in Government and society;

"(5) minimize the cost to the Federal Government of the creation, collection, maintenance, use, dissemination, and disposition of information;

"(6) strengthen the partnership between the Federal Government and State, local, and tribal governments by minimizing the burden and maximizing the utility of information created, collected, maintained, used, disseminated, and retained by or for the Federal Government;

"(7) provide for the dissemination of public information on a timely basis, on equitable terms, and in a manner that promotes the utility of the information to the public and makes effective use of information technology;

"(8) ensure that the creation, collection, maintenance, use, dissemination, and disposition of information by or for the Federal Government is consistent with applicable laws, including laws relating to—

"(A) privacy and confidentiality, including section 552a of title 5;

"(B) security of information, including the Computer Security Act of 1987 (Public Law 100–235); and

"(C) access to information, including section 552 of title 5;

"(9) ensure the integrity, quality, and utility of the Federal statistical system;

"(10) ensure that information technology is acquired, used, and managed to improve performance of agency missions, including the reduction of information collection burdens on the public; and

"(11) improve the responsibility and accountability of the Office of Management and Budget and all other Federal agencies to Congress and to the public for implementing the information collection review process, information resources management, and related policies and guidelines established under this chapter.

"§3502. Definitions

"As used in this chapter—

"(1) the term 'agency' means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but does not include—

"(A) the General Accounting Office;

"(B) Federal Election Commission;

"(C) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions; or

"(D) Government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities;

"(2) the term 'burden' means time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency, including the resources expended for—

"(A) reviewing instructions;

"(B) acquiring, installing, and utilizing technology and systems;

"(C) adjusting the existing ways to comply with any previously applicable instructions and requirements;

"(D) searching data sources;

"(E) completing and reviewing the collection of information; and

"(F) transmitting, or otherwise disclosing the information;

"(3) the term 'collection of information' means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either—

"(A) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States; or

"(B) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes;

"(4) the term 'Director' means the Director of the Office of Management and Budget;

"(5) the term 'independent regulatory agency' means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Housing Finance Board, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Rate Commission, the Securities and Exchange Commission, and any other similar agency designated by statute as a Federal independent regulatory agency or commission;

"(6) the term 'information resources' means information and related resources, such as personnel, equipment, funds, and information technology;

"(7) the term 'information resources management' means the process of managing information resources to accomplish agency missions and to improve agency performance, including through the reduction of information collection burdens on the public;

"(8) the term 'information system' means a discrete set of information resources and processes, automated or manual, organized for the

collection, processing, maintenance, use, sharing, dissemination, or disposition of information;

"(9) the term 'information technology' has the same meaning as the term 'automatic data processing equipment' as defined by section 111(a)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(a)(2));

"(10) the term 'person' means an individual, partnership, association, corporation, business trust, or legal representative, an organized group of individuals, a State, territorial, or local government or branch thereof, or a political subdivision of a State, territory, or local government or a branch of a political subdivision;

"(11) the term 'practical utility' means the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion;

"(12) the term 'public information' means any information, regardless of form or format, that an agency discloses, disseminates, or makes available to the public; and

"(13) the term 'recordkeeping requirement' means a requirement imposed by or for an agency on persons to maintain specified records, including a requirement to—

"(A) retain such records;

"(B) notify third parties or the public of the existence of such records;

"(C) disclose such records to third parties or the public; or

"(D) report to third parties or the public regarding such records.

"§3503. Office of Information and Regulatory Affairs

"(a) There is established in the Office of Management and Budget an office to be known as the Office of Information and Regulatory Affairs.

"(b) There shall be at the head of the Office an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall delegate to the Administrator the authority to administer all functions under this chapter, except that any such delegation shall not relieve the Director of responsibility for the administration of such functions. The Administrator shall serve as principal adviser to the Director on Federal information resources management policy.

"§3504. Authority and functions of Director

"(a)(1) The Director shall—

"(A) develop, coordinate and oversee the implementation of Federal information resources management policies, principles, standards, and guidelines; and

"(B) provide direction and oversee—

"(i) the review and approval of the collection of information and the reduction of the information collection burden;

"(ii) agency dissemination of and public access to information;

"(iii) statistical activities;

"(iv) records management activities;

"(v) privacy, confidentiality, security, disclosure, and sharing of information; and

"(vi) the acquisition and use of information technology.

"(2) The authority of the Director under this chapter shall be exercised consistent with applicable law.

"(b) With respect to general information resources management policy, the Director shall—

"(1) develop and oversee the implementation of uniform information resources management policies, principles, standards, and guidelines;

"(2) foster greater sharing, dissemination, and access to public information, including through—

"(A) the use of the Government Information Locator Service; and

"(B) the development and utilization of common standards for information collection, storage, processing and communication, including standards for security, interconnectivity and interoperability;

"(3) initiate and review proposals for changes in legislation, regulations, and agency procedures to improve information resources management practices;

"(4) oversee the development and implementation of best practices in information resources management, including training; and

"(5) oversee agency integration of program and management functions with information resources management functions.

"(c) With respect to the collection of information and the control of paperwork, the Director shall—

"(1) review and approve proposed agency collections of information;

"(2) coordinate the review of the collection of information associated with Federal procurement and acquisition by the Office of Information and Regulatory Affairs with the Office of Federal Procurement Policy, with particular emphasis on applying information technology to improve the efficiency and effectiveness of Federal procurement, acquisition, and payment and to reduce information collection burdens on the public;

"(3) minimize the Federal information collection burden, with particular emphasis on those individuals and entities most adversely affected;

"(4) maximize the practical utility of and public benefit from information collected by or for the Federal Government;

"(5) establish and oversee standards and guidelines by which agencies are to estimate the burden to comply with a proposed collection of information; and

"(6) place an emphasis on minimizing the burden on small businesses with 50 or fewer employees.

"(d) With respect to information dissemination, the Director shall develop and oversee the implementation of policies, principles, standards, and guidelines to—

"(1) apply to Federal agency dissemination of public information, regardless of the form or format in which such information is disseminated; and

"(2) promote public access to public information and fulfill the purposes of this chapter, including through the effective use of information technology.

"(e) With respect to statistical policy and coordination, the Director shall—

"(1) coordinate the activities of the Federal statistical system to ensure—

"(A) the efficiency and effectiveness of the system; and

"(B) the integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes;

"(2) ensure that budget proposals of agencies are consistent with system-wide priorities for maintaining and improving the quality of Federal statistics and prepare an annual report on statistical program funding;

"(3) develop and oversee the implementation of Governmentwide policies, principles, standards, and guidelines concerning—

"(A) statistical collection procedures and methods;

"(B) statistical data classification;

"(C) statistical information presentation and dissemination;

"(D) timely release of statistical data; and

"(E) such statistical data sources as may be required for the administration of Federal programs;

"(4) evaluate statistical program performance and agency compliance with Governmentwide policies, principles, standards and guidelines;

"(5) promote the sharing of information collected for statistical purposes consistent with privacy rights and confidentiality pledges;

"(6) coordinate the participation of the United States in international statistical activities, including the development of comparable statistics;

"(7) appoint a chief statistician who is a trained and experienced professional statistician to carry out the functions described under this subsection;

"(8) establish an Interagency Council on Statistical Policy to advise and assist the Director in carrying out the functions under this subsection that shall—

"(A) be headed by the chief statistician; and

"(B) consist of—

"(i) the heads of the major statistical programs; and

"(ii) representatives of other statistical agencies under rotating membership; and

"(9) provide opportunities for training in statistical policy functions to employees of the Federal Government under which—

"(A) each trainee shall be selected at the discretion of the Director based on agency requests and shall serve under the chief statistician for at least 6 months and not more than 1 year; and

"(B) all costs of the training shall be paid by the agency requesting training.

"(f) With respect to records management, the Director shall—

"(1) provide advice and assistance to the Archivist of the United States and the Administrator of General Services to promote coordination in the administration of chapters 29, 31, and 33 of this title with the information resources management policies, principles, standards, and guidelines established under this chapter;

"(2) review compliance by agencies with—

"(A) the requirements of chapters 29, 31, and 33 of this title; and

"(B) regulations promulgated by the Archivist of the United States and the Administrator of General Services; and

"(3) oversee the application of records management policies, principles, standards, and guidelines, including requirements for archiving information maintained in electronic format, in the planning and design of information systems.

"(g) With respect to privacy and security, the Director shall—

"(1) develop and oversee the implementation of policies, principles, standards, and guidelines on privacy, confidentiality, security, disclosure and sharing of information collected or maintained by or for agencies;

"(2) oversee and coordinate compliance with sections 552 and 552a of title 5, the Computer Security Act of 1987 (40 U.S.C. 759 note), and related information management laws; and

"(3) require Federal agencies, consistent with the Computer Security Act of 1987 (40 U.S.C. 759 note), to identify and afford security protections commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of information collected or maintained by or on behalf of an agency.

"(h) With respect to Federal information technology, the Director shall—

"(1) in consultation with the Director of the National Institute of Standards and Technology and the Administrator of General Services—

"(A) develop and oversee the implementation of policies, principles, standards, and guidelines for information technology functions and activities of the Federal Government, including periodic evaluations of major information systems; and

"(B) oversee the development and implementation of standards under section 111(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(d));

"(2) monitor the effectiveness of, and compliance with, directives issued under sections 110

and 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 757 and 759);

"(3) coordinate the development and review by the Office of Information and Regulatory Affairs of policy associated with Federal procurement and acquisition of information technology with the Office of Federal Procurement Policy;

"(4) ensure, through the review of agency budget proposals, information resources management plans and other means—

"(A) agency integration of information resources management plans, program plans and budgets for acquisition and use of information technology; and

"(B) the efficiency and effectiveness of interagency information technology initiatives to improve agency performance and the accomplishment of agency missions; and

"(5) promote the use of information technology by the Federal Government to improve the productivity, efficiency, and effectiveness of Federal programs, including through dissemination of public information and the reduction of information collection burdens on the public.

"§3505. Assignment of tasks and deadlines

"(a) In carrying out the functions under this chapter, the Director shall—

"(1) in consultation with agency heads, set an annual Governmentwide goal for the reduction of information collection burdens by at least 10 percent, and set annual agency goals to—

"(A) reduce information collection burdens imposed on the public that—

"(i) represent the maximum practicable opportunity in each agency; and

"(ii) are consistent with improving agency management of the process for the review of collections of information established under section 3506(c); and

"(B) improve information resources management in ways that increase the productivity, efficiency and effectiveness of Federal programs, including service delivery to the public;

"(2) with selected agencies and non-Federal entities on a voluntary basis, initiate and conduct pilot projects to test alternative policies, practices, regulations, and procedures to fulfill the purposes of this chapter, particularly with regard to minimizing the Federal information collection burden; and

"(3) in consultation with the Administrator of General Services, the Director of the National Institute of Standards and Technology, the Archivist of the United States, and the Director of the Office of Personnel Management, develop and maintain a Governmentwide strategic plan for information resources management, that shall include—

"(A) a description of the objectives and the means by which the Federal Government shall apply information resources to improve agency and program performance;

"(B) plans for—

"(i) reducing information burdens on the public, including reducing such burdens through the elimination of duplication and meeting shared data needs with shared resources;

"(ii) enhancing public access to and dissemination of, information, using electronic and other formats; and

"(iii) meeting the information technology needs of the Federal Government in accordance with the purposes of this chapter; and

"(C) a description of progress in applying information resources management to improve agency performance and the accomplishment of missions.

"(b) For purposes of any pilot project conducted under subsection (a)(2), the Director may waive the application of any regulation or administrative directive issued by an agency with which the project is conducted, including any regulation or directive requiring a collection of information, after giving timely notice to the public and the Congress regarding the need for such waiver.

"§3506. Federal agency responsibilities

"(a)(1) The head of each agency shall be responsible for—

"(A) carrying out the agency's information resources management activities to improve agency productivity, efficiency, and effectiveness; and

"(B) complying with the requirements of this chapter and related policies established by the Director.

"(2)(A) Except as provided under subparagraph (B), the head of each agency shall designate a senior official who shall report directly to such agency head to carry out the responsibilities of the agency under this chapter.

"(B) The Secretary of the Department of Defense and the Secretary of each military department may each designate a senior official who shall report directly to such Secretary to carry out the responsibilities of the department under this chapter. If more than one official is designated for the military departments, the respective duties of the officials shall be clearly delineated.

"(3) The senior official designated under paragraph (2) shall head an office responsible for ensuring agency compliance with and prompt, efficient, and effective implementation of the information policies and information resources management responsibilities established under this chapter, including the reduction of information collection burdens on the public. The senior official and employees of such office shall be selected with special attention to the professional qualifications required to administer the functions described under this chapter.

"(4) Each agency program official shall be responsible and accountable for information resources assigned to and supporting the programs under such official. In consultation with the senior official designated under paragraph (2) and the agency Chief Financial Officer (or comparable official), each agency program official shall define program information needs and develop strategies, systems, and capabilities to meet those needs.

"(b) With respect to general information resources management, each agency shall—

"(1) manage information resources to—

"(A) reduce information collection burdens on the public;

"(B) increase program efficiency and effectiveness; and

"(C) improve the integrity, quality, and utility of information to all users within and outside the agency, including capabilities for ensuring dissemination of public information, public access to government information, and protections for privacy and security;

"(2) in accordance with guidance by the Director, develop and maintain a strategic information resources management plan that shall describe how information resources management activities help accomplish agency missions;

"(3) develop and maintain an ongoing process to—

"(A) ensure that information resources management operations and decisions are integrated with organizational planning, budget, financial management, human resources management, and program decisions;

"(B) in cooperation with the agency Chief Financial Officer (or comparable official), develop a full and accurate accounting of information technology expenditures, related expenses, and results; and

"(C) establish goals for improving information resources management's contribution to program productivity, efficiency, and effectiveness, methods for measuring progress towards those goals, and clear roles and responsibilities for achieving those goals;

"(4) in consultation with the Director, the Administrator of General Services, and the Archivist of the United States, maintain a current and complete inventory of the agency's information resources, including directories necessary to fulfill the requirements of section 3511 of this chapter; and

"(5) in consultation with the Director and the Director of the Office of Personnel Management, conduct formal training programs to educate agency program and management officials about information resources management.

"(c) With respect to the collection of information and the control of paperwork, each agency shall—

"(1) establish a process within the office headed by the official designated under subsection (a), that is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved under this chapter, to—

"(A) review each collection of information before submission to the Director for review under this chapter, including—

"(i) an evaluation of the need for the collection of information;

"(ii) a functional description of the information to be collected;

"(iii) a plan for the collection of the information;

"(iv) a specific, objectively supported estimate of burden;

"(v) a test of the collection of information through a pilot program, if appropriate; and

"(vi) a plan for the efficient and effective management and use of the information to be collected, including necessary resources;

"(B) ensure that each information collection—

"(i) is inventoried, displays a control number and, if appropriate, an expiration date;

"(ii) indicates the collection is in accordance with the clearance requirements of section 3507; and

"(iii) contains a statement to inform the person receiving the collection of information—

"(I) the reasons the information is being collected;

"(II) the way such information is to be used;

"(III) an estimate, to the extent practicable, of the burden of the collection; and

"(IV) whether responses to the collection of information are voluntary, required to obtain a benefit, or mandatory; and

"(C) assess the information collection burden of proposed legislation affecting the agency;

"(2)(A) except for good cause or as provided under subparagraph (B), provide 60-day notice in the Federal Register, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information, to solicit comment to—

"(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

"(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

"(iii) enhance the quality, utility, and clarity of the information to be collected; and

"(iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology; and

"(B) for any proposed collection of information contained in a proposed rule (to be reviewed by the Director under section 3507(d)), provide notice and comment through the notice of proposed rulemaking for the proposed rule and such notice shall have the same purposes specified under subparagraph (A) (i) through (iv);

"(3) certify (and provide a record supporting such certification, including public comments received by the agency) that each collection of information submitted to the Director for review under section 3507—

"(A) is necessary for the proper performance of the functions of the agency, including that the information has practical utility;

"(B) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

"(C) reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined under section 601(6) of title 5, the use of such techniques as—

"(i) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

"(ii) the clarification, consolidation, or simplification of compliance and reporting requirements; or

"(iii) an exemption from coverage of the collection of information, or any part thereof;

"(D) is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;

"(E) is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;

"(F) indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified;

"(G) contains the statement required under paragraph (1)(B)(iii);

"(H) has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public;

"(I) uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

"(J) to the maximum extent practicable, uses information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public; and

"(4) place an emphasis on minimizing the burden on small businesses with 50 or fewer employees.

"(d) With respect to information dissemination, each agency shall—

"(1) ensure that the public has timely, equal, and equitable access to the agency's public information, including ensuring such access through—

"(A) encouraging a diversity of public and private sources for information based on government public information,

"(B) in cases in which the agency provides public information maintained in electronic format, providing timely, equal, and equitable access to the underlying data (in whole or in part); and

"(C) agency dissemination of public information in an efficient, effective, and economical manner;

"(2) regularly solicit and consider public input on the agency's information dissemination activities;

"(3) provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products; and

"(4) not, except where specifically authorized by statute—

"(A) establish an exclusive, restricted, or other distribution arrangement that interferes with timely and equitable availability of public information to the public;

"(B) restrict or regulate the use, resale, or redissemination of public information by the public;

"(C) charge fees or royalties for resale or redissemination of public information; or

"(D) establish user fees for public information that exceed the cost of dissemination, except that the Director may waive the application of this subparagraph to an agency, if—

"(i) the head of the agency submits a written request to the Director, publishes a notice of the request in the Federal Register, and provides a copy of the request to the public upon request;

"(ii) the Director sets forth in writing a statement of the scope, conditions, and duration of the waiver and the reasons for granting it, and makes such statement available to the public upon request; and

"(iii) the granting of the waiver would not materially impair the timely and equitable availability of public information to the public.

"(e) With respect to statistical policy and coordination, each agency shall—

"(1) ensure the relevance, accuracy, timeliness, integrity, and objectivity of information collected or created for statistical purposes;

"(2) inform respondents fully and accurately about the sponsors, purposes, and uses of statistical surveys and studies;

"(3) protect respondents' privacy and ensure that disclosure policies fully honor pledges of confidentiality;

"(4) observe Federal standards and practices for data collection, analysis, documentation, sharing, and dissemination of information;

"(5) ensure the timely publication of the results of statistical surveys and studies, including information about the quality and limitations of the surveys and studies; and

"(6) make data available to statistical agencies and readily accessible to the public.

"(f) With respect to records management, each agency shall implement and enforce applicable policies and procedures, including requirements for archiving information maintained in electronic format, particularly in the planning, design and operation of information systems.

"(g) With respect to privacy and security, each agency shall—

"(1) implement and enforce applicable policies, procedures, standards, and guidelines on privacy, confidentiality, security, disclosure and sharing of information collected or maintained by or for the agency;

"(2) assume responsibility and accountability for compliance with and coordinated management of sections 552 and 552a of title 5, the Computer Security Act of 1987 (40 U.S.C. 759 note), and related information management laws; and

"(3) consistent with the Computer Security Act of 1987 (40 U.S.C. 759 note), identify and afford security protections commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of information collected or maintained by or on behalf of an agency.

"(h) With respect to Federal information technology, each agency shall—

"(1) implement and enforce applicable Governmentwide and agency information technology management policies, principles, standards, and guidelines;

"(2) assume responsibility and accountability for information technology investments;

"(3) promote the use of information technology by the agency to improve the productivity, efficiency, and effectiveness of agency programs, including the reduction of information collection burdens on the public and improved dissemination of public information;

"(4) propose changes in legislation, regulations, and agency procedures to improve information technology practices, including changes that improve the ability of the agency to use technology to reduce burden; and

"(5) assume responsibility for maximizing the value and assessing and managing the risks of major information systems initiatives through a process that is—

"(A) integrated with budget, financial, and program management decisions; and

"(B) used to select, control, and evaluate the results of major information systems initiatives.

"§3507. Public information collection activities; submission to Director; approval and delegation

"(a) An agency shall not conduct or sponsor the collection of information unless in advance of the adoption or revision of the collection of information—

"(1) the agency has—

"(A) conducted the review established under section 3506(c)(1);

"(B) evaluated the public comments received under section 3506(c)(2);

"(C) submitted to the Director the certification required under section 3506(c)(3), the proposed collection of information, copies of pertinent statutory authority, regulations, and other related materials as the Director may specify; and

"(D) published a notice in the Federal Register—

"(i) stating that the agency has made such submission; and

"(ii) setting forth—

"(I) a title for the collection of information;

"(II) a summary of the collection of information;

"(III) a brief description of the need for the information and the proposed use of the information;

"(IV) a description of the likely respondents and proposed frequency of response to the collection of information;

"(V) an estimate of the burden that shall result from the collection of information; and

"(VI) notice that comments may be submitted to the agency and Director;

"(2) the Director has approved the proposed collection of information or approval has been inferred, under the provisions of this section; and

"(3) the agency has obtained from the Director a control number to be displayed upon the collection of information.

"(b) The Director shall provide at least 30 days for public comment prior to making a decision under subsection (c), (d), or (h), except for good cause or as provided under subsection (j).

"(c)(1) For any proposed collection of information not contained in a proposed rule, the Director shall notify the agency involved of the decision to approve or disapprove the proposed collection of information.

"(2) The Director shall provide the notification under paragraph (1), within 60 days after receipt or publication of the notice under subsection (a)(1)(D), whichever is later.

"(3) If the Director does not notify the agency of a denial or approval within the 60-day period described under paragraph (2)—

"(A) the approval may be inferred;

"(B) a control number shall be assigned without further delay; and

"(C) the agency may collect the information for not more than 1 year.

"(d)(1) For any proposed collection of information contained in a proposed rule—

"(A) as soon as practicable, but no later than the date of publication of a notice of proposed rulemaking in the Federal Register, each agency shall forward to the Director a copy of any proposed rule which contains a collection of information and any information requested by the Director necessary to make the determination required under this subsection; and

"(B) within 60 days after the notice of proposed rulemaking is published in the Federal Register, the Director may file public comments

pursuant to the standards set forth in section 3508 on the collection of information contained in the proposed rule.

"(2) When a final rule is published in the Federal Register, the agency shall explain—

"(A) how any collection of information contained in the final rule responds to the comments, if any, filed by the Director or the public; or

"(B) the reasons such comments were rejected.

"(3) If the Director has received notice and failed to comment on an agency rule within 60 days after the notice of proposed rulemaking, the Director may not disapprove any collection of information specifically contained in an agency rule.

"(4) No provision in this section shall be construed to prevent the Director, in the Director's discretion—

"(A) from disapproving any collection of information which was not specifically required by an agency rule;

"(B) from disapproving any collection of information contained in an agency rule, if the agency failed to comply with the requirements of paragraph (1) of this subsection;

"(C) from disapproving any collection of information contained in a final agency rule, if the Director finds within 60 days after the publication of the final rule, and after considering the agency's response to the Director's comments filed under paragraph (2), that the collection of information cannot be approved under the standards set forth in section 3508; or

"(D) from disapproving any collection of information contained in a final rule, if—

"(i) the Director determines that the agency has substantially modified in the final rule the collection of information contained in the proposed rule; and

"(ii) the agency has not given the Director the information required under paragraph (1) with respect to the modified collection of information, at least 60 days before the issuance of the final rule.

"(5) This subsection shall apply only when an agency publishes a notice of proposed rulemaking and requests public comments.

"(6) The decision by the Director to approve or not act upon a collection of information contained in an agency rule shall not be subject to judicial review.

"(e)(1) Any decision by the Director under subsection (c), (d), (h), or (j) to disapprove a collection of information, or to instruct the agency to make substantive or material change to a collection of information, shall be publicly available and include an explanation of the reasons for such decision.

"(2) Any written communication between the Administrator of the Office of Information and Regulatory Affairs, or any employee of the Office of Information and Regulatory Affairs, and an agency or person not employed by the Federal Government concerning a proposed collection of information shall be made available to the public.

"(3) This subsection shall not require the disclosure of—

"(A) any information which is protected at all times by procedures established for information which has been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy; or

"(B) any communication relating to a collection of information, the disclosure of which could lead to retaliation or discrimination against the communicator.

"(f)(1) An independent regulatory agency which is administered by 2 or more members of a commission, board, or similar body, may by majority vote void—

"(A) any disapproval by the Director, in whole or in part, of a proposed collection of information that agency; or

"(B) an exercise of authority under subsection (d) of section 3507 concerning that agency.

"(2) The agency shall certify each vote to void such disapproval or exercise to the Director, and explain the reasons for such vote. The Director shall without further delay assign a control number to such collection of information, and such vote to void the disapproval or exercise shall be valid for a period of 3 years.

"(g) The Director may not approve a collection of information for a period in excess of 3 years.

"(h)(1) If an agency decides to seek extension of the Director's approval granted for a currently approved collection of information, the agency shall—

"(A) conduct the review established under section 3506(c), including the seeking of comment from the public on the continued need for, and burden imposed by the collection of information; and

"(B) after having made a reasonable effort to seek public comment, but no later than 60 days before the expiration date of the control number assigned by the Director for the currently approved collection of information, submit the collection of information for review and approval under this section, which shall include an explanation of how the agency has used the information that it has collected.

"(2) If under the provisions of this section, the Director disapproves a collection of information contained in an existing rule, or recommends or instructs the agency to make a substantive or material change to a collection of information contained in an existing rule, the Director shall—

"(A) publish an explanation thereof in the Federal Register; and

"(B) instruct the agency to undertake a rulemaking within a reasonable time limited to consideration of changes to the collection of information contained in the rule and thereafter to submit the collection of information for approval or disapproval under this chapter.

"(3) An agency may not make a substantive or material modification to a collection of information after such collection has been approved by the Director, unless the modification has been submitted to the Director for review and approval under this chapter.

"(i)(1) If the Director finds that a senior official of an agency designated under section 3506(a) is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved and has sufficient resources to carry out this responsibility effectively, the Director may, by rule in accordance with the notice and comment provisions of chapter 5 of title 5, United States Code, delegate to such official the authority to approve proposed collections of information in specific program areas, for specific purposes, or for all agency purposes.

"(2) A delegation by the Director under this section shall not preclude the Director from reviewing individual collections of information if the Director determines that circumstances warrant such a review. The Director shall retain authority to revoke such delegations, both in general and with regard to any specific matter. In acting for the Director, any official to whom approval authority has been delegated under this section shall comply fully with the rules and regulations promulgated by the Director.

"(j)(1) The agency head may request the Director to authorize collection of information prior to expiration of time periods established under this chapter, if an agency head determines that—

"(A) a collection of information—

"(i) is needed prior to the expiration of such time periods; and

"(ii) is essential to the mission of the agency; and

"(B) the agency cannot reasonably comply with the provisions of this chapter within such time periods because—

"(i) public harm is reasonably likely to result if normal clearance procedures are followed; or

"(ii) an unanticipated event has occurred and the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information related to the event or is reasonably likely to cause a statutory or court-ordered deadline to be missed.

"(2) The Director shall approve or disapprove any such authorization request within the time requested by the agency head and, if approved, shall assign the collection of information a control number. Any collection of information conducted under this subsection may be conducted without compliance with the provisions of this chapter for a maximum of 90 days after the date on which the Director received the request to authorize such collection.

"§3508. Determination of necessity for information; hearing

"Before approving a proposed collection of information, the Director shall determine whether the collection of information by the agency is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility. Before making a determination the Director may give the agency and other interested persons an opportunity to be heard or to submit statements in writing. To the extent, if any, that the Director determines that the collection of information by an agency is unnecessary for any reason, the agency may not engage in the collection of information.

"§3509. Designation of central collection agency

"The Director may designate a central collection agency to obtain information for two or more agencies if the Director determines that the needs of such agencies for information will be adequately served by a single collection agency, and such sharing of data is not inconsistent with applicable law. In such cases the Director shall prescribe (with reference to the collection of information) the duties and functions of the collection agency so designated and of the agencies for which it is to act as agent (including reimbursement for costs). While the designation is in effect, an agency covered by the designation may not obtain for itself information for the agency which is the duty of the collection agency to obtain. The Director may modify the designation from time to time as circumstances require. The authority to designate under this section is subject to the provisions of section 3507(f) of this chapter.

"§3510. Cooperation of agencies in making information available

"(a) The Director may direct an agency to make available to another agency, or an agency may make available to another agency, information obtained by a collection of information if the disclosure is not inconsistent with applicable law.

"(b)(1) If information obtained by an agency is released by that agency to another agency, all the provisions of law (including penalties which relate to the unlawful disclosure of information) apply to the officers and employees of the agency to which information is released to the same extent and in the same manner as the provisions apply to the officers and employees of the agency which originally obtained the information.

"(2) The officers and employees of the agency to which the information is released, in addition, shall be subject to the same provisions of law, including penalties, relating to the unlawful disclosure of information as if the information had been collected directly by that agency.

"§3511. Establishment and operation of Government Information Locator Service

"In order to assist agencies and the public in locating information and to promote information sharing and equitable access by the public, the Director shall—

"(1) cause to be established and maintained a distributed agency-based electronic Government Information Locator Service (hereafter in this section referred to as the 'Service'), which shall identify the major information systems, holdings, and dissemination products of each agency;

"(2) require each agency to establish and maintain an agency information locator service as a component of, and to support the establishment and operation of the Service;

"(3) in cooperation with the Archivist of the United States, the Administrator of General Services, the Public Printer, and the Librarian of Congress, establish an interagency committee to advise the Secretary of Commerce on the development of technical standards for the Service to ensure compatibility, promote information sharing, and uniform access by the public;

"(4) consider public access and other user needs in the establishment and operation of the Service;

"(5) ensure the security and integrity of the Service, including measures to ensure that only information which is intended to be disclosed to the public is disclosed through the Service; and

"(6) periodically review the development and effectiveness of the Service and make recommendations for improvement, including other mechanisms for improving public access to Federal agency public information.

"§3512. Public protection

"(a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to maintain or provide information to any agency if the collection of information involved was made after December 31, 1981, and at the time of the failure did not display a current control number assigned by the Director, or fails to state that such request is not subject to this chapter.

"(b) Actions taken by agencies which are not in compliance with subsection (a) of this section shall give rise to a complete defense or bar to such action by an agency, which may be raised at any time during the agency decision making process or judicial review of the agency decision under any available process for judicial review.

"§3513. Director review of agency activities; reporting; agency response

"(a) In consultation with the Administrator of General Services, the Archivist of the United States, the Director of the National Institute of Standards and Technology, and the Director of the Office of Personnel Management, the Director shall periodically review selected agency information resources management activities to ascertain the efficiency and effectiveness of such activities to improve agency performance and the accomplishment of agency missions.

"(b) Each agency having an activity reviewed under subsection (a) shall, within 60 days after receipt of a report on the review, provide a written plan to the Director describing steps (including milestones) to—

"(1) be taken to address information resources management problems identified in the report; and

"(2) improve agency performance and the accomplishment of agency missions.

"§3514. Responsiveness to Congress

"(a)(1) The Director shall—

"(A) keep the Congress and congressional committees fully and currently informed of the major activities under this chapter; and

"(B) submit a report on such activities to the President of the Senate and the Speaker of the House of Representatives annually and at such other times as the Director determines necessary.

"(2) The Director shall include in any such report a description of the extent to which agencies have—

"(A) reduced information collection burdens on the public, including—

"(i) a summary of accomplishments and planned initiatives to reduce collection of information burdens;

"(ii) a list of all violations of this chapter and of any rules, guidelines, policies, and procedures issued pursuant to this chapter;

"(iii) a list of any increase in the collection of information burden, including the authority for each such collection; and

"(iv) a list of agencies that in the preceding year did not reduce information collection burdens by at least 10 percent pursuant to section 3505, a list of the programs and statutory responsibilities of those agencies that precluded that reduction, and recommendations to assist those agencies to reduce information collection burdens in accordance with that section;

"(B) improved the quality and utility of statistical information;

"(C) improved public access to Government information; and

"(D) improved program performance and the accomplishment of agency missions through information resources management.

"(b) The preparation of any report required by this section shall be based on performance results reported by the agencies and shall not increase the collection of information burden on persons outside the Federal Government.

"§3515. Administrative powers

"Upon the request of the Director, each agency (other than an independent regulatory agency) shall, to the extent practicable, make its services, personnel, and facilities available to the Director for the performance of functions under this chapter.

"§3516. Rules and regulations

"The Director shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this chapter.

"§3517. Consultation with other agencies and the public

"(a) In developing information resources management policies, plans, rules, regulations, procedures, and guidelines and in reviewing collections of information, the Director shall provide interested agencies and persons early and meaningful opportunity to comment.

"(b) Any person may request the Director to review any collection of information conducted by or for an agency to determine, if, under this chapter, the person shall maintain, provide, or disclose the information to or for the agency. Unless the request is frivolous, the Director shall, in coordination with the agency responsible for the collection of information—

"(1) respond to the request within 60 days after receiving the request, unless such period is extended by the Director to a specified date and the person making the request is given notice of such extension; and

"(2) take appropriate remedial action, if necessary.

"§3518. Effect on existing laws and regulations

"(a) Except as otherwise provided in this chapter, the authority of an agency under any other law to prescribe policies, rules, regulations, and procedures for Federal information resources management activities is subject to the authority of the Director under this chapter.

"(b) Nothing in this chapter shall be deemed to affect or reduce the authority of the Secretary of Commerce or the Director of the Office of Management and Budget pursuant to Reorganization Plan No. 1 of 1977 (as amended) and Executive order, relating to telecommunications and information policy, procurement and management of telecommunications and information systems, spectrum use, and related matters.

"(c)(1) Except as provided in paragraph (2), this chapter shall not apply to obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions—

"(A) during the conduct of a Federal criminal investigation or prosecution, or during the disposition of a particular criminal matter;

"(B) during the conduct of—

"(i) a civil action to which the United States or any official or agency thereof is a party; or

"(ii) an administrative action or investigation involving an agency against specific individuals or entities;

"(C) by compulsory process pursuant to the Antitrust Civil Process Act and section 13 of the Federal Trade Commission Improvements Act of 1980; or

"(D) during the conduct of intelligence activities as defined in section 4–206 of Executive Order No. 12036, issued January 24, 1978, or successor orders, or during the conduct of cryptologic activities that are communications security activities.

"(2) This chapter applies to obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions during the conduct of general investigations (other than information collected in an antitrust investigation to the extent provided in subparagraph (C) of paragraph (1)) undertaken with reference to a category of individuals or entities such as a class of licensees or an entire industry.

"(d) Nothing in this chapter shall be interpreted as increasing or decreasing the authority conferred by Public Law 89–306 on the Administrator of the General Services Administration, the Secretary of Commerce, or the Director of the Office of Management and Budget.

"(e) Nothing in this chapter shall be interpreted as increasing or decreasing the authority of the President, the Office of Management and Budget or the Director thereof, under the laws of the United States, with respect to the substantive policies and programs of departments, agencies and offices, including the substantive authority of any Federal agency to enforce the civil rights laws.

"§3519. Access to information

"Under the conditions and procedures prescribed in section 716 of title 31, the Director and personnel in the Office of Information and Regulatory Affairs shall furnish such information as the Comptroller General may require for the discharge of the responsibilities of the Comptroller General. For the purpose of obtaining such information, the Comptroller General or representatives thereof shall have access to all books, documents, papers and records, regardless of form or format, of the Office.

"§3520. Authorization of appropriations

"There are authorized to be appropriated to the Office of Information and Regulatory Affairs to carry out the provisions of this chapter such sums as may be necessary.".

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall take effect October 1, 1995.

Mr. DOLE. Madam President, I move that the Senate disagree to the amendment of the House, agree to the conference requested by the House, and the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer appointed Mr. ROTH,

Mr. COHEN, Mr. COCHRAN, Mr. GLENN, and Mr. NUNN conferees on the part of the Senate.

ORDERS FOR THURSDAY, MARCH 16, 1995

Mr. DOLE. Madam President, I ask unanimous consent when the Senate completes its business today it stand in adjournment until the hour of 9 a.m. Thursday, March 16, 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; that there then be a period for the transaction of morning business not to extend beyond the hour of 10 a.m., with Senators permitted to speak for up to 5 minutes each, with the exception of the following: Senator CRAIG, 35 minutes; Senator PRYOR, 15 minutes; Senator DORGAN, 10 minutes.

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

PROGRAM

Mr. DOLE. For the information of all Senators, if we can reach an agreement for a short list of amendments to the supplemental appropriations bill, it will be my intention to call the bill back before the Senate in order to complete action on it expeditiously, and I think that means around 2 o'clock in the afternoon. Then we would hope to move to the line-item veto at that point.

I urge my colleagues—I know everybody feels compelled, because it is permitted in the Senate, to offer everything that they have ever thought of on every bill that comes through here.

I hope, at least it is my understanding, the President very much wants the supplemental appropriation bill. The Defense Department has been calling on a daily basis. I have notified the White House that if they were really interested in getting this bill done maybe they could help talk some of their colleagues off offering amendments, so we are working on that. We will be working on it overnight.

If an amendment is acceptable, that is one thing. If it is something that is going to take a long time to debate, then we would hope it would be called up at a later time.

ADJOURNMENT UNTIL 9 A.M. TOMORROW

Mr. DOLE. If there is no further business to come before the Senate, I now ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:50 p.m., adjourned until Thursday, March 16, 1995, at 9 a.m.