SENATE—*Friday, March 24, 1995*

(Legislative day of Thursday, March 23, 1995)

The Senate met at 9:45 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND.]

PRAYER

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

Let us pray:

Almighty God, Sovereign of this Nation and gracious Father of our lives, You have placed a homing spirit within us and made our hearts restless until they rest in You. The heart of the matter always is the heart. Our hearts are lonely until they return and find their home in You. You receive us as we are with unqualified grace. Thank You, Father, for the strength, security, and serenity You provide us in the midst of strain and stress. You offer us perfect peace in the midst of pressure and the tyranny of the urgent.

We also thank You that we find each other as we return to You. You give us the miracle of unity in diversity, oneness in spite of our differences. You hold us together when otherwise ideas, policies, and resolutions would divide us. Make us sensitive to one another, especially when a vote makes conspicuous our differences. Help us to reach out to each other to affirm that we are one in the calling to lead our Nation. May we neither savor our victories or nurse our disappointments, but press on.

So we fall on the knees of our hearts seeking Your blessing for our work this day. To know You is our greatest privilege and to grow in our knowledge of Your will is our most urgent need. Our strength is insufficient; bless us with Your wisdom. Our vision is incomplete; bless us with Your hope. Carpe diem. We grasp the day. In Your holy name, Yahweh, through Christ, our Lord. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. COATS. Mr. President, this morning, leader time has been reserved, and there will be a period for morning business until the hour of 10 a.m. At the hour of 10 a.m., the Senate will begin consideration of H.R. 831, the self-employed health insurance deduction bill. That bill will be considered under a 5-hour time limitation which was agreed upon last evening.

The majority leader has announced that there will be no rollcall votes during today's session of the Senate. Senator DOLE has also indicated that it will be his intention to proceed to the regulation moratorium bill on Monday.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. INHOFE). Under the previous order, the Senator from Arizona [Mr. MCCAIN] is recognized to speak for up to 15 minutes.

The distinguished Senator from Arizona.

Mr. MCCAIN. Mr. President, I expect to be joined in a few minutes by my friend and colleague from the other side of the aisle, Senator KERREY of Nebraska. We may engage in a brief colloquy after our remarks. But I will begin with my remarks.

CIVILITY IN PUBLIC DISCOURSE

Mr. MCCAIN. Mr. President, there has been considerable media discussion lately about the decline of civility in our public discourse. I agree that political rhetoric often seems quite harsh these days. I have also observed that the people who report on politicians, and who are often among the first to decry the incivility of politics, seem more inclined lately to allow their reporting to cross from tough to cruel.

That said, I cannot claim with certainty that manners in either politics or the press have truly degenerated to new lows. I suspect that every American generation in our history has had occasion to be repulsed by unnecessarily mean attacks from within and upon politics that are unavoidable in a free society. Political cartoonists, for instance, have throughout our history spared few public figures from ridicule. Often the ridicule is earned. Sometimes it is not. Sometimes even the license given cartoonists cannot excuse an especially malignant attack.

Such was the case last Sunday when Mr. Garry Trudeau decided to use his comic strip to scorn the military service of the majority leader, Senator DOLE.

The author of the comic strip "Doonesbury," Mr. Trudeau has made it his business to lampoon not only Republicans, but anyone whose devotion to the looniest of left wing causes he suspects is less robust than his own. His increasingly strident attacks have forsaken whatever humor might have once distinguished his cartoons from the silly rantings of your garden variety conspiracy theorist. Even former admirers of his comic strip tell me that he has become decidedly unfunny in recent years.

For this singular contribution to American culture, Mr. Trudeau feels he should be permitted to dispense with the encumbrances of good manners. Apparently, artists of his caliber cannot be burdened by the bonds that hold most of us together in our disparate society—bonds like honor and respect.

Ordinary Americans, of course, feel it appropriate to show gratitude to Americans who have ransomed their life to the defense of their freedom. Ordinary Americans would recoil from the suggestion that there is humor in ridiculing the sacrifice borne by an American who took up arms to defend them, and sustained grave injury in that cause.

Ordinary Americans, Mr. President, would honor a service rendered to them at such great cost.

But not Mr. Trudeau. His is far too important a calling for it to be constrained by humility, gratitude, or ordinary good taste. I do not want to dwell too much on Mr. Trudeau. He is not really worth the ink used to ridicule him. Suffice it to say that I hold him in utter contempt. I hold him in contempt for his small heart, for the cruelty he inflicts on others to obscure the weaknesses in his own character, and for his immense ingratitude to those who have had the strength of character to protect Mr. Trudeau's right to pollute—for profit, of course—political debate in America.

I would rather talk a little bit about BOB DOLE. Anyone who has read Richard Ben Kramer's book, "What It Takes," knows what kind of man is BOB DOLE. He answered his country's call to take up arms in a war for the future of the world. He helped save that world. Of course, he did so in a time when even political cartoonists believed such service to be honorable.

As a proud young man of great promise and an excellent athlete, BOB DOLE went to Italy. Like others of his generation, he paid a dear price for his love of country. He was gravely wounded. That he recovered at all from that wound is testament to the extraordinary courage that defines BOB DOLE, and that sets him apart from others.

BOB DOLE bears the discomfort and the challenge of that wound today, 50 years after he sustained it. He bears it with a quiet dignity that is—in every respect—worthy of our utmost admiration. I have known him for a long time now. I have never—never—heard him complain about his injury even though

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

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I know not a waking hour passes when he does not feel that pain. Neither have I ever heard him use his injury for political advantage, although he is—as he should be—proud of his service. Most people—indeed, almost everyone save Mr. Trudeau—is proud of him for his service and for the dignity with which he has accepted its consequences.

The problem for Mr. Trudeau, I suspect, is that he has never done anything for which he can be proud and therefore cannot understand how other people could take pride in the moment when they answered their country's call.

Mr. President, I am the son and grandson of admirals. Military service has been my family's business since the American Revolution. I have thus been blessed to have spent much time in the company of heroes. I know what they look like. I know how they act. BOB DOLE is the genuine article. Duty and honor are not relative concepts to him. They are absolute standards. Thank God, ours is still a country that knows the worth of such men even if the odd cartoonist does not.

Mr. President, I have a hard time maintaining self-restraint when I contemplate the injustice of Mr. Trudeau's disrespect for the brave service of a young man who left his family and friends in a small town in Kansas to defend his country's interests on foreign soil, and who as a consequence of his courage helped make the world safe—even for cartoonists.

It is a pity Mr. Trudeau never bothered to wear the uniform of his country. The experience would have no doubt improved his manners. Since little is likely to improve the poverty of his manners now, perhaps he could just limit his cartoon to a subject better matched to his skills and his character—perhaps the O.J. trial. At a minimum, if Mr. Trudeau cannot find it in himself to honor the service of people like BOB DOLE, I would hope he could just remain silent. I think he will find that fewer and fewer people are listening anyway.

Mr. President, I would like to yield at this time to the Senator from Nebraska and possibly at the end engage in a short discourse with the Senator from Nebraska.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. Mr. President, I must state at the beginning I normally read, when I have the opportunity, Mr. Trudeau's comics or cartoons and find much humor in them. In this one, however, not only did I find no humor but I found in it great sadness and much in fact to be ridiculed.

First, let me say that I have only on a number of relatively small occasions been moved by the words of another politician. I say that straight out. I sometimes say that I was moved. But it is rarely the case where I am genuinely and deeply moved.

One such occasion was in, I believe, 1988 when—it might have been 1987—Senator DOLE announced his intent to run for the Presidency in Russell, KS. I watched him on television and watched him recollect his homecoming to Russell, KS, and the kindness that was expressed by the people of Russell, KS, to him, and he could not go on.

Now, this is a man whose persona is, to say the least, a tough persona. This is a man, as the Senator from Arizona has just said, who never complains about his injury. At least he has not complained to me, he has not complained in my presence, and he has not complained in the presence of anybody that I know. This is a man who does not talk about his injuries and does not talk about his injuries easily when he does.

For the cartoonist to portray Mr. DOLE as sort of playing upon his war wound is a lie on its face. It does not happen. Quite the contrary, Mr. President. Senator DOLE, as I indicated, feels great warmth and is moved by people who saved his life. I have heard Senator DOLE talk about the people who restored his life and put his life back together.

On a second occasion when I was moved—I must say I find it odd that Senator DOLE, who is supposed to be one of the meanest guys in politics today—that is his reputation anyway—has on two occasions moved me so deeply.

The second one was I believe the Larry King interview, or it might have been—it was not Larry King. It was one of the other journalists who was interviewing Senator DOLE at length, and he began to talk about his father coming to visit him while he was in the hospital.

On many occasions when asked how is it that I could admire BOB DOLE, since he is the Republican leader and I am a proud member of the Democratic party, how is it that I could admire BOB DOLE and like BOB DOLE, my answer almost always begins with a declaration that this man loves his country and is a patriot.

It guides him, in the end, to make decisions that sometimes are not in his best political interest. He did not serve in World War II as a consequence of calculating what was going to be in his best interest. It did not turn out to be in his best physical interest.

He started to describe this moment when his father came to see him and described the swollen ankles of his father. He, once again, could not go on. He was moved, not by his own suffering, Mr. President, not by his wound.

He did not go before this journalist, he did not stand before an audience in Russell, KS, and say, "Pity me for this wound." Quite the contrary. What he did on both occasions was say, to a certain extent: Pity the audience. My sympathy goes to them. My appreciation goes to them. My respect and admiration go to them for what they did for me.

I have great personal respect for Senator DOLE and admiration for his patriotism. And, above all of the things, his ability to put his life back together, his capacity to put his life back together, I admire deeply.

He has never worn his war record or his injuries in front of the public as if it was some sort of badge of honor. I have never heard him talk about, never heard him express that. Quite the contrary.

So I, like the Senator from Arizona, am deeply offended by this cartoon. It says something about Americans who served that is reprehensible. And it says something about a great American patriot that is particularly reprehensible.

Very often those of us who have been wounded are described that way. "BOB KERREY, wounded in the war in Vietnam." I do not ask to be described that way, but that is how it occurs. We are described that way.

And in today's modern journalism, the way things get beat around electronically, very often that comes back and somebody says, "Well, I saw you made a statement that says you were wounded in the war." I did not make a statement. And Senator DOLE does not talk about his injuries, but he gets labeled with it.

Unfortunately, today, in modern politics, the tendency is to look for the worst. And in Senator DOLE, not only do we not have the worst, we have the best impulses of human beings and of Americans—an American who was willing to serve and willing to come back and not with bitterness say, "You owe me," but an American who was willing to come back and say, "The debt is still on my side. I feel compassion to those in Russell, KS, who welcomed me home. I feel compassion and respect for my father, who did the same. I feel compassion and respect for all Americans who continue to try to struggle not just with their lives but to overcome adversity, as well."

Mr. President, I yield the floor.

I would be pleased to engage in a colloquy with my friend from Arizona.

Mr. MCCAIN. Mr. President, I just want to thank my friend from Nebraska for stepping forward.

We cannot do anything about someone like Mr. Trudeau, but we intend to try.

I do believe that when something as egregious and outrageous as this is—and, frankly, Senator DOLE would not like to hear me say this—but it has to hurt when one's service and sacrifice to one's country is demeaned and denigrated in this fashion.

I am grateful that someone like Senator KERREY would step forward and

condemn it. I do not know if it stops this kind of thing. I do not know what beneficial effect it has. But I do know this: For Senator KERREY and me to remain silent in the face of this outrage would be a dereliction of duty on our part, if I may use a phrase from our previous incarnation.

So I want to thank Senator KERREY for saying this.

I do not intend to belabor the point, and I know Senator KERREY does not, but I hope the American people know—and especially BOB DOLE knows—that the cynicism and sarcasm of Mr. Trudeau is not shared by the overwhelming majority of the American people.

Mr. KERREY. Mr. President, if I could add one additional thing.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. Mr. President, the public should not view this as a couple of old veterans wandering down here to the floor to defend another old veteran that got beat up by a cartoonist.

Senator DOLE has the capacity to make fun of himself, as I do and as does the Senator from Arizona. This is not saying our skin is so thin we cannot take a cartoonist's deprecating comments about us. Lord knows, it happens all the time. It is hard to pick up an account of something you have said or done and not find something being said in a deprecating fashion. I do not mind that at all. I do not object to any cartoonist or journalist that wants to take some foible of mine, a weakness of mine, and magnify it and have some fun with it.

But that is not what is occurring in this case. There is a deep offense given, as a consequence, to isolating something that, in fact, does not occur. Senator DOLE does not wear his wound out in front of the public. He does not try to use it to gain some kind of advantage. Quite the contrary is the case.

I am here this morning to say that I admire that. Indeed, beyond admiring it, I believe that it is sort of something that Americans need to emulate—to emulate a man who says, "I may be suffering, but my concern is for my friends and neighbors who welcomed me home. My concern is with my father who made a trip to Chicago to visit me. My concern is still with others who are struggling in their lives."

I yield the floor.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I see the managers are waiting. I would like to make one additional comment on a different subject.

THE LINE-ITEM VETO

Mr. MCCAIN. Mr. President, last night we passed in the Senate something that I have been working on for 10 years. I know that everyone is aware that it did not happen because of the efforts only of Senator COATS and myself.

We are very grateful for the help and efforts that Senator DOLE engaged in in bringing together enough of us that it was an overwhelming victory. Senator DOMENICI and Senator STEVENS were very instrumental in that.

And, of course, we respected very much the participation of Senator BYRD. I think years from now when people read the CONGRESSIONAL RECORD of the debate that was conducted, I think they will be illuminated by his remarks.

Also, Senator EXON, the manager on the other side of the bill, and Senator LEVIN, whose amendment I think was extremely helpful.

Sheila Burke spent many, many hours in meetings in an effort to bring Republicans together on this issue. Sharon Soderstrom, the able assistant of Senator COATS, and Megan Gilly did an outstanding job; David Crane, Bill Hoagland, Dave Hoppe, Eric Ueland, Joe Donoghue, and Mark Buse.

So I would like to thank all of them for their enormous assistance, not only in recent weeks but in recent years, in helping us achieve what I think is one of the most important changes in the way that this country does business since 1974, when the Budget and Impoundment Act was passed.

I thank my colleagues for their patience.

Mr. President, I yield back the remainder of my time.

SANBORNTON MAN CROSSES REMAGEN BRIDGE IN WORLD WAR II

Mr. SMITH. Mr. President, I rise today to pay tribute to Guy J. Giunta, Sr., a resident of Sanbornton, NH, who played a significant role in the infamous capture by the Americans of the bridge at Remagen during World War II. This offensive resulted in shortening the war and saving thousands of lives.

Guy was a private first class in the 78th Infantry Division. He was one of the American soldiers who crossed the bridge at Remagen over the Rhine River, 50 years ago this month. This battle illustrated the American military strength which caught the Germans by surprise. The events of March 7, 1945, were known as the "Miracle of Remagen."

Guy left his native Italy for the United States in 1927 where he worked as a machinist making parts for turbines for the U.S. Navy when the war broke out. Deferments as an essential worker kept him out of the war until 1943, but after learning of friends dying overseas, he enlisted in a war that included his birthland.

When soldiers reached a plateau above Remagen on March 7, they saw German troops and civilians retreating across the Ludendorff Bridge. Violating instructions to proceed down the Rhine, Gen. William M. Hoge ordered his men to take the bridge. After refusing, the men heard a "whoosh" as 660 pounds of dynamite lifted the bridge from its stone piers.

There was still shooting as soldiers fought their way up the big cliff on the eastern end of the bridge. Twenty-four Americans died on or around the bridge. Guy Giunta was one the 600 brave men who were involved in taking the bridge, including 200 engineers who cut wires to the unexploded dynamite. Guy's medals from the war include three major battle stars: the Ardennse, the Rhineland, and Central Europe.

Guy Giunta is a retired Westinghouse machinist. His wife, Rina Passi, also a native Italian, didn't meet her future husband until after the war, but knew of him because she translated his mother's letters to him from Italian into English. They have lived in a white farmhouse in Sanbornton since 1985.

I commend Guy for sharing his experiences at this important World War II battle with many in New Hampshire. His courage and patriotism are an inspiration to us all. It is an honor to represent Guy Giunta, Sr., and his family in the U.S. Senate.

TRIBUTE TO DICK REINERS

Mr. DASCHLE. Mr. President, today I want to take a moment to commemorate the long and distinguished life of my dear friend, Richard H. Reiners, an outstanding American, who passed away earlier this year.

Dick Reiners was born September 24, 1907, on a small farm east of Lennox, SD, and passed away on January 15, 1995, at his rural home north of Worthing, SD. Throughout his life he was dedicated to his family, his community, and the land in which he lived.

As a father and husband, Dick epitomized the term "family values." He was faithful, honest, and loyal and he passed those values on to his children and grandchildren. As a member of the community, Dick was constantly active in improving the quality of people's lives. He served on numerous boards, including his church, his children's school district, the Farmers Home Administration, and the South Dakota Farmers Union. He was also actively involved in politics and labored tirelessly for the people he believed in.

As a farmer, Dick held a reverence for the land and its capacity for production. He was a hard worker and an eternal optimist.

Dick spoke his mind. He never gave up. He was always a kind and thoughtful man.

During my travels as a U.S. Senator, I am constantly humbled by the people of my State—people like Dick

Reiners—and the basic principles by which they live their lives: a love of family, an obligation to community service, and a strong commitment to an honest day's work. Those who knew Dick Reiners learned much from him, and I am honored to say that he was my friend. He will not be forgotten.

TRIBUTE TO THE 87TH ENGINEER BATTALION (HEAVY PONTOON)

Mr. NUNN. Mr. President, I rise today to pay tribute to an outstanding Army organization in recognition of its distinguished service to this Nation and extraordinary performance during World War II. The 87th Engineer Battalion was the first heavy pontoon battalion activated at Fort Benning, GA, on August 1, 1940. Also trained at Fort Benning, this battalion went ashore at Utah Beach in the Normandy landing to build the bridges needed to liberate France. Among the many rivers that had to be crossed were the Meuse, the Saar, and the Moselle. The 87th Engineers bridged them all.

This brought the 87th Engineer Battalion to the most awesome and difficult of all European rivers, the Rhine. Fifty years ago today, on March 24, 1945, the 87th Engineer Battalion made history when they constructed the longest pontoon bridge in the world across the Rhine River at Oppenheim. Despite shortages of personnel and equipment, the 87th was ordered to move Patton's 3d Army across the Rhone. They built a 1,237 foot span in 13 hours while under constant enemy attack. Their efforts resulted in the establishment of the second American bridgehead across the Rhine and contributed directly to the overall success of Allied operations. When they were not building bridges, the soldiers of the 87th Engineer Battalion assisted in hauling thousands of tons of critical supplies from the beaches to the interior depots. Their successful accomplishment of this critical mission helped to maintain the Allied momentum throughout the war.

The soldiers of the 87th Engineer Battalion repeatedly distinguished themselves as professional soldiers, technically competent engineers, and great Americans whose performance of duty was outstanding.

For their efforts and impressive successes, it is my privilege to wish the World War II veterans of the 87th Engineer Battalion the best in the years ahead and join the Nation in expressing our heartfelt thanks for their dedication and selfless devotion and service to the United States of America.

GREEK INDEPENDENCE DAY 1995

Mr. LIEBERMAN. Mr. President, tomorrow marks the 174th anniversary of the opening of the struggle by the Greek people for independence from the Ottoman Empire. I am honored to be a sponsor of the resolution designating tomorrow, March 25, 1995, as Greek Independence Day: A National Day of Celebration of Greek and American Democracy.

Greek Independence Day celebrates the independence the Greek people achieved after almost 400 years of foreign control. In all those years of domination and repression, the people of Greece retained their passion for democracy. This passion is alive and well today.

The United States and Greece have a long history of shared democratic ideals and beliefs, when our Founding Fathers designed the American form of government, they took inspiration from the democratic traditions of ancient Greece. Later, Greek patriots in the struggle against the Ottoman Sultan followed the example of the American Revolution in their fight for freedom and their efforts to design their new government.

In this century, Greece has been an outstanding ally and leader in the fight for democracy; 9 percent of all Greeks, gave their lives to help stop the tyranny of Hitler. Together Greece and the United States fought against communism throughout the cold war and together we must work to solve the problems of the post-cold-war era.

On this special occasion, it is fitting to pay tribute to all the contributions that the Greek people have made to American life, both as valuable members of our own society and as members of a nation that was the birthplace of democracy.

GREEK INDEPENDENCE CELEBRATION

Mr. MOYNIHAN. Mr. President, I rise once again to join the Greek American community as they celebrate the 174th anniversary of the beginning of their revolution for independence from under the yoke of the Ottoman Empire.

I and 47 of my colleagues in the Senate jointed together to commemorate this historic event by cosponsoring Senate Resolution 79, a resolution commemorating March 25, 1994, as Greek Independence Day: A National Day of Celebration of Greek and American Democracy.

From their first settlement in the 18th century in St. Augustine, FL, to one of the largest Greek communities in America, Astoria, NY, the Greek people have been an influential segment of American society. Their history, culture, language, religion, and of course native culinary artistry, have enriched all of America. Greece has contributed great things in the areas of arts, education, medicine, and philosophy, but no contribution was more precious than that of democracy.

Born in Athens during the age of Pericles and nurtured in the United States, the principles of democracy are now being practiced throughout the world. This new wave of democracy, would never have come to fruition had it not been for Hellenistic political thought. We will always be indebted to Greece for giving us this most precious gift.

AG WEEK

Mr. DOLE. Mr. President. This week is National Ag Week. It is the one week of the year that we take time out to applaud America's farmers for what they give to us every week of the year. Undoubtedly, they are the most progressive, most efficient, and most productive in the world.

American agriculture is an industry to be proud of. America exports more than 43 billion dollar's worth of food products every year—that is a trade surplus of $17 billion. Agriculture also employs more that 21 million Americans.

But those numbers don't tell the whole story. Every day, Americans eat. So every day, we all depend on the American farmer. We expect the best from our farmers—and they deliver. We have a cheap, wholesome, safe, and dependable food supply. No doubt about it, we as consumers are getting a pretty good deal.

Agriculture has made exciting advances this last year. Most important, GATT and NAFTA have opened up new trade opportunities for American agriculture. Finally, America's farmers will gain access to millions of new customers around the world.

At home, Republicans are leading the charge to reduce the regulatory, paperwork, and tax burdens which depress the farmer's bottom line. As we work to rein in the Federal Government, we will focus on preserving the programs that advance American agriculture in the world market place.

Today, agriculture is on the verge of a new era. I believe that 100 years from now, historians will look back and recognize this time as a turning point in the history of American agriculture. Both locally and globally, things are changing fast.

Agriculture is now a global industry—an industry where American farmers will play an increasingly important role. The Census Bureau estimates that the world population will increase by 50 percent in the next 20 years. Today, 1 American farmer can feed 129 people. Tomorrow that farmer must feed more.

America's farmers have already started preparing to meet these demands. Less than 100 years ago, the first gasoline tractor was built. Now, farmers are using satellite technology to customize planting and fertilizer use. That increases yields, reduces costs, and benefits the environment. These are the types of innovative programs we should encourage in the 1995 farm bill.

Mr. President, there is a saying in Kansas: If you do not eat, then do not worry about the farmer. So this week, National Ag Week, we recognize that each of us has a vested interest in the vitality of American agriculture. I look forward to working with my colleagues during this pivotal year to ensure that American agriculture remains a world leader in this new era.

NATIONAL AGRICULTURE WEEK

Mr. BAUCUS. Mr. President, today, as America celebrates National Agriculture Week, I rise to pay tribute to our country's farmers and ranchers.

THE GROWING SEASON

This Tuesday was the first day of spring. The time of rebirth and renewal. All over the country, farmers are preparing to till the soil and plant the seeds that they hope will lead to a bountiful harvest. Ranchers see newborn calves and lambs. In Montana and across America, producers are getting ready for the future with hope and confidence.

They know only too well that lack of rain, too much rain, or other uncontrollable natural events can destroy their crop. They know they are in a risky business. And yet they continue to brave the risks and work long hours, because of the satisfaction that comes with working and living on your own land.

These are hard working folks. They are survivors who make up Montana's number one industry, creating nearly $2 billion a year for our economy. And their work gives Americans the best, cheapest and safest food supply in the world.

BEFORE THE FARM PROGRAM

Today we take all that for granted. We think it is natural. But it is not. It is the result of careful policy, and cooperation between producers, consumers, and government.

As we begin to redraft our farm bill this year—and as some with short memories call for eliminating farm programs completely—we should remember what happened before we had any farm programs.

In those days, producers lived through drastic cycles of boom and bust. A hard-working and prosperous family one year could be destitute the next.

As Mike Malone recalls in his book "Montana: A History of Two Centuries":

> During 1929–1930, a new ordeal of drought and depression began in Montana . . . By midsummer of that terrible year, twenty-eight of Montana's fifty-six counties had filed for aid from the Red Cross. Most of those counties lay in the arc of dry-farming and stockgrowing lands that reached from the High Line north of the Missouri River to the southeast along the Dakota state line . . .
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> An amount of wheat worth $100 in 1920 brought only $19.23 in 1932. Beef cattle sold for $9.10 per hundredweight in 1929; in 1934, the price was only $3.34. Sheep brought $8.14 per hundredweight in 1929 but only $3.12 in 1934.
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> Daniels County, in the state's northeastern corner, typified the crisis. During the good years of the late 1920s, the country seat, Scobey, had advertised itself as the world's largest wheat shipping point. By the spring of 1933, 3,500 of the county's 5,000 people needed relief assistance.

SUCCESS OF AMERICAN AGRICULTURE

This disaster was only the worst in a series. The heartland suffered equally traumatic disasters in 1893, 1907 and 1920. But this time, Franklin Roosevelt responded by creating the first Federal farm support programs.

Since then, we have had good times and bad. But farm programs have prevented crises on that scale. And during this time, American farmers have created a productive revolution unmatched in history.

They have revolutionized agricultural productivity. They have used hard work and state-of-the-art research, to develop new sustainable farming techniques, thus protecting our natural resources. And they continue to be most productive agricultural producers in the world.

According to USDA's Economic Research Service, farm output per unit of input increased by 26 percent between 1982 and 1991.

As a result, Americans spend the lowest amount of their disposable income on food of any nation in the world. Just 9.3 percent, less than a dime in a dollar of income.

THE 1995 FARM BILL

Today, if the Congress goes too far in a thoughtless rush to eliminate farm programs simply for the sake of cutting, we could return to those days of boom and bust.

Less severe consequences could include lower soil and water quality. Loss of wildlife habitat.

Lower farm incomes, and thus higher rates of outmigration from rural America. From the consumer's point of view, if we are not careful, America could wind up depending on imports of food to give our citizens enough to eat each day.

We must help our producers make American agriculture more competitive and more profitable in the international market place. We must continue to develop new sustainable farming techniques. We must make sure the children and grandchildren of today's rural families can still live and work on their own land.

Mr. President, I look forward to the job. The FFA, the national youth organization for the improvement of agriculture, begins their creed with the statement, "I believe in the future of farming." I believe in that future, too.

Thank you, and I yield the floor.

GREEK INDEPENDENCE DAY

Mr. DOLE. Mr. President, I rise today to speak in honor of Greek Independence Day, a national day of celebration marking 174 years of freedom for the modern Greek people. The achievements of ancient Greece in art, architecture, science, mathematics, philosophy, drama, literature, and most importantly—democracy—have become legacies for succeeding ages to emulate. Modern Greece, born of these same roots, also has given much to the present day world and especially to the United States.

Many Americans can trace their heritage back to the glory of Athens. Greek-American Dr. George Kotzias developed medicine to combat the scourge of Parkinson's disease. Maria Callas, the Brooklyn-born opera soprano, provided us a legacy of beautiful music. Young Pete Sampras reminds us of the important contribution the Greeks have made in the field of athletics as he continues his outstanding command of the game of tennis. Greek-Americans have also contributed to the might of America's business and industry showing true entrepreneurial spirit. In Operation Desert Storm, Lt. Gen. William "Gus" Pagonis, U.S. Army, retired, successfully commanded the most complex sea, land, and air mobilization executed by a military force since the Second World War. And, of course, in this body today are two of the most outstanding Greek-American citizens in this country, Senator OLYMPIA SNOWE and Senator PAUL SARBANES.

On Monday, I will be visiting with a number of other Greek-American leaders to commemorate Greek Independence Day. Foremost among them will be his His Eminence Archbishop Iakovos, the spiritual leader of the Greek Orthodox Archdiocese of North and South America.

On this day, it is important to remember that American democracy would not exist today had the Greeks not believed in the power of the people to govern. As Pericles said some 2,000 years ago, "our constitution is called a democracy because power is in the hands not of the minority, but of the whole people * * * everyone equal before the law."

So as we honor the modern Greeks and their sons and daughters in America today, let me paraphrase Thomas Jefferson—we Americans are all indebted to the ancient Greeks for the light of democracy which led us out of the darkness of tyranny.

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES!

Mr. HELMS. Mr. President, as of the close of business yesterday, Thursday, March 23, the Federal debt stood at $4,845,959,175,160.98. On a per capita basis, every man, woman, and child in America owes $18,395.34 as his or her share of that debt.

THE 50TH ANNIVERSARY OF THE BATTLE OF IWO JIMA

Mr. NUNN. Mr. President, today I want to commemorate the 50th anniversary of the conclusion of the World War II battle for Iwo Jima.

Exactly 50 years ago today, the U.S. Marines successfully finished a fierce battle for a small dot in the Pacific that had been turned into one of the most heavily fortified islands in the world by a hard-as-nails Samurai warrior Japanese Lieutenant General Kurabayashi.

The battle for Iwo Jima had started on February 19, 1945. American military planners half-a-world away came up with only one way to make Iwo into the needed U.S. forward base: an attack right into the teeth of the Japanese defenses.

The ensuing 33-day battle was the basest form of struggle—individual against individual, inch by inch. Artillery, mortars, naval gunfire, and air—the traditional combined arms of the Marines—provided only marginal help to the attackers. The most powerful weapon was the individual marine who had to drive the enemy from gun emplacements, caves, tunnels, and spider holes.

There were 2,500 marines killed on that first day—February 19, 1945. The death toll tripled by the time the first marine fire team fought to the top of Mt. Suribachi 6 days later. Mt. Suribachi was the strategic high point from which the defenders were pinning the marines down on the beaches and was the dominating feature of the entire island.

Three reserve marines, two regular marines, and one Navy corpsman joined together in a moment that captured the soul of a service. They raised Old Glory atop that 550-foot extinct volcano. Those on the beach below saw the red, white, and blue flutter in the breeze. Secretary of the Navy James Forrestal, there with the Marine Commander Major General "Howling Mad" Smith, turned and said: "The raising of the flag on Mt. Suribachi means a Marines Corps for the next five hundred years."

I certainly hope so.

Though organized resistance continued until mid-March, the flag raising, which produced perhaps the most famous and inspiring combat photograph of World War II, symbolized one of the hardest won victories of that war.

Military historian Allan Millett has written of Iwo Jima that, "Of all the unpleasant islands the marines saw, Iwo Jima was the nastiest—prepared by nature and the Japanese armed forces as a death trap for any attacker." And so it was.

There were 70,000 marines locked in combat on this tiny island in the Pacific; 5,931 died; 17,372 were wounded; Presidential and Navy Unit Citations were awarded and 22 marines earned the Medal of Honor.

The fighting was so brutal, and the determination and bravery of the marines so stunning, that Adm. Chester Nimitz, Commander in Chief of the Pacific Fleet, was moved to say that on Iwo Jima "uncommon valor was a common virtue."

They fought and died so that others might live in freedom. The purpose of wresting Iwo Jima from the Japanese was to establish a forward air base on the island which served, among other things, as an interim emergency landing base for United States bombers making the long run between the Marianas to targets in Japan. More than 25,000 airmen in the Army Air Force subsequently used Iwo Jima for emergency landings.

Mr. President, I know I speak for all in saying we honor both those who fell on Iwo Jima and those who fought but managed to survive. I know it must have been a very emotional ceremony last week on the black sands of Iwo Jima when thousands of the survivors joined Secretary of the Navy John Dalton and current Marine Commandant Gen. Carl Mundy in paying tribute to their bravery and sacrifice and to commemorate those who did not return.

I felt of that same emotion when I was fortunate to be on the Senate floor March 2, 1995, when Senator JOHN GLENN was making a very moving tribute about the marines who fought on Iwo Jima. This was part of a series of speeches about that battle by Senators who have served as marines. Each spoke about a different aspect of Iwo Jima.

We would all benefit from reading all these speeches and so I ask unanimous consent to have printed in the RECORD the names of the Senators, the date of their speech, and the page in the CONGRESSIONAL RECORD where their remarks can be found.

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

CONGRESSIONAL RECORD SPEECHES—IWO JIMA

Senator	Date	Vol.	No.	Page(s)
Senator Robb	Feb. 10, 1995	141	27	S2455
Senator Thomas	Feb. 13, 1995	141	28	S2533–S2534
Senator Burns	Feb. 14, 1995	141	29	S2596–S2597
Senator Bumpers	Feb. 15, 1995	141	30	S2732–S2736
Senator Heflin	Feb. 16, 1995	141	31	S2774–S2775
Senators Chafee and Warner.	Feb. 23, 1995	141	34	S3034–S3036
Senator Glenn	Mar. 2, 1995	141	39	S3376–S3377

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. DEWINE). MORNING BUSINESS IS CLOSED.

SELF-EMPLOYED HEALTH INSURANCE DEDUCTIONS

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of H.R. 831, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 831) to amend the Internal Revenue Code of 1986 to permanently extend the deduction for the health insurance costs of self-employed individuals, to repeal the provision permitting nonrecognition of gain on sales and exchanges effectuating policies of the Federal Communications Commission, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Finance, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. PERMANENT EXTENSION AND INCREASE OF DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.

(a) PERMANENT EXTENSION.—Subsection (l) of section 162 of the Internal Revenue Code of 1986 (relating to special rules for health insurance costs of self-employed individuals) is amended by striking paragraph (6).

(b) INCREASE IN DEDUCTION.—Paragraph (1) of section 162(l) of the Internal Revenue Code of 1986 is amended by striking "25 percent" and inserting "30 percent".

(c) EFFECTIVE DATES.—

(1) EXTENSION.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1993.

(2) INCREASE.—The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1994.

SEC. 2. REPEAL OF NONRECOGNITION ON FCC CERTIFIED SALES AND EXCHANGES.

(a) IN GENERAL.—Subchapter O of chapter 1 of the Internal Revenue Code of 1986 is amended by striking part V (relating to changes to effectuate FCC policy).

(b) CONFORMING AMENDMENTS.—Sections 1245(b)(5) and 1250(d)(5) of the Internal Revenue Code of 1986 are each amended—

(1) by striking "section 1071 (relating to gain from sale or exchange to effectuate polices of FCC) or", and

(2) by striking "1071 AND" in the heading thereof.

(c) CLERICAL AMENDMENT.—The table of parts for such subchapter O is amended by striking the item relating to part V.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to—

(A) sales and exchanges on or after January 17, 1995, and

(B) sales and exchanges before such date if the FCC tax certificate with respect to such sale or exchange is issued on or after such date.

(2) BINDING CONTRACTS.—

(A) IN GENERAL.—The amendments made by this section shall not apply to any sale or exchange pursuant to a written contract which was binding on January 16, 1995, and at all times thereafter before the sale or exchange, if the FCC tax certificate with respect to such sale or exchange was applied for, or issued, on or before such date.

(B) SALES CONTINGENT ON ISSUANCE OF CERTIFICATE.—A contract shall be treated as not binding for purposes of subparagraph (A) if the sale or exchange pursuant to such contract, or the material terms of such contract, were contingent, at any time on January 16, 1995, on the issuance of an FCC tax certificate. The preceding sentence shall not apply if the FCC tax certificate for such sale or exchange is issued on or before January 16, 1995.

(3) FCC TAX CERTIFICATE.—For purposes of this subsection, the term "FCC tax certificate" means any certificate of the Federal Communications Commission for the effectuation of section 1071 of the Internal Revenue Code of 1986

(as in effect on the day before the date of the enactment of this Act).

SEC. 3. SPECIAL RULES RELATING TO INVOLUNTARY CONVERSIONS.

(a) REPLACEMENT PROPERTY ACQUIRED BY CORPORATIONS FROM RELATED PERSONS.—

(1) IN GENERAL.—Section 1033 of the Internal Revenue Code of 1986 (relating to involuntary conversions) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) NONRECOGNITION NOT TO APPLY IF CORPORATION ACQUIRES REPLACEMENT PROPERTY FROM RELATED PERSON.—

"(1) IN GENERAL.—In the case of a C corporation, subsection (a) shall not apply if the replacement property or stock is acquired from a related person. The preceding sentence shall not apply to the extent that the related person acquired the replacement property or stock from an unrelated person during the period described in subsection (a)(2)(B).

"(2) RELATED PERSON.—For purposes of this subsection, a person is related to another person if the person bears a relationship to the other person described in section 267(b) or 707(b)(1)."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to involuntary conversions occurring on or after February 6, 1995.

(b) APPLICATION OF SECTION 1033 TO CERTAIN SALES REQUIRED FOR MICROWAVE RELOCATION.—

(1) IN GENERAL.—Section 1033 of the Internal Revenue Code of 1986 (relating to involuntary conversions), as amended by subsection (a), is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) SALES OR EXCHANGES TO IMPLEMENT MICROWAVE RELOCATION POLICY.—

"(1) IN GENERAL.—For purposes of this subtitle, if a taxpayer elects the application of this subsection to a qualified sale or exchange, such sale or exchange shall be treated as an involuntary conversion to which this section applies.

"(2) QUALIFIED SALE OR EXCHANGE.—For purposes of paragraph (1), the term 'qualified sale or exchange' means a sale or exchange before January 1, 2000, which is certified by the Federal Communications Commission as having been made by a taxpayer in connection with the relocation of the taxpayer from the 1850–1990MHz spectrum by reason of the Federal Communications Commission's reallocation of that spectrum for use for personal communications services. The Commission shall transmit copies of certifications under this paragraph to the Secretary."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to sales or exchanges after March 14, 1995.

SEC. 4. DENIAL OF EARNED INCOME CREDIT FOR INDIVIDUALS HAVING MORE THAN $2,450 OF INVESTMENT INCOME.

(a) IN GENERAL.—Section 32 of the Internal Revenue Code of 1986 is amended by redesignating subsections (i) and (j) as subsections (j) and (k), respectively, and by inserting after subsection (h) the following new subsection:

"(i) DENIAL OF CREDIT FOR INDIVIDUALS HAVING MORE THAN $2,450 OF INVESTMENT INCOME.—

"(1) IN GENERAL.—No credit shall be allowed under subsection (a) for the taxable year if the aggregate amount of disqualified income of the taxpayer for the taxable year exceeds $2,450.

"(2) DISQUALIFIED INCOME.—For purposes of paragraph (1), the term 'disqualified income' means—

"(A) interest which is received or accrued during the taxable year (whether or not exempt from tax),

"(B) dividends to the extent includible in gross income for the taxable year, and

"(C) the excess (if any) of—

"(i) gross income from rents or royalties not derived in the ordinary course of a trade or business, over

"(ii) the sum of—

"(I) expenses (other than interest) which are clearly and directly allocable to such gross income, plus

"(II) interest expenses properly allocable to such gross income."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 5. REVISION OF TAX RULES ON EXPATRIATION.

(a) IN GENERAL.—Subpart A of part II of subchapter N of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 877 the following new section:

"SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.

"(a) GENERAL RULE.—For purposes of this subtitle, if any United States citizen relinquishes his citizenship during a taxable year—

"(1) except as provided in subsection (f)(2), all property held by such citizen at the time immediately before such relinquishment shall be treated as sold at such time for its fair market value, and

"(2) notwithstanding any other provision of this title, any gain or loss shall be taken into account for such taxable year.

Paragraph (2) shall not apply to amounts excluded from gross income under part III of subchapter B.

"(b) EXCLUSION FOR CERTAIN GAIN.—The amount which would (but for this subsection) be includible in the gross income of any individual by reason of subsection (a) shall be reduced (but not below zero) by $600,000.

"(c) PROPERTY TREATED AS HELD.—For purposes of this section, except as otherwise provided by the Secretary, an individual shall be treated as holding—

"(1) all property which would be includible in his gross estate under chapter 11 were such individual to die at the time the property is treated as sold,

"(2) any other interest in a trust which the individual is treated as holding under the rules of subsection (f)(1), and

"(3) any other interest in property specified by the Secretary as necessary or appropriate to carry out the purposes of this section.

"(d) EXCEPTIONS.—The following property shall not be treated as sold for purposes of this section:

"(1) UNITED STATES REAL PROPERTY INTERESTS.—Any United States real property interest (as defined in section 897(c)(1)), other than stock of a United States real property holding corporation which does not, on the date the individual relinquishes his citizenship, meet the requirements of section 897(c)(2).

"(2) INTEREST IN CERTAIN RETIREMENT PLANS.—

"(A) IN GENERAL.—Any interest in a qualified retirement plan (as defined in section 4974(c)), other than any interest attributable to contributions which are in excess of any limitation or which violate any condition for tax-favored treatment.

"(B) FOREIGN PENSION PLANS.—

"(i) IN GENERAL.—Under regulations prescribed by the Secretary, interests in foreign pension plans or similar retirement arrangements or programs.

"(ii) LIMITATION.—The value of property which is treated as not sold by reason of this subparagraph shall not exceed $500,000.

"(e) RELINQUISHMENT OF CITIZENSHIP.—For purposes of this section, a citizen shall be treated as relinquishing his United States citizenship on the earliest of—

"(1) the date the individual renounces his United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

"(2) the date the individual furnishes to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)),

"(3) the date the United States Department of State issues to the individual a certificate of loss of nationality, or

"(4) the date a court of the United States cancels a naturalized citizen's certificate of naturalization.

Paragraph (1) or (2) shall not apply to any individual unless the renunciation or voluntary relinquishment is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the United States Department of State.

"(f) SPECIAL RULES APPLICABLE TO BENEFICIARIES' INTERESTS IN TRUST.—

"(1) DETERMINATION OF BENEFICIARIES' INTEREST IN TRUST.—For purposes of this section—

"(A) GENERAL RULE.—A beneficiary's interest in a trust shall be based upon all relevant facts and circumstances, including the terms of the trust instrument and any letter of wishes or similar document, historical patterns of trust distributions, and the existence of and functions performed by a trust protector or any similar advisor.

"(B) SPECIAL RULE.—In the case of beneficiaries whose interests in a trust cannot be determined under subparagraph (A)—

"(i) the beneficiary having the closest degree of kinship to the grantor shall be treated as holding the remaining interests in the trust not determined under subparagraph (A) to be held by any other beneficiary, and

"(ii) if 2 or more beneficiaries have the same degree of kinship to the grantor, such remaining interests shall be treated as held equally by such beneficiaries.

"(C) CONSTRUCTIVE OWNERSHIP.—If a beneficiary of a trust is a corporation, partnership, trust, or estate, the shareholders, partners, or beneficiaries shall be deemed to be the trust beneficiaries for purposes of this section.

"(D) TAXPAYER RETURN POSITION.—A taxpayer shall clearly indicate on its income tax return—

"(i) the methodology used to determine that taxpayer's trust interest under this section, and

"(ii) if the taxpayer knows (or has reason to know) that any other beneficiary of such trust is using a different methodology to determine such beneficiary's trust interest under this section.

"(2) DEEMED SALE IN CASE OF TRUST INTEREST.—If an individual who relinquishes his citizenship during the taxable year is treated under paragraph (1) as holding an interest in a trust for purposes of this section—

"(A) the individual shall not be treated as having sold such interest,

"(B) such interest shall be treated as a separate share in the trust, and

"(C)(i) such separate share shall be treated as a separate trust consisting of the assets allocable to such share,

"(ii) the separate trust shall be treated as having sold its assets immediately before the relinquishment for their fair market value and as having distributed all of its assets to the individual as of such time, and

"(iii) the individual shall be treated as having recontributed the assets to the separate trust.

Subsection (a)(2) shall apply to any income, gain, or loss of the individual arising from a distribution described in subparagraph (B)(ii).

"(g) TERMINATION OF DEFERRALS, ETC.—On the date any property held by an individual is treated as sold under subsection (a), notwithstanding any other provision of this title—

"(1) any period during which recognition of income or gain is deferred shall terminate, and

"(2) any extension of time for payment of tax shall cease to apply and the unpaid portion of such tax shall be due and payable at the time and in the manner prescribed by the Secretary.

"(h) RULES RELATING TO PAYMENT OF TAX.—

"(1) IMPOSITION OF TENTATIVE TAX.—

"(A) IN GENERAL.—If an individual is required to include any amount in gross income under subsection (a) for any taxable year, there is hereby imposed, immediately before the individual relinquishes United States citizenship, a tax in an amount equal to the amount of tax which would be imposed if the taxable year were a short taxable year ending on the date of such relinquishment.

"(B) DUE DATE.—The due date for any tax imposed by subparagraph (A) shall be the 90th day after the date the individual relinquishes United States citizenship.

"(C) TREATMENT OF TAX.—Any tax paid under subparagraph (A) shall be treated as a payment of the tax imposed by this chapter for the taxable year to which subsection (a) applies.

"(2) DEFERRAL OF TAX.—The provisions of section 6161 shall apply to the portion of any tax attributable to amounts included in gross income under subsection (a) in the same manner as if such portion were a tax imposed by chapter 11.

"(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations providing appropriate adjustments to basis to reflect gain recognized by reason of subsection (a) and the exclusion provided by subsection (b).

"(j) CROSS REFERENCE.—

"For termination of United States citizenship for tax purposes, see section 7701(a)(47)."

(b) DEFINITION OF TERMINATION OF UNITED STATES CITIZENSHIP.—Section 7701(a) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

"(47) TERMINATION OF UNITED STATES CITIZENSHIP.—An individual shall not cease to be treated as a United States citizen before the date on which the individual's citizenship is treated as relinquished under section 877A(e)."

(c) CONFORMING AMENDMENT.—Section 877 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

"(f) APPLICATION.—This section shall not apply to any individual who relinquishes (within the meaning of section 877A(e)) United States citizenship on and after February 6, 1995."

(d) CLERICAL AMENDMENT.—The table of sections for subpart A of part II of subchapter N of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 877 the following new item:

"Sec. 877A. Tax responsibilities of expatriation."

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to United States citizens who relinquish (within the meaning of section 877A(e) of the Internal Revenue Code of 1986, as added by this section) United States citizenship on or after February 6, 1995.

(2) DUE DATE FOR TENTATIVE TAX.—The due date under section 877A(h)(1)(B) of such Code shall in no event occur before the 90th day after the date of the enactment of this Act.

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The PRESIDING OFFICER. There are 5 hours of debate, equally divided.

The Senator from New York.

Mr. MOYNIHAN. Mr. President, I do believe the distinguished chairman of the committee wishes to speak first.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. I thank the Chair.

Mr. President, "Amici attenti." These are the opening words in the play "Fiorello" when Fiorello LaGuardia is first campaigning for Congress in 1916. The set—and I saw it first in New York—is a wonderful set. As he is campaigning, to give the sense of ethnic campaigning, he has a little box and they put it on the left of the stage. He stands up, and as he is speaking to Italian immigrants, he says, "Amici attenti, Trieste must be free as we must be free."

Trieste was then a port disputed between what is now Italy and what we used to call Yugoslavia. It was then part of the Austro-Hungarian Empire.

Italy, of course, was allied on our side during World War I, and the Austro-Hungarian Empire was against us. And one of the big issues in American politics where there was ethnic campaigning—people of Italian ancestry—was the issue of Trieste.

Many of us today would understand it in a different venue—Cyprus, those of Greek and Turkish ancestry; Jerusalem, those of Jewish and Moslem faith. The issues may change, but not the methods.

It was interesting to watch "Fiorello" in New York because at the end of his little pitch to those of Italian ancestry, the box is simply moved to the other side of the stage, and he stands up and he is speaking to those of Jewish background in Yiddish, with whatever may have been at the time in 1916 appropriate for an appeal to that group.

As I went to law school at New York University, that was all I needed, or anybody familiar with New York needed, to give the impression of ethnic campaigning.

I saw the play produced at an Oregon high school some years later, and it was interesting the way the scene was done. They did the "amici attenti," moved the box on the other side, and spoke in Yiddish. Then they moved it back, and there is the same type of interlude in Swedish. They moved it back again on the other side, and it was in Scottish.

Afterward, I talked to the high school producer and asked him did he know he had added this. He said, yes, he had seen "Fiorello."

I asked, "Why did you add it?"

He said, "Because the students here are familiar with the Johnsons and the Eriksons and the MacGivers, but not the Giadellis, Bergers, or Cohens. And so, for this audience to give the impression of what ethnic campaigning was like, it had to be put in a form understandable to that audience.

I thought to myself, we are all products of our environment and where we grew up. And we may see things in a different light and often at a different time.

You may remember the difficulty that Ed Muskie had in 1972 when he used, or was alleged to have used, the word "Canuck," a term of derogation, a term not to be used, and it hurt him in the campaign.

Yet, you can go back not more than 60, 70 years to the musical "Naughty Marietta" and the captain, Captain Dick. Captain Dick's infantry was almost a free-booter in terms of this little private army, and in the Victor Herbert musical, "Naughty Marietta," you recall the lines:

Tramp, tramp, tramp now clear the roadway.
Room, room, room the world is free.
We are Planters and Canucks.
Virginians and Kaintucks.
Captain Dick's own infantry.

There it was used as a term of geography, perhaps, but really used as a term for rural Americans. It does not matter if we are Canucks of French Canadian background or planters or Kaintucks. The times had changed and times do change.

I remember well January or February 1942. My father was a lobbyist for the principal Oregon business group, now called Associated Oregon Industries, and then called Columbia Empire Industries. He used to go to the legislature. He was a house counsel for them, not outside. He attempted to explain to me in 1942 an incident that I could not grasp at the time.

I grew up practically every day after school at the neighborhood YMCA—swimming, tumbling, basketball—and it was, indeed, a neighborhood youth center, and we had a number of boys, members of Japanese ancestry. One day they disappeared. Gone.

My father attempted to explain the relocation. He attempted to explain these were American citizens—he was also a member of the American Civil Liberties Union, even though he was a business lobbyist—and the unfairness in what he thought was clearly an unconstitutional act, and surely the Supreme Court would strike it down.

I remember him calling to my attention that we were not going to imprison any Americans whose names were Shultz or Heindrich of German ancestry, even though at the time German submarines were sinking ships 5 and 10 miles off our coast.

It was a difference in the way we looked at ethnic backgrounds.

Mr. MOYNIHAN. Or Giadelli.

Mr. PACKWOOD. Exactly. We did not imprison any Giadellis or any DeAngelos; only those of Japanese ancestry. So as we look at things, our whole growing up and our whole background influence us.

I noticed the glass ceiling report the other day on women and employment. I can understand the report. It is hard for me to grasp, in terms of my own employment practices. The women in my office are my chief of staff, my press secretary, my legislative director, my staff director, and chief counsel on the Finance Committee. All of the principal positions of leadership in my offices are held by women. All of my campaigns have been managed by women for the last four campaigns.

On average, although we did this study 8 or 9 months ago, women made, on average, $10,000 more a year than men in the office. I once had a man—I do not know if he was facetious or not—who talked to me about affirmative action and the feeling that somehow men were not treated quite as equally.

In my office, if I had to have a quota system, I would have to fire two or three women and probably lower the salaries of many others in order to reach some kind of equality.

So, again, we are all products of our background. We all see things as we saw them when we grew up, and often people who grow up in a different era, or are treated differently, come at things in a different way.

I think rather than being harsh with each other and judgmental, we are often better to be kind.

One of the nicest eulogies I think I ever read was by Winston Churchill when Neville Chamberlain died. He died in about 1942. Chamberlain had been the Prime Minister of Great Britain. He had been really the head of the pacifists and had negotiated with Hitler for peace for our time. He had been proven utterly wrong, and had to resign almost in disgrace at the start of the war.

Churchill, all during the thirties and during the ascendancy of Neville Chamberlain, said, "Watch out for that man. This Hitler is evil. We are going to go to war. The pacifists are wrong. We should be arming, not disarming." Everything Chamberlain did, Churchill disagreed with, and Churchill was right.

Churchill's wonderful eulogy is as follows:

> At the lychgate, we may all pass our own conduct and our own judgments under a searching review. It is not given to human beings happily for them for otherwise life would be intolerable, to foresee or to predict to any large extent the unfolding course of events. In one phase, men seem to have been right, in another, they seem to have been wrong. Then again, a few years later, when the prospective of time has lengthened, all stands in a different setting. There is a new proportion. There is another scale of values. History with its flickering lamp stumbles along the trail of the past, trying to reconstruct its scenes, to revive its echoes, and kindle with pale gleams the passion of former days.

He goes on for another three or four paragraphs in his book and he concludes that, "We do honor to one." Churchill would have had every right if he had wanted to say this man was wrong, but he did not.

Now, Mr. President, with that background, let me come to this bill. The issue of this bill, de facto, is whether or not we are going to fund, for those who are self-employed, enough money so that they can deduct 25 percent in the first year and 30 percent thereafter of the cost of their health insurance premiums. There is no debate about that subject. There is barely any debate about the funding levels. We would all like it to be higher, but there is no debate about what we have done. And in the discussion of this bill, I think relatively little controversy, if any, would be generated about the purpose of the bill.

But the bill became a flash point when it passed the House and part of the financing—we have continued it in the Senate—was the elimination of what are known as minority and women certificates at the Federal Communications Commission, whereby certificates of preference, in essence, are given to sellers or others of broadcast properties if they will sell them to minorities or to women.

This brings us, really, to the issue—and it is interesting that in the Washington Post this morning there is a long story and in USA Today is the longest story I have ever seen for USA Today—four pages—on the issue of affirmative action. I thought it ironic that on the day we start this debate, those stories would be in two principal newspapers. It is doubly ironic that we start this debate on a bill that comes from the Finance Committee. We have jurisdiction of many things on this committee, but never in my wildest imagination would I have thought the first debate on one of the major issues to face this country would come out of this committee. But so be it. Like generals, you cannot choose where you want to fight. You fight where you have to.

Let me discuss what the issues involved are and what we face, because I think in this bill and in this issue, whether or not we want to have preferences is really oblique. But what will come after this may be set by the tenor of the debate today. Take a look at the history of civil rights enforcement, and it really falls into three categories: individual discrimination, individual remedy, and then past discrimination, where the remedy was a group entitlement rather than just an individual remedy. The last is a situation is where you have no discrimination shown in the past at all, but you have group entitlements because you want to change the ratios of employment, or admittance to colleges, or whatever, but no showing of past discrimination. Those three—the first is individual discrimination and individual right; the second is past discrimination and group right, even though everybody in the group may not have been discriminated against. And the last is, where there is no evidence of discrimination.

Take the first, individual discrimination. Suzy Goldberg is Jewish, and Suzy wants to buy a house in a housing development. The developers have a covenant that they cannot sell to Jews. Suzy sues and wins and gets the house, and Suzy gets damages. An individual wrong and an individual remedy. And that was what we thought we meant, I think, by civil rights and civil rights enforcement, that all people were to be judged on their individual merits and treated individually. Then we moved to a second phase. I remember this era because I was here. To digress for a moment, it is interesting, when we were debating the budget the other day, I mentioned a 1972 bill in which we were voting whether or not to give to President Nixon the power to cut the budget when it exceeded $250 billion. One of the younger staff members, one of our permanent staff members, came up and said to me, "Senator, that was very interesting, but if we had term limits, would anybody know about that except some historian? I thought her point was well taken, perhaps because I am going to go back now in history. I am not sure, if we had term limits, that anybody would know.

Anyway, we went through this first phase of individual remedies for individual discrimination—and Hubert Humphrey's wonderful comment is cited over and over on the 1964 Civil Rights Act. He said:

> I will start eating the pages, one after another, if there is any language which provides that an employer will have to hire on the basis of percentage or quota related to color.

He was thinking individual remedy for individual discrimination. But the difficulty came when you started getting into a situation where you had businesses that simply had a history of discrimination. Women would not rise above a certain position. No blacks would be hired. And you had this 30, 40, or 50 years of discrimination. What do you do? How does one individual remedy solve an almost aggregated problem?

So the Johnson administration—and my good friend, Senator MOYNIHAN, the ranking member of the Finance Committee, is well familiar with this era. He was in the Kennedy administration in the Department of Labor and certainly is familiar with everything that went on as we got to the Office of Federal Contract Compliance and the effort to get employers and those who contract with the Government to do better at hiring minorities and women. But the administration, I think, correctly was afraid to actually set quotas. They did not want to use the word "quotas." Therefore, business, on

the other hand, was not quite sure what goal they were to hit. Ironically, it fell to a Republican administration to really address this—there had been a couple of court decisions, but the first set out a remedy that went way beyond any remedy to rectify discrimination to an individual person. It was called the Philadelphia plan. Here again, when I say I have been here long enough to remember this, I am not sure if we had term limits, if anyone would know this.

The Under Secretary of Labor was Larry Silberman. He was the author of the Philadelphia plan. He is now on the court of appeals. I knew him well. I was on the Labor and Public Welfare Committee and dealt with him then. More importantly, I got to know his wife, and she was my press secretary for several years in the 1970's. So it is a longstanding association. Larry Silberman, now Judge Silberman, was the author of the Philadelphia plan. In Philadelphia, in the building trades, they had a history of discrimination. Initially, we thought against blacks, but I recall, 20 years ago, Larry saying it was not against blacks, it was against anybody not related to somebody already in the trades. You hired your cousin or your uncle's nephew, or somebody like that. It was a closed show. But it was totally closed to blacks.

So the administration came up with the Philadelphia plan. Larry Silberman, Under Secretary of Labor, now Judge Silberman on the court of appeals, was simply decreeing that, henceforth, the building trades would have to hire a certain number of minorities, and there had to be a timetable and a goal to be reached. And the problem was—and Larry Silberman said, in retrospect, and he set this forth in a wonderful Wall Street Journal article in 1977—he said that inevitably the goals and the timetables became quotas. How could you know if somebody was meeting the goal without counting? And the counting became quotas. And, finally, the employers, out of frustration and fear, started setting quotas. If there were 20 percent blacks in the area, you try to hire 20 percent blacks, if you can.

I might quote one paragraph from that Wall Street Journal article that Larry Silberman wrote in 1977:

> I now realize that the distinction we saw between goals and timetables on the one hand, and unconstitutional quotas on the other, was not valid. Our use of numerical standards in pursuit of equal opportunity has led ineluctably to the very quotas, guaranteeing equal results, that we initially wished to avoid.

So now we have gone from an individual remedy, for an individual act of discrimination, to a group entitlement and having to hire a certain percentage of minorities, even though many in the minority may have never suffered any individual discrimination in hiring. They never applied and had never been turned down. As Larry Silberman said, once the Philadelphia plan was adopted, we began to apply it nationwide like Johnny Appleseed, scattering it every place, and even starting to apply it where there was no evidence of discrimination. Just assuming that after 200 years there had been discrimination and therefore, Mr. or Ms. Employer, if you want to contract with the Federal Government, you better have so many percentages of different minorities.

That brings us to the issue at hand. It is the issue of the Federal Communications Commission and the issuance of tax certificates. We are principally talking about sellers of broadcast properties receiving a tax credit when they sell to a minority. And the sellers are the ones that make, initially, the great profit. Here is an example: Let us say you bought a radio station for $1 million 10 years ago and you want to sell it now. It is now worth maybe $5 million.

The FCC says if a person sells it to a minority, they need pay no taxes on the profits if, within 2 years, they reinvest them in a similar property. No capital gains, no nothing.

So they have a $1 million station, they sell to a white person for $5 million, they have to pay taxes on $4 million. Sell to a minority, they have $4 million profit, and roll it into a similar profit and they pay no taxes.

What brought this issue to a head was the so-called Viacom deal, and this was a big deal. This was a sale of about $2.4 billion and a deferral of taxes, $400 to $600 million of taxes. That is what caused this issue to come to a head.

Here is the problem with the FCC tax certificate program. First, there is no history of discrimination in the sale of broadcast properties. If a person wants to sell their radio station, they will sell it to the highest bidder. One fellow said, "I don't care if they have blue skin and an eye in the center of their forehead. If they have the most money, they get to buy the station."

There is utterly no history of discrimination in the sale of properties. Yet the FCC wanted to ensure that minorities could get properties, and they had to hinge it on something, as they had no history of discrimination in the sale of these properties.

So they came up with the idea of diversity broadcasting. It is not a new idea; it is a policy they have followed for years. But normally we would have thought of it as economic concentration. A person was not allowed to own two radio stations in the same town. They came up with a policy that said, "You have to sell one." Involuntary conversion. You sold it, you got the tax certificate because the Government made you sell it.

Pretty soon they said a person could not have a newspaper and television station in the same town, and they required the divesting of the involuntary diversions, and the tax certificates were used because they changed policy. It was almost as if they were thinking they did not want William Randolph Hearst to own the television station, radio station, and newspaper—almost an economic antitrust.

The argument is people wanted diversity. In 1978, the FCC, Federal Communications Commission, started the policy of diversity; you sell to minorities and you want diverse voices owning television and radio so you could get a different kind of editorial opinion and a different kind of news.

Here is where the interesting linchpin comes. It is a difference of opinion as to how one reads the studies. I have now read all the studies. I think I mistakenly had not read enough when it went through the Finance Committee. I thought initially that the studies proved that minority-owned radio stations and television stations programmed differently. I have now, I think, read all of the studies that were relied upon, and I will cite a few.

One was done by Marilyn Fife in 1984, an associate professor at Michigan State University. It was a relatively modest study, of two local television stations in Detroit. One was owned by a minority and one not, and her conclusions were as follows: There was no significant difference between the stations as to news and coverage of international politics or issues. No significant difference existed regarding coverage of community events and human interest stories. No significant difference existed as to coverage of crime, accidents and fire. And there was no significant difference in the amount of time devoted to racially significant stories. In sum, she could find in that study no evidence that minorities programmed to minorities.

She did another study in 1986. This time she studied four television stations, one in Corpus Christi which was owned by Hispanics; another one in Detroit—the minority owned station she had studied previously; one in Jackson, MS, that was black-owned; and a station in Bangor, ME, that was 100 percent black-owned, principally by 35 black professionals who were mostly from Chicago.

What she discovered was interesting. In Corpus Christi, which is 48 percent Hispanic, this station owned by Hispanics attempted to broadcast marginally to Hispanics but they had difficulty getting advertising revenue, and they did the best they could. But she also discovered that there were other stations in Corpus Christi. These are radio stations owned by whites that were broadcasting to Hispanics—48 percent of the market. We can understand why.

The Detroit study was no different than she had seen 2 years before. The two stations—one black-owned, one not—still broadcast similarly.

In Jackson, MS, about 40 percent of the population is black. But the black-owned station did not program any differently than the other stations programmed. All of the stations were aware that there was a 40 percent black audience; it did not matter if they were owned by minorities or not.

Then in Bangor, ME—the interesting one—Bangor has only about .2 percent black population. And although the station studied was totally owned by blacks, they said it was first and foremost a profit-oriented entity. The goal of the news management was to have similar news coverage as the other two local stations. It is understandable.

Then we have the Trotter study in Boston in 1987. This study compared the types of news coverage by five newspapers and then three television stations and two radio stations, one white-owned and one black-owned.

They discovered among the newspapers, initially, a tremendous diversity in the way the news was covered depending upon whether you were black-owned or not. But then look at the papers that were being studied. The Boston Globe and the Boston Herald were immense big dailies, not black-owned. The three black-owned papers were the Bay State Banner and the Boston Greater News, both published weekly; and the Roxbury Community News, published monthly.

They, in essence, were "narrow casting" as can be done in the print. We still find all kinds of foreign language newspapers in this country, printed in this country, for a narrow population. Those three black-owned papers in Boston, two weeklies and a monthly, were programmed to some extent to a black audience. But we can do that in print; a person can do that. Say, if I have 5, 10 percent or 15 percent interest in this, I can make a little profit on it. But the two big papers, the Boston Globe and the Boston Herald that were in essence printing broadly for everybody, printed for the broad audience.

Then regarding the radio stations studied in Boston—one white-owned and one black-owned—again what the Trotter study concluded was interesting. We should think of it in the context of our use of the words "narrow" and "broad." What do we call the function of radio and television stations? We call it broadcasting. It is almost impossible to limit your signal to a particular segment—to broadcast it to a particular segment of the population. A person might get a particular segment to listen —broadcast country and western, or soul, or all news. Whoever likes that will listen. No way can a person shut out everybody else who might want to listen.

What the Trotter study discovered on the broadcast properties was that they all broadcast "broad" whether they were owned by whites or owned by minorities. They all regarded themselves as part of the overall community. No significant difference.

Then we get to the CRS study, the Congressional Research Service study, which admitted in itself it had some shortcomings. It was done in 1986, but it was done by sending out a questionnaire. It had, basically, sort of multiple choice and then check boxes as to what kind of programs are done, no personal interviews. All the stations did not respond, but it was a broad study. There is a question as to whether it was deep or not—it is hard to tell.

From this study came the principal reliance of the courts, or the principal criticism by the courts, of the FCC's policy, because it finally came to the courts. And, in the Metro Broadcasting case, the Supreme Court, in a 5-to-4 decision—although it is interesting that 4 of the 5 in the majority are now gone and have been replaced by the other 4 that have been appointed since 1990—it relied upon, basically, the CRS study and said there is evidence that a minority-owned station programs more likely to a minority audience than would a nonminority-owned station.

But in a blistering dissent when the same case was in a lower court, Judge Williams said as follows:

> Hispanic targeting is obviously more likely to be profitable in Miami than in Minneapolis. Thus, if specific minorities are more likely to own stations in areas where they are numerous (which seems likely), the difference in "targeting" that the Report hesitantly attributes to the owners' racial characteristics may be due simply to their rational responses to demand.

This was the difficulty with the study. How do you tell if a station—if it is in a city that has a 30- or 40- or 50-percent Hispanic listening audience or a 25- or 35- or 40-percent black audience and is owned by a minority—programs a certain way because it is owned by a minority or programs that way because that is the audience there is to listen to it? And that is what the minority, both at the lower court and then 5 to 4, with Sandra Day O'Connor writing the dissent in the Supreme Court—that was the difficulty they found. And she says, "First," in the dissent, "the market shapes the programming to a tremendous extent. Second, station owners have only limited control over the content of programming. Third, the FCC had absolutely no factual basis for the nexus when it adopted the policies and has since established none to support its existence."

In essence, she said there is no evidence to conclude that because minorities own a station they broadcast to minorities.

Now, however you look at these two or three reports, where you could read them one way or the other, there are two glaring problems with them. One, the CRS, the biggest study, did not include television in its analysis. So you have no evidence. They just did not cover any television stations. And, while they included women, the report basically concludes that women-owned stations do not program specifically to women. So if your hope in giving a minority certificate to a seller who sells to women is to get whatever women's programming might be—whatever that is—you do not get it. It is no different than any other station that is owned by a man.

So, in these multiple studies, you have this situation: Some arguable evidence—some—that a minority-owned station might program to minorities. But to me, the overwhelming evidence is that it depends upon the market that you are in, rather than the ownership. Second, as to women, there is no evidence that they program to women at all.

In fact, again, I started this speech talking earlier about my experiences. In Oregon—I do not know if this is true in many other States—our second biggest market is Eugene, OR. I know what its population is. I do not know what the thrust or radius of the broadcasting market is, but I would guess 300,000; and Medford, OR, I guess would be our third biggest market, and I guess it would be 200,000. Each of the towns have the three network affiliates. In each of the towns, two of the network affiliates are owned by women. Ironically, in each of the towns, the affiliates are owned—I mean in Medford and Eugene—each of the affiliates are owned by the same woman. So in Eugene, OR, you have Carolyn Chambers owning a television station, going head to head with Patsy Smullin, who owns a television station. And in Medford, OR, the same two women own two stations, going head to head in competition. I defy you to go to Eugene, OR, and watch any of the stations and try to figure out from looking at what is on it whether it is owned by a man or a woman. You cannot. I understand why. These are two canny women. They are successful businesswomen. They understand their markets.

So now you ask yourself—and this is where we are coming, now, down to the third issue. Remember, I said there are three types of remedies in the history of civil rights litigation.

One is remedies for individual discrimination. Suzy Goldberg cannot buy the house. She is discriminated against. She sues, she wins, she gets the house and damages. That is one.

Two, you have remedies based on a history of discrimination. Let us say it is in employment. A business has not hired blacks, or trade unions have not let minorities in for years, and you sue and your remedy is a class entitlement in which you say: We are going to require the business to hire so many women or promote so many women; or we are going to require the trade union to let in so many minorities until they reach a certain quota and we are going

to give this preferential hiring right to any number of people in the class that has been discriminated against even though they individually have not been discriminated against, but you have a history of discrimination.

And then the third type of remedy is in a situation where you have no history of discrimination. This is where the difficulty comes in Federal programs, and it is an interesting distinction that the Court makes. When the Court is reviewing discrimination on the part of State or local governments, or businesses or trade unions, there must be evidence of past discrimination before there can be a remedy of any kind. But if the Federal Government is imposing some kind of hiring preference or admittance preference or whatever, the Court does not require any showing of discrimination. They have made a distinction between Federal actions, whether they are administrative or congressional fiat or findings; they do not require any finding of past discrimination.

That brings you to the situation where we are now with the Federal Communications Commission, where you have no history of showing of past discrimination in the sale of broadcasting properties, and where at best the only justification for the minority tax certificates is the argument that minorities or women program differently, and you get diversity. As I say, the evidence on this is mixed. Is that a sufficient justification for setting aside part of the television and radio spectrum for women and minorities?

Without getting into the argument as to whether it is or it is not, the question you ask yourself is: Do we want a Government policy that says we are going to attempt to help minorities or to help women where there is no evidence of discrimination? And in order to help them, we will give them a preference and, of necessity, as there is a limited amount of these properties, the preference will have to exclude somebody else who could have otherwise bought the station or might have otherwise bought the station.

I want to tell you what I think is the danger of this policy. It is not so much a danger as to whether or not we want to have a policy of giving preference where there is no discrimination. What bothers me is that the Federal Government is first defining minority and deciding what voices it wants to hear in broadcasting.

I will tell you one group that is not included that I would think would have a legitimate complaint. It is Americans of Arab ancestry. They do not count as a minority. They are Caucasian, so they do not count. I would wager that the average American watching television news today thinks of anybody of Arab ancestry as a terrorist—they are going to blow up the plane, blow up the World Trade Center, or assassinate our diplomats. It is totally unfair to the millions of Americans of Arab ancestry who are hard-working, decent Americans, who send their kids to school—but they do not count as a minority. They cannot get any tax preference for the purchase of a radio station or television station because the Federal Government has made its decision as to which voices will be allowed. And when any government has the right to make that decision, that is a danger to be frightened of.

Most of us in the Senate can still remember the attacks that came before, during, and after Nazi Germany about the Jewish-owned press. The New York Times was singled out by the Fascists as supported by the Government. They were not, but it was the allegation: supported by the Government. It was a front for Franklin Roosevelt. That is the kind of fear I have, a fear of the consequences when governments begin to determine who is going to have the right to be the voice of the people.

You think back in history. Again I come back to what in my mind amounts to discrimination against Americans of Arab ancestry. It is particularly ironic if you think back in history. When we were going through the Dark Ages and Western Christendom was going through the Dark Ages, we progressed through holding on to repositories of learning in a few monasteries for practically 1,000 years. You had these great Moslem centers of learning, and Jewish centers of learning. Ironically, almost all of them were in what is present-day Iraq. Here were the candles of learning and education which we kept burning. Western Christendom was almost on the brink of intellectual extinction.

So times change. Were there periods in our history where we needed to have group entitlements to remedy past discrimination? I emphasize that again. Group entitlements to remedy evidence of past discrimination? Maybe. Maybe not. That was the Philadelphia plan. The Philadelphia plan, for all of its good intentions, when it set goals and timetables could not avoid quotas because there was no way to get there without counting.

But I really want to ask a broader question—we do not need to answer it really today in this bill—as to whether or not we want group entitlements where there is no evidence of past discrimination. Not an iota. And we allow the group entitlements at the expense of others in different groups because of the Government decision that we want to prefer some people over others where there is no evidence of discrimination.

So as we start this debate—I do not mean today—as we start it in this Congress and in this country, and it is coming in the years, I hope we begin this debate with understanding and not malice. I hope we can conduct this debate with gentleness rather than rancor. I hope we conclude this debate with love, charity, and the hope that all individuals of any race or ethnic background can finally achieve their rightful day in the Sun where they do not have to live in the shadow of the suspicion that they got there because of a preference.

I wish that we had not had to come to this today or any other day. But we are here.

So let us continue, as I hope, in spirit of fairness and let us make the decision as to whether or not this country wants to go down the path of group entitlements without any evidence of discrimination.

I thank the Chair.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, might I begin by—once again, not the first time and not for the last—expressing my great admiration for the clarity, openness, and wisdom with which the Senator from Oregon, the distinguished chairman of our committee, has spoken. I have nothing of the depth or breadth of his observations to offer myself today.

But I would make just a very few comments, some of which might resonate with the chairman. He mentions that I was in the Kennedy administration. I was, in fact, Assistant Secretary of Labor for policy planning in the Kennedy and Johnson administrations. I was present at the creation, if you could say, when Vice President Johnson went down Pennsylvania Avenue, and left this Chamber. He had two principal activities in the Federal Government, not many, after rather enormous energy was given to assignments: The space committee, which was mostly interested in whether—the great issue at the time—that would we build the supersonic transport. All the major transport planes in this country had been begun as military models. They had gotten bigger and faster and so forth.

Finally, they came along with the supersonic. It could get you anywhere in no time at all but with only a platoon of marines. And was it really worth it? The Defense Department said we will turn it over to civilian manufacture, if they want to. In the end, as you know, we decided not to and the Europeans decided to do so.

Vice President Johnson would concentrate on that, and have meetings all Saturday and Sunday. But mostly he was concerned with a Department of Labor subject of the employment of minorities in units. He threw himself into that effort.

I can remember walking into Secretary of Labor, Arthur Goldberg's office one morning and there on Steve Schulman's desk were three pink slips

saying "Call Camel." He was in Afghanistan, the Vice President at that point, in that celebrated effort in which he took a camel driver, and gave him a truck and ruined the man's life. They did not have any spare parts for the trucks but with camels you could go. But he was thinking of this mission and all.

When he became President and was dealing, he was confronting, and you were very sensitive. If I can say to the Senator that Judge Silverman, commenting on the Philadelphia plan, pointed out that they discovered that the absence of other groups in those building trade unions was not a matter of discrimination against as discrimination for. There has been a great deal of literature, apocalyptic, grandiose, about the nature of the labor movement and what it would do for the world, transformation, and so forth.

But still the most demanding text was written out of the University of Wisconsin in the 1920's by Selig Perlman, called the "A Theory of the Labor Movement," in which he broke the hearts of a whole generation of progressives by saying the labor movement arises from the perception of the scarcity of economic opportunity. There are not many jobs. There are only some jobs for plumbers in this town, and it would be very careful who gets to do the plumbing, trying to restrict it to your circle because the economic opportunity was scarce. That was published, "A Theory of the Labor Movement," in 1928.

But it also became clear as we began these efforts that we were dealing with issues of caste in American life, then very real, but also class. Particularly in the Labor Department they had been able to understand the class issues; that these merged in many circumstances.

There is in the current issue of The New Republic an article by Richard Kahlenberg called "Class, Not Race." It proposes a distinction which is real. But I do not think an exclusive consideration of either one gets you into a lot of difficulty. But he points out. He said:

> In Lyndon Johnson's June 1965 address to Howard University in which the concept of affirmative action was first unveiled did not ignore class. In a speech drafted by MOYNIHAN, Johnson spoke of the aftermath of caste discrimination which had the effect of class disadvantage. That was the first assertion of affirmative action as a Presidential policy.

The speech was given in June 1965, and on September 24, Executive Order 11246, part one, nondiscrimination in Government employment. This was directed to discrimination and nondiscrimination in employment by Government contractors and subcontractors, addressing yourself to the old refrain "no Irish need apply" phenomenon.

We provided that the Federal contractor had to agree to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color or national origin. That is the first use of affirmative action.

In 1967, I had departed then but all work was done in the Labor Department—very important, the Labor Department—in 1967, the Executive Order 11246 was amended to apply to gender discrimination as well, by President Johnson. And then again in 1969—and peripatetically I am back, I am in the White House—President Nixon went further in Executive Order 11478 to speak basically to quantitative measures:

> The head of each executive department and agency in the United States Government shall establish and maintain an affirmative action program of equal employment opportunity within his jurisdiction, in accordance with the policy set forth in section 1, to assure that recruitment activities reach all sources of job candidates.

At this point, not to sound too theoretical, we are getting behavior of organizations. Two phenomena took place. One is that Federal executives seeking to bolster the legitimacy and widen the support for these affirmative action programs included successively new groups identified in one form or another, thinking that this would widen support—Native Americans, an obvious example.

But I remember, in the 1970's, running into a list that had been compiled in the Department of Health, Education and Welfare which on one line in a list of categories had the category Maylays and Aleuts. It is a little hard to be clear what exactly the relationship between Maylays and Aleuts was, but somebody had it in their head. We will deal more effectively, with the kind of openness of mind and heart that the Senator has spoken of, if we are aware that we are not alone in this matter. Ethnic divisions are the primary source of division in the world today, class division having turned out to be much less powerful—not absent but much less powerful. The problem is, as the Senator has referred, once you list 10 groups, you have excluded 110 groups. So then you go to 11 and then you will go to 12. But you never reach a point where there is nobody that has not been excluded, and indeed our affirmative action programs today on behalf of minorities cover about 75 percent of the population.

The second point to make, if I may—and I am sure the distinguished Presiding Officer would recognize this—it is invariably, inexorably the pattern of bureaucratic behavior—I know it is a bad word but it is a reality—to seek to quantify. They will say count up and then we will know. It is Weberian uniformity. I have got to be able to say I have the same standards you have and let us measure by these same standards which will turn out to be quantitative. Let us see who has done the better job.

I think if we demystify a lot of this, we will do a better job in handling it, with the openness that the Senator talks about, because let us not have any illusion about the problems of equality in the United States. There are very real problems of equality. The Senator from Oregon nodded agreement at this point. They are enduring problems and a democracy inevitably and properly addresses them, and does so in settings of great emotion because the one basic fact is that we are a Nation defined by credo rather than by territory and blood, and the credo of equality is very powerful in the United States. In the end, you have to be very sensitive to perceptions that it is not being equally applied, and that is one of the things we are going to deal with here.

If my friend would permit, however, I would like to address the more pedestrian but yet more urgent matter before us which is the restatement of the 25-percent tax deduction for the health insurance expenses of the self-employed, which is the measure before us today.

Authority for this tax deduction expired at the end of 1993. The health care reform legislation reported by the Finance Committee last year would have reinstated it on a timely basis, but obviously we did not get that legislation passed. Thus, we have a situation where the filing deadline for the 1994 tax year is fast approaching and the self-employed are left with no health insurance deduction. It is imperative that we act promptly on this legislation so that more than 3 million self-employed individuals across this country can file their 1994 tax return by the April 17 filing deadline. We must act quickly, and I am confident we will.

Of course, reinstating the deduction costs revenue. In order to avoid increasing the deficit, we must offset its cost with other provisions. And I was concerned, with colleagues on both sides of the aisle, that we have decided to pay for the health insurance deduction with a provision that has a long history and is controversial, as the chairman observed.

I refer to section 1071 of the Internal Revenue Code which authorizes the Federal Communications Commission to provide tax deferral to sellers of broadcast properties when such sales effectuate FCC policies, including sales to minority purchasers to foster program diversity. This bill would retroactively repeal section 1071 so that even those transactions which had been negotiated in reliance on section 1071 could not go forward. One thing is clear as we consider this bill—there were other ways to pay for the reinstatement of the deduction.

Mr. President, many assertions have been made about the FCC tax certificate program, some justified, some not.

I, and many of my colleagues, recognize that valid questions have been raised about the way that section 1071 is currently being administered. But, before we act on this bill, we should be clear that other options were available, short of outright repeal on a retroactive basis. I proposed an amendment in the Finance Committee that would have paid for the health insurance deduction at an increased level of 30 percent, avoid the issue of retroactivity, and provided a moratorium of up to 2 years on the FCC's issuance of tax certificates. During the moratorium period, no FCC tax certificates would be issued and applications for tax certificates would not be processed by the FCC. The Administration is undertaking a comprehensive review of all Federal affirmative action programs. The moratorium would have provided adequate time for the Congress to take a careful look at section 1071, consider any recommendations from the administration, and make changes in an orderly way. Section 1071 was enacted more than 50 years ago, in 1943, and its application to sales of broadcast properties to minority purchasers has been in place for 17 years, since 1978. It is only reasonable to expend more than a few weeks when making significant changes to the provision. Unfortunately, the necessity of acting quickly on the extension of the self-employed health insurance deduction has precluded that kind of deliberation.

The amendment that I offered in the Finance Committee to this legislation would have eliminated the retroactive aspect of the repeal of section 1071. Our colleagues in the other body, and more recently the Senate Finance Committee, have voted to repeal section 1071 on a retroactive basis—that is, retroactive to January 17 of this year, the date on which the Chairman of the Ways and Means Committee issued a press release raising concerns about the provision. The best information we have is that there are at least 19 transactions that were negotiated in reliance on the existence of section 1071 and had FCC tax certificate applications pending on January 17. In many of these cases, the parties had signed definitive purchase agreements, subject only to issuance of an FCC tax certificate, filed applications for FCC tax certificates, and expended hundreds of thousands—in some cases, millions—of dollars in negotiation costs. All done in reliance on an FCC policy that had been in place for 17 years and had been expressly reaffirmed by Congress in each annual appropriations bill for the FCC since 1987, most recently in appropriations legislation passed in August 1994.

Businesses cannot plan, cannot negotiate, and cannot compete on a fair basis under the threat of this kind of retroactive reversal of the law. The critical issues are adequate notice and justified reliance. Many of us believe that the affected parties justifiably relied on the law in effect when they entered into their transactions, and that the notice they received was not adequate. This kind of retroactive legislating should not be done. I regret that it is in this bill, but the time has now run out for alternatives if we are to get the self-employed health insurance deduction reinstated within a reasonable period before tax returns for 1994 must be filed.

Mr. President, we could have addressed the need to extend the self-employed health insurance deduction in a timely manner without retroactively repealing the Minority Broadcast Tax Preference Program. We must act promptly to reinstate the 25 percent tax deduction for the health insurance expenses of the self-employed. And, we will. I regret, however, that my colleagues did not accept the amendment I offered in the Finance Committee which would have allowed us to review this provision more carefully, correct what must be fixed and retain what has clearly worked for so many years.

Mr. President, I see the Senator from Maine has been on the floor. I think he wishes to address this.

I yield the floor.

Mr. COHEN addressed the Chair.

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

Mr. COHEN. Mr. President, first let me say that we have heard presentations here this morning by, I believe, two of the most intellectually gifted, eloquent Members of the U.S. Senate, both of whom have a long record in the field of civil rights and affirmative action programs that attempt to rectify policies of discrimination.

The PRESIDING OFFICER. Let me interrupt the Senator.

Who is yielding time?

Mr. PACKWOOD. Mr. President, I yield as much time as the Senator may need.

The PRESIDING OFFICER. The Senator is recognized.

Mr. COHEN. I thank the Senator for yielding.

I would like to discuss the broader issue involved here. Since this particular bill is said to be the first wave of an oncoming assault on all affirmative action programs, I would like to discuss the subject in a broader context.

First, commenting on the statement of the Senator from New York, we are trying to provide very much needed relief to the self-employed, a tax benefit that had expired last year for self-employed individuals who need to purchase health insurance. That deduction expired last year. It needs to be restored.

In my own opinion, we need to expand it as we try to reform our health care system. Many of us would like to see the self-employed put on the very same footing as the employers who now claim a 100-percent deduction. Obviously, that will involve a revenue loss and we will have to find ways to pay for it. That, of course, is the second component of what we are talking about here today, finding ways to pay for the restoration of a tax benefit that we would like to see not only restored but increased.

I think what is remarkable from my perspective, in reading today's Washington Post front page story about the mood that is sweeping the country, one that the polls tell us is overwhelming, that is the rejection of the whole notion of affirmative action.

Many people assert today that we are living in a color-blind society. I feel that is a flagrant falsehood. I do not for one moment believe that we live in a color-blind society. I think, quite to the contrary, perhaps we are more color conscious than ever by virtue of the social developments that have taken place in the past 10, 20, 30 years.

There is also a notion that not one of us should ever be held responsible for past discrimination. In other words, you could have what you call 2 centuries or 4 centuries of absolutely reprehensible conduct and its impact on the minority groups, and there should be no curative or restorative responsibility borne by today's generation. That is a sentiment which apparently is very widely held.

Another widely held view is that unqualified blacks and minorities are taking jobs away from more qualified white males, and some would even argue genetically intellectually superior individuals. They refer to "The Bell Curve."

It has also been stated that reverse discrimination—which, I think, is a misnomer, reverse discrimination, because discrimination really means you have the power to discriminate, to hold someone down or back. For most people who fall into the category of minority, they do not have power. But, nonetheless, assuming you accept the phrase "reverse discrimination," some have said it is an evil equal to slavery. I find that to be more than a mild exaggeration, given the history of what has taken place in this country.

And, of course, most people believe, and all of us here share in that belief, that we are fundamentally opposed to discrimination.

On one hand, we are fundamentally opposed to discrimination; namely, basing our decisions and judgments of people on the color of their skin or the texture of their hair, their gender. We are all opposed to that, but we also reject any affirmative programs to rectify discrimination where, in fact, it exists.

I would like to say, respectfully, to my colleagues that we have yet to fully and honestly confront the fact that racism is an evil that is not simply a stained chapter in our history books. It

still flourishes in many overt and, I would suggest, even more subtle ways.

We tell ourselves that we practice our religious teachings in terms of loving our fellow man, until a controversy arrives or a conflict in our emotions or our loyalties, and then the darker angels of our nature surface and they lash out and they blame or condemn those whose race or gender is different from our own.

I recall during the Iran-Contra hearings—those were chaired by our distinguished colleague from Hawaii—by virtue of the fact that we had a very popular lieutenant colonel testifying before that committee, the hate mail started to pour in, hate mail directed at Senator INOUYE—a floodtide of nasty, negative epithets directed toward a man who had given his limb, offered his life in defense of this country. And yet, because he had the audacity to question a Marine, a popular Marine, suddenly the hate surfaced and was directed at him.

I thank our colleague from New Hampshire, Senator Rudman, who spoke out vocally and strongly against that, condemning the indulgence of racial hatred. Because, suddenly, the poisonous emotions started to bubble up, and the hate-mongerers said, "Ah-ha, there is a minority. How dare he challenge one of us."

And so, this has been our past and I think it will continue to be our future unless there are major changes that will take place, hopefully during our lifetime, but I doubt that.

So we have to go back and ask what was the basis for affirmative action.

The Senator from Oregon, gave a very perceptive analysis of its birth. But I think it is partly guilt, partly guilt on our part. And with reference to the Philadelphia story, so to speak, the Philadelphia plan, some saw it as partly political expediency.

The guilt came about because we had recognized that we had perpetrated a monstrous evil, that we had enslaved a people, that we had called them only three-fifths human, that we had destroyed their families, their dignity, their pride, and that we had deprived them of opportunity. We had prohibited them from learning to read or write or vote. And then we insisted that they should be willing to fight and die for America, but they could not sleep in the same barracks, they could not eat in the same dining halls, they could not drink from the same fountains.

I do not know whether the Senator from Oregon saw the article that appeared in the Washington Post about a week or two ago about the Tuskegee airmen. It was a poignant story. It was a reunion of the Tuskegee airmen, a group of black pilots who flew back in World War II. It was a very emotional reunion for them. There were tears welling up in their eyes as they were telling their stories.

They had to fight two wars. They had to fight a war against Hitler and they had to fight one against an inner rage that was burning inside them toward a society that said they could be equal only on the fields of slaughter.

We recall not too long ago in our history that we were turning German shepherd dogs on blacks who were marching or sitting in, hoping to enjoy the equal rights and privileges that we have under the Constitution. We blasted them with fire hoses.

It was in the wake of the marches and the sit-ins and, I might suggest, the assassination of Martin Luther King, Jr., that we, as a society, finally recognized and admitted that we had not measured up to our professed ideals, either as individuals or as a nation.

That gave birth to the affirmative action programs to break down the barriers in the worlds of construction and housing and corporate finance and banking and, yes, even eventually in the communications world.

The purpose, as the Senator from Oregon has suggested, was not to give unqualified people special preferential rights, but rather to give people who were, in fact, qualified and eager and ambitious the opportunity to enter into fields that had been denied them solely by virtue of the color of their skin or their gender. That was the purpose of the affirmative action program.

The Senator from Oregon said it was inevitable—quoting those who were the formulators of the program—inevitable that the affirmative action programs would lead to quotas—inescapable. All of us are opposed to quotas, because it is just the reverse of what we are trying to do; namely, not give any group preferential treatment by virtue of the color of their skin or the nature of their gender who are unqualified, but rather to use some affirmative action to allow those who are, in fact, gifted and willing and able to break through barriers that may be made of glass or concrete.

I mentioned expedience, by the way. The Senator from Oregon pointed to the Philadelphia plan. It has been written that Richard Nixon seized upon the plan back in the seventies, to get at the Democrats, to break through the trade and contruction unions who had at that point, and to this day, I suspect, still basically support the Democratic Party. That this was a way to really drive a wedge into the Democratic Party by opening up that particular marketplace, so to speak, to blacks who had been denied that opportunity.

So the question is, have we been successful? I suggest only partly. The Senator from Oregon rightly talks about stereotypes. What happens to Arab-Americans in this country? We immediately see the stereotype of a terrorist. How unfair, as he has pointed out.

The same thing is true for African-Americans in this country. We see them, do we not, as athletes? We are witnessing the return of Michael Jordan and a tremendous outpouring of pride and near hysteria at his returning. We see them as entertainers. But do we see them as entrepreneurs, as such? Not really.

As a matter of fact, there have been stories about the problem out in L.A. right now. All of us—not all of us, but many millions of people in this country—are mesmerized by the trial going on in Los Angeles right now. Why is it, as the trial attorney Jerry Spence suggests, that African-Americans look through a different lens than we do because they have had a different experience than we have had. That experience has not been a pleasant one, apparently, in Los Angeles.

Story after story starts to emerge about prominent actors or athletes who have been followed right to their homes, to their doorsteps because they happen to be driving a Mercedes or another expensive car, and immediately, of course, what do the police suspect? "Must be a stolen car." Either that or, "He is a drug dealer. Let's arrest him or stop him. Let's see the identification and make him prove ownership." So there are still stereotypes which exist to this very day.

Talking about affirmative action programs, I think the Senator from Oregon pointed out the CRS study was at least deficient in one respect. It had not analyzed television. I was going to ask the Senator from Oregon or the Senator from New York as to whether or not there is any relationship between minority ownership in programming, whether he has ever watched Black Entertainment Television? That is minority owned. There is a great story involved in that particular television station.

The owner, Robert Johnson, when he was applying to college, Princeton, was initially denied admission, except that he was then allowed to enter through a minority admissions program. He ended up finishing sixth in his class.

What he gained from that entry into Princeton was access to other Princetonians, access to capital, access to influence. And had he not had that opportunity to break through that barrier that initially had been denied him, he would not be in the position that he is today.

So he started Black Entertainment Television about 20 years ago with a personal investement of—I do not know— $25,000, $30,000, $40,000, whatever it was. Today, that station is probably worth $300 or $400 million.

I challenge anyone to watch the program. Is it different than CBS programming or NBC or CNN? I suggest to you the programming is quite different. It is quite different. And I suggest that that relationship between the

ownership and his status has a great deal to do with that programming.

The Senator from Oregon asked the question: Do we want to grant preferential treatment to groups where there is no evidence of past discrimination? But there is another question I think we can also ask: How do those who have been victims of past or present discrimination ever acquire that access to the capital that is necessary for them to be in a position to acquire radio stations or television stations?

In other words, if you take the position that you have historically denied education to a group, let us say African-Americans, equal to that of another group, namely, white Americans, and then you, as an employer, say, "I can't find any qualified blacks," that is the circular argument that those who are struggling to break through the barriers find themselves confronting.

I come back to the issue of stereotypes. All of us recall the Clarence Thomas hearings and the Anita Hill testimony. What was really remarkable to me is the reaction of the people to those hearings. They said, "Isn't it amazing there were so many articulate blacks testifying during the course of that hearing?" Now, why should that be so stunning? The word associated with those blacks being "articulate," as if we expected them to be inarticulate. Again, another stereotype that they have to confront. We expect them to not be as educated or articulate as those in the white community.

Mr. President, I ask the question: Should we discontinue preferential treatment to veterans in this country? I see the Senator from New York is rising quickly on his feet, having been a noble sailor in his youth. But we grant preferential treatment to veterans. Why? Because of the sacrifice they have made in serving their country as a group.

Not every one of them served in the Persian Gulf or in Korea on Pork Chop Hill or in Vietnam or at Iwo Jima—wherever it might be. Some stayed right here in the United States. Some sat behind a desk, never facing the threat of a bullet or a bayonet or a bomb. But we as a society say, nonetheless in hiring practices, we give preferences to our veterans, and we decide that.

When the Senator from Oregon says it is dangerous whenever a Government decides to determine who is in and who is out, well, we are the Government. We are the elected officials. We decide. We are held accountable by our constituents, and we have decided that there is merit in that particular case.

So I think this is just the beginning of a debate that needs to be approached, as the Senator from Oregon has said, with great sensitivity, with a recognition that this is a very powerful issue in this country; that it has the potential to become not only a wedge issue but a very damaging, polarizing issue in our society. We have to look to see whether or not everything should be scrapped in dealing with affirmative action. Let us say, for example, we have abuses in the Food Stamp Program, do we not? We have abuses in the welfare program, do we not? We have abuses in the Federal procurement programs, do we not? We have abuses in the workman's compensation programs and in the disability insurance programs. Has our answer been to terminate them, just kill the programs, they do not work. Or to stop feeding people and let them fend for themselves? We say, wait a minute, let us see if we cannot modify them.

Maybe the States have a better idea. Maybe there are ingenious Governors, creative individuals at the State and local level, that can do a better job than we have done. But the answer has not been, let us just terminate it, it is not working.

That is my fear, as we begin this debate, not on this issue specifically, but on the broader discussion of affirmative action, because if we simply go by what the polls say, there is no contest. But I think we have a higher duty than to simply read the polls and to really examine what is at stake here.

The stereotypes continue, as I have said. I recall reading an article by columnist Michael Wilbon, a Washington Post sports writer. He described an incident where he and five friends, an investment banker, a venture capitalist, a manufacturing executive, a lawyer, and an international marketing director for a large company, went down to the Super Bowl. They were dining in a restaurant and the waitress kept coming over to the table saying, "Who do you play for?" Well, he is a noted sports writer, and he was in the company of a reputable lawyer and, as I recall, an accountant, and an investment banker. But the waitress would not take that for an answer. "No, no, no, who do you play for?"

So we have to deal with the issue of the stereotypes and what that means and what they continue to mean for individuals who try to break out of the stereotypes, who are trying to get into occupations and positions and to start a on a level playing field, which has not existed to date.

Whatever failures have been in affirmative action programs, let us look at them carefully and let us try to see if we cannot change them. If there is no evidence of past discrimination in the field of communications, that is one thing. If this is indeed a system which has been exploited and abused by white corporate owners and not really serving the minority community, then it is time for a change and indeed maybe in this case even a termination.

But I hope, Mr. President, as we begin this debate on affirmative action, that we approach it in the concluding words and with the concluding sentiments expressed by my friend from Oregon—with a sense of responsibility, not with a sense of hate or malice, or vindictiveness, or a simple urge to purge our laws as such of their preferential treatment to groups that historically have been discriminated against and continue to be discriminated against every day—every day of their lives.

So I commend my colleague from Oregon and also my friend from New York. I hope that we can begin this process of fixing those programs that have been misused or abused. But I hope we will refrain from playing the wedge issue, which I know the Senator from Oregon, the Senator from New York would never do, because those wedge issues can become polarizing, divisive issues that will not serve this country well.

I wanted to take the floor to express those sentiments. I know that is not the fashion in which you have proceeded. I commend the Senator for his comments as he expressed them.

Mr. PACKWOOD. Mr. President, I want to respond to my good friend from Maine. He and I have probably been on the same side of more issues than any other person in this Chamber. He mentioned Bob Johnson, the founder of Black Entertainment Television. Well, I met him. Despite the fact that he was a Princeton man and as qualified as anybody, his problem was access to capital. I do not know what I would have done as a banker 20 years ago if somebody came to me and said, listen, I have this idea for an all black entertainment channel. I do not know. It is interesting how he got the money. He could not get it from the banks. He went to John Malone of TCI. I think Malone is maybe one of the finest entrepreneurs in this country. Bob Johnson explained what he wanted to do. John Malone said, "How much do you need?" Bob said, "$500,000." Malone said—and I thought this is where Bob Johnson was so humorous. He said, "All right, I will put up $125,000, but I want 20 percent of your stock. I will loan you $375,000." Malone did not know that Johnson would have given him 80 percent of the stock. He got the $500,000 and he said to John Malone, "I have not really been in a business. Do you have any advice? Malone said, "Keep your expenses below your income." From that grew Black Entertainment Television.

There is an interesting difference. Cable is more like the ethnic newspapers. Cable is narrowcasting. This is where a smart entrepreneur can say, I can make money on 5 or 6 percent of the audience, not 60 percent. As you skim through the channels now, whether it is education, discovery, or history, I doubt if any of them have 50 percent of the audience, but they have

5, 10, 20 percent. There is money to be made.

The Senator put his finger, I think, on the most interesting issue here. No question, in my judgment, there is no discrimination in the sale of the broadcast property. If you have a radio station and you want to retire, you are going to sell to the highest bidder. One owner said, "Even if you have blue skin and an eye in the center of your forehead, you will get it." The potential is limited to those who have the money to buy. Minorities, and maybe women to a lesser extent, did not have access.

So now the question becomes this, and I do not know the answer. Because minorities have been discriminated against for centuries, and because women could never rise above—you remember the settlement with AT&T 15 years ago. There was a glass ceiling. You could be a Ph.D and be first in your class in all the schools, and there is a level beyond which you were not going to go. Because of the past discrimination and because of the past access to capital—the lack of it—we set up a preference program in an area where there has been proven discrimination, simply to say we want 5 percent women or 10 percent women to own, and we want 10 percent Asians and 5 percent this and 5 percent that. You just do it. I am not sure I know the answer. But clearly, that is the discussion we are going to have.

Mr. COHEN. Here is another example of the problems confronting minorities in this city. Many years ago—almost more than 20 now—I had a problem with a car. I purchased a used car. I had a problem with it and took it over to a dealer, which will remain unnamed. The dealer told me the cost for fixing that particular automobile would be $1,800. I said, "$1,800? That is more than I paid for the car." I then came back to Capitol Hill and inquired, "Does anybody know a good mechanic?" which is hard to find in any city. They gave me the name of Clarence Davis. I went to see Clarence and I said, "Can you fix this car?" He said, "Well, let me look around." He kind of tapped it here and there. He said, "I can fix it." I said, "How much?" He said, "Do not worry about the money." I said, "No, no, how much?" He said, "I am telling you do not worry about the money." So I, with my trusting soul, handed him the keys to the car and said, "OK, fix the car." Do you know what the bill was? It was $68. I will repeat that. It was $68. Behold, I had found a man, an honest mechanic. And sooner will a camel pass through the eye of a needle than you will find a mechanic that will charge you $68 for something somebody else wanted $1,800 for.

I have maintained a relationship with this individual. He ended up working for another station on the hill, owned by a Korean family. He was their real source of income, because everybody wanted to go to Clarence in order to have their automobiles fixed. He is really a genius in fixing automobiles. Then it occurred to him that he is working for somebody else, and would he like to go into business for himself? The answer was: Of course he would. He had a clientele of mostly Senators and Congressmen. But guess what? He could not get a loan. No matter that he had his eye an a piece of property that was prime territory; it was a great bargain and it was an old Exxon station; it was closed down. He had a list of clients at least 75 long of Members of Congress and executive branch, who testified to his competence, and he showed a stream of income that would have more than paid for the mortgage. He could not get a loan. I sent him to every bank in Washington. He could not get a loan. So then I contacted a wealthy, white friend of mine, whom I had never asked a favor from in my life. I said, "Here is a person who is talented, brilliant, and he cannot get a loan in this city." And the individual made the loan, and the business is there and is flourishing today. It shows the barriers that people are up against.

Now here we are, in a predominantly black city, with a predominantly black clientele. Suppose now that individual, with a great record, history, clientele could not get a loan.

That is what I am talking about when I say "access to capital." Give a person the access to capital and they can perform and prevail as anyone else. But that has been the history of denial in this country.

I say to my friend that I do not have the answer to it. I think the affirmative action programs were designed to achieve that. If they have gone astray, we ought to try to modify them as best we can. If it becomes the collective judgment of the people in this country, this Congress, that they no longer serve a socially useful goal, then obviously they will be terminated.

I must say that we have not yet reached our ideal of a colorblind society. There are still many, many, racial stereotypes that exist today. They will not be easily eliminated. So we still have an obligation, I think, to help those who have the talent and the ambition and the desire to share fully in the real benefits and bounty of this country, who have been denied that opportunity.

Mr. PACKWOOD. Mr. President, I yield such time as the Senator from Delaware may need.

Mr. ROTH. Mr. President, I thank the distinguished chairman.

Mr. President, what we are doing today is a most important step, one I have worked for for quite some time. I would like to thank the majority leader and the Finance Committee chairman for moving so quickly to pass this legislation—legislation that is extremely important for our hard-working farmers, as well as our job-creating small business men and women.

Few people understand how very difficult it is to get a tax bill passed through both Houses of Congress within about 2 months' time. I believe we have been successful not only because of the efforts of Senators DOLE, GRASSLEY, PRYOR, and me, but because our esteemed colleagues understand how important, how fair, this measure is.

It has been my objective, along with Senators DOLE, PRYOR, GRASSLEY, and others, to get the self-employed health insurance deduction passed retroactively for 1994; to have it passed before the filing deadline next month.

Personally, I will continue to do everything I can to get this bill passed and out of conference with the House before April 17, the deadline this year for filing our taxes.

This is so important to me that at the conclusion of the Senate session last year, I held up a vital Securities and Exchange Commission funding bill as long as I could because it was the last tax bill leaving the Congress. Since it was our last chance, as well, to get the 25-percent deduction extended, I wanted to attach this legislation to that bill so that there would not be this administrative nightmare facing small businesses and farmers, because they might have to file amended tax returns.

The Finance Committee chairman at that time, Senator MOYNIHAN, joined in a colloquy agreeing we would take up the legislation early this year if I would let the SEC bill go forward. I reluctantly agreed. The new Finance Committee chairman, Senator PACKWOOD, has kept that promise to move quickly, and we have. In fact, to pay for this bill, we have used some of the ways I suggested last year. In particular, I am pleased that we have enacted some of the changes I have been recommending on the earned-income tax credit.

Earlier this year, in an effort to encourage the House to pass the 25-percent health insurance deduction, I circulated a letter with my good friend and colleague, Senator PRYOR, which was signed by 75 Senators.

That letter, sent to both leaders, stated that in order to move quickly, we would all agree not to support or offer any amendments to the legislation to extend the 25-percent deduction for health insurance for the self-employed when it reached the floor of the Senate. I believe this letter was instrumental in helping get this bill passed quickly.

Finally, I want to mention that we are not done with the deduction for self-employed, even though this bill will enact the legislation on a permanent basis for the first time. I believe it must still go forward. I believe we

need to increase the 30-percent deduction to a full 100 percent, just like major corporations get for that health insurance. In fact, it was my amendment in the Finance Committee that increased the 25-percent deduction to 30-percent beginning in 1995 and forever after that.

Although my amendment made progress, we have to go a lot further. I will continue to do everything I can to increase the deduction to 100 percent.

Mr. President, I yield the floor.

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

I ask that the time be charged equally.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

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

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

Mr. DORGAN. Mr. President, I would like to take just 2 minutes in support of the pending bill. Then I would ask unanimous consent to speak for 10 minutes as if in morning business.

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

Who yields time?

Mr. MOYNIHAN. Mr. President, I am happy to yield such time as indicated to my distinguished friend from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I thank the Senator from New York. I did not know we were under a time agreement.

First, let me say that I believe the matter of providing retroactively the 25-percent tax deduction for sole proprietorships and self-employed—including farmers—is very, very important.

We should not have let that expired. It did. But now to make it retroactive, so that it is a seamless 25 percent, makes a lot of sense. I believe we ultimately ought to make sure that sole proprietorships are able to deduct 100 percent of their health care costs, just as corporations are. My State is a lot like old England. It is a State of shopkeepers, small business people, many of whom are sole proprietors and unincorporated, including family farmers. Across the street may be someone who is incorporated. They can, under current law, deduct all of their health care costs as a business expense. On the other side of the street someone in business, but unincorporated, is now able to deduct zero. With the passage of this piece of legislation, he will be able to deduct only 25 percent; 25 percent is a step forward. That is good. We certainly need to restore that. But I have introduced legislation and supported legislation and fought for legislation for years to make sure that we treat all businesses alike—unincorporated and incorporated.

Health care costs ought to be fully, 100 percent deductible as a business expense for farmers and sole proprietorships just as it now is for corporations.

So I commend the Senator from New York and the Senator from Oregon for bringing this legislation to the floor. I fully support it. I think the work the two Senators have done to correct this is admirable work and I hope we all can work together for a full 100-percent deduction for all sole proprietorships in the years ahead.

Mr. PACKWOOD. Mr. President, I yield as much time to the Senator from Rhode Island as he may need.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, first I thank the distinguished chairman of the Finance Committee and the ranking member of the Finance Committee, the former chairman, for giving me this time.

Mr. President, I am very pleased that this bill has come to the floor today and will be considered in an expeditious manner. I believe Congress needs to pass this legislation promptly so that hundreds of thousands of self-employed taxpayers can complete the filing of their 1994 income tax returns.

The bill reported by the Finance Committee includes sufficient revenues to pay for the extension of the health insurance deduction. That is covered. We also came up with additional money which will reduce the deficit by about $1.4 billion over the next 5 years. In terms of the entire Federal budget this is a modest amount—$1.5 billion over 5 years. But it represents a step in the right direction.

What concerns me about this bill, Mr. President, is that it provided a modest test—not a gigantic test but a modest test—of our desire to reduce the deficit; and I am afraid that we are in danger of failing that test.

Let me review the bidding. The immediate need which prompted the quick consideration of this legislation was a desire to extend the 25-percent deduction for the health insurance of self-employed individuals for 1994. Absent this action, they would not have been able to take that 25 percent deduction because it expired at the end of 1993. And we wanted to get this done before the filing date of April 17 for the income tax returns. That is the way it started out—take care of this year.

In the Ways and Means Committee the members chose to permanently extend the deduction. In other words, the 25 percent deduction for health care costs paid by the self-employed was to remain permanently on the books. The Finance Committee went a step further by not only making it permanent but also increasing the deduction from 25 to 30 percent for the year 1995 and thereafter.

So what started off as a bill that would have cost $500 million, a half a billion dollars, to address an immediate need, turned into a bill that costs $3.5 billion over the next 5 years.

I strongly support the 25 percent health insurance deduction for the self-employed. Always have. The mainstream coalition health care legislation that we presented last year included it. Indeed, we phased it up to a 100 percent over a period of years. And so, therefore, I can understand and sympathize with the effort to not only give the self-employed the 25-percent deduction but to bring it up to 30 percent next year and the years thereafter. All that is understandable.

I would make the point; however, that those who are working for a business where their insurance is not paid for by the employer and the individual must obtain his or her own insurance, cannot deduct a nickel of his or her payments for health insurance. The self-employed can, but if you are working for somebody else, you are employed by a corporation or a self-employed person, you cannot deduct the cost of your health insurance. You cannot deduct anything.

So, yes, it is nice that we have gotten it up to 30 percent for the self-employed. But we have not done anything for those who work for corporations.

But here is my concern, Mr. President. Sixty-six Senators in this body voted in favor of a constitutional amendment to provide a balanced budget amendment by the year 2002. Achieving that goal is going to take incredible effort. We are going to have to reduce Federal spending from what it otherwise would have been over these 7 years by $1.2 trillion.

Now, even for somebody from Washington, DC, $1.2 trillion is a lot of money. That is a monumental challenge. Yet, here we have a bill that gave us some money to start down this deficit reduction path, to use toward the $1.2 trillion, and what is the action we take? We increase the deduction and make it permanent.

I am going to support this bill as it was reported by the Finance Committee because we did exercise some discipline by providing for a modest amount of deficit reduction.

But I greatly fear that, in the conference, the House conferees will say, "Well, the Senate increased the deduction from 25 percent to 30 percent. There is additional money in the bill that is directed toward deficit reduction. But let us not use it for deficit reduction. Let us use it to increase the deduction from 30 percent to 35 percent or 40 percent," whatever the traffic will bear. And that, Mr. President, would be a very great mistake, a very great mistake.

So I just want to go on record here to say that, should the conferees come back using up the money we set aside for deficit reduction for another purpose, I will not support that conference report. I believe it would be a great mistake. We in this body are determined to do something about these deficits. And to do something about it means we have got to make tough choices. It means we have to forgo attractive proposals, such as increasing the self-employed health insurance deduction.

I thank the Chair, and I thank the managers for giving me this time.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. PACKWOOD. Mr. President, I yield as much time to the Senator from Missouri as he may want.

The PRESIDING OFFICER. The Senator from Missouri.

LINE-ITEM VETO

Mr. ASHCROFT. Mr. President, on occasion after occasion, you and I have heard it said that under the dark of night, in the late hours of evening or the early hours of the morning, this body does things that are a discredit to a democratic society—pay raises, pork-barrel projects, and profligate spending. The kind of things that we would not want to have brought to the light of day.

But late last night, something very befiting of this body took place. And, Mr. President, it did so at your hand and at the hand of your colleague, Senator MCCAIN of Arizona. Because under your leadership, late last night, the U.S. Senate passed the line-item veto. And in so doing, we placed a tool in the hands of Presidents which will allow us to move toward the aspiration of a balanced budget. In the cover of darkness, we uncovered the darkest parts of our behavior, and said no more. We put the national interest ahead of the special interests. We said that in the future, if you want to put projects in an appropriations bill, you will have to contend with the possibility of a veto by the President of the United States.

So I rise today, Mr. President, to draw attention to the importance of the action taken late last night to change the culture and structure of spending here in Washington.

Forty-three of the 50 States have some variant of the line-item veto. During the debate, however, we heard people talk hypothetically about potential abuses. It is important to note that, of the 43 States, there has not been a single effort by any of the legislatures to repeal the line-item veto authority. In fact, it works so well that there is a consensus in the States that it should be left in place so that they might continue to provide a foundation for the financial integrity of the Nation.

Someone came to me recently and said, "JOHN, there is a State that has changed their line-item veto. In 1990, the State of Wisconsin amended their provision." Well, it was interesting when I looked at what the amendment really said. It reads, and I quote: "in approving an appropriations bill in part, the Governor may not create a new word by rejecting individual letters in a word of the enrolled bill."

Mr. President, what the legislature said was that the Governor could not change the word "cannot" into "can" by striking out the last three letters of the word. That is not a real change in the philosophy behind the veto authority. It is simply a housekeeping detail about making the measure what it ought to be, namely, the capacity of the executive to knock those things out of spending bills which are not in the best interest of the State. So, it is important as we go to conference to understand the success that the line-item veto has enjoyed in the States.

In the end, I was encouraged by the vote last night. Sixty-nine votes in favor of the line-item veto reflected a strong understanding that we must adopt measures to restrain spending, and reduce the deficit. So we have made a significant step forward. For if the people sent us here for any purpose at all, it was to enact changes, such as this, that will fundamentally alter the way we do business.

I look forward to the time when the conference report comes back and we again have an opportunity to address this issue. It is critically important. The vote last night was encouraging. However, while the battle has been won, the war is not over. And as we work out the differences between the two bills, I hope that the end product gives us as great a promise for financial integrity as the measure we passed last night.

Mr. President, as the Senator from Indiana, you are to be commended for your role, along with Senator MCCAIN. It was your hard work that ensured we arrived at a product which could be subscribed to by such a broad majority of the Senate. I hope that this body acts on the conference report as it did last night. It was nighttime behavior, maybe somewhat reminiscent of times when we have done the wrong thing under the cover of darkness. Last night's behavior, however, was commendable in that it was in the national interest. We should seek to replicate it in the future.

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

The PRESIDING OFFICER. If the Senator will suspend his request. The Senator from New York.

Mr. MOYNIHAN. Mr. President, the Senator from Vermont would like 10 minutes to discuss and discourse on what was the once and possibly future national pastime. I yield those 10 minutes to the Senator.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

MAJOR LEAGUE BASEBALL ANTITRUST REFORM ACT OF 1995

Mr. LEAHY. Mr. President, I thank my good friend, the distinguished senior Senator from New York and my neighbor. And like the distinguished Senator from New York, I, too, hope that we will some day actually have baseball played. I share his sense of patriotism in all things. I admire his sense of history. But I suspect he, like I, is at many, many events this time of year when our national anthem is played. We are all very proud to hear it, but we sometimes, as spring arrives, wait for the words, "Play ball," right after it is played.

So the Major League Baseball Antitrust Reform Act of 1995 is being introduced, Mr. President. It is being introduced by Senators HATCH, THURMOND, and myself. I want the Senate to know why I back this.

Senator THURMOND and I introduced on February 14 an earlier version of this legislation to remove the antitrust law exemption that major league baseball has enjoyed for over 70 years. Major league baseball, unlike practically any other business in this country, has an exemption from the antitrust laws, and Senator THURMOND, Senator HATCH, and I, and others, feel that should be removed.

Actually, we are just saying that nobody should be above the law. We did this for Congress. We passed the Congressional Accountability Act, something I backed for years, which applies the same laws to Congress as apply to everybody else. We are just saying baseball should live by the same laws as everybody else.

I regret very much that the owners of major league baseball teams and major league baseball players have been unable to get through their impasse. Mediation has not been successful. Presidential entreaties could not do it. Congressional pleas for a voluntary settlement have gone for nought.

What we have always thought of as our national pastime may become a thing of the past. I am afraid that what we saw as children when we would follow games, when we would go to our Little League games and identify with various major leaguers at that time is gone. Seniors who look forward to the joys of spring training and following their favorite teams on radio, youngsters who identify with heroes in the world of baseball, this will be gone.

And let us not forget so many who make monthly mortgage payments by being vendors of everything from T-shirts to hot dogs, who park the cars, who take the tickets. These people are also out of a job.

There is a public interest in the resumption of major league baseball. I am concerned that the owners show no intent of really getting a strong commissioner who might look out for the best interest of baseball. That is what the commissioner is supposed to do—not the private interest of those who make the money from baseball, whether owners or players, but rather for the best interests of baseball itself.

Our antitrust laws are designed to protect consumers, but for over 70 years consumers have not seen these applied to baseball, on the assumption that there would be a strong commissioner and the major league would operate in the best interest of baseball. But that is not what is going on.

In Vermont, where I grew up, virtually everybody was a Red Sox fan. Now there is divided loyalty between the Red Sox and the Montreal Expos, and there is also the minor league team, the Vermont Expos.

We also have jobs in the State of Vermont that rely on baseball. There is a company called Moot Wood Turnings in Northfield Falls, VT. "Turnings" is wood turnings. They make the souvenir, replica baseball bats, the little bats that have been passed out for 40 years on bat day at baseball games. They had to drop a third of their 24-person work force because of the strike last summer. That is just one small company. These are not people who make a great deal of money. They make $5 and $6 an hour, and they were out of work because a small group of people cannot figure out how to divide up $2 billion. It makes absolutely no sense.

We had a chance last year to right this situation when we were considering a bill to repeal baseball's antitrust exemption, but we decided to hold off in the Senate, thinking that maybe everybody would work it out. Right after that, negotiations between the major league baseball owners and players disintegrated. We saw a preemptive strike, the unilateral imposition of a salary cap, failed efforts at mediation, the loss of one season and likely obliteration of a second, and pleas from all corners to get it going again.

I think if we had repealed this out-of-date, judicially proclaimed immunity from the antitrust laws, this matter would not still be festering. No other business, professional or amateur sport, has this exemption from law that major league baseball has enjoyed and, Mr. President, has abused.

In fact, one of the players who testified at the Judiciary Committee hearing this year asked a very perceptive question. He said, let us suppose that baseball did not have an antitrust exemption and let us suppose they were in the sorry state they are in today and then let us suppose baseball came to Congress and said, "Oh, by the way, we cannot clean up this mess we have, but would you kindly give us an antitrust exemption? Would you pass a special law to exempt us from the antitrust laws"—something nobody else has. Mr. President, they would get laughed off Capitol Hill. There would be no antitrust exemption passed for them.

So the question is, if we would not enact it today, why do we allow them to have it? Why do we not just end it? It is something that should be done.

I am concerned about the interest of the public. I am concerned particularly about the interest of baseball fans. I am not here to speak on behalf of the baseball owners or the players. Former commissioner Fay Vincent said:

> Baseball is more than ownership of an ordinary business. Owners have a duty to take into consideration that they own a part of America's national pastime—in trust. This trust sometimes requires putting self-interest second.

I am also concerned about some of the answers I got from some of major league baseball's representatives. In fact, I should note here on the floor that the answers that they sent, their written answers, are in severe variance with their hearing testimony on several points. In other words, they said one thing at the hearing and they said something else after, in their answers. I think the public should look at what they did, because either they are grossly mistaken on one point or they are not telling the truth on another.

For example, I asked the acting commissioner whether fans who reject replacement players and replacement games would retain season tickets when the strike ended and major league players return? He testified unequivocally and without hesitation, "Yes, sir." But in his written response to the same question, he did not confirm his testimony. Instead, he responded that policies with regard to season tickets and priority seating are handled by the clubs individually.

Well, he has given two answers. One has to be honest, and one contradicts the other. At the hearing, I asked whether major league baseball owners, who benefit from a special antitrust exemption in order to be able to join together with regard to sports broadcasting, would make an unqualified commitment that major league baseball playoff and World Series games would continue to be broadcast over free television through the year 2010.

The acting commissioner responded in the affirmative. But when he got away from the TV lights and cameras and the hearing, he answers that "it is not possible to make an unqualified commitment that far into the future."

I think the public is being shortchanged by the policies and practices of major league baseball and by such disregard for the interests of the fans as evidenced from the hearing record.

They ought to have a little bit of competition. If we withdraw the antitrust exemption, they will have it. There is no joy here in Washington as we continue these proceedings—just a sense of loss, lost opportunities, lost innocence, and lost stature for a game that once symbolized America like no other.

I commend our chairmen, Senators HATCH and THURMOND, for taking up this challenge. We will move forward on it.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. MOYNIHAN. Mr. President, in the spirit of bipartisan harmony I would like to yield 5 minutes, or such time as he requires, to the distinguished senior Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. Mr. President, I want to express my sincere appreciation to my good friend, the senior Senator from New York. We have worked together on many important projects.

This is a measure before the Senate today that is very important to small business people all across this country. Today, the person who operates a small business has many problems. There is nothing so glaring as the failure of the code, as it now stands, to give any deduction for the payment of health insurance for the business owner or that owner's family.

This 25-percent deduction level, as we all know, expired December 31, 1993. According to the Treasury Department, approximately 3.2 million self-employed taxpayers cannot currently deduct any of their health insurance premiums, unless this is corrected. The 3.2 million taxpayers represent approximately 30 percent of the unincorporated business owners in America today.

We had hoped last year, and we talked a great deal in health reform, about the need to put the small business owner on the same footing as the employee of a large corporation who can receive, essentially, 100 percent deductions for the cost of health care premiums.

Large corporations already are able to exclude these costs, and their employees do not have to report them on their tax returns. We are putting entrepreneurs at a very, very serious disadvantage. This problem afflicts small business owners who are farmers, who

are ranchers, who are truck drivers. These people deserve fair tax credit treatment.

One of the biggest concerns that we have today is that without this deduction many families are left without health insurance because of its already high cost. We think this is a terrible impact on the families. It is very hard to imagine a more difficult problem for them to face. Nearly one-quarter or 23 percent of the self-employed are uninsured today. About 4 million of those who do not carry health insurance are in families headed by a self-employed worker.

This deduction makes insurance more affordable and helps to get the families the health insurance that they need and deserve to get. Whether these are small businesses in the town or the city, or farmers, or truck drivers, as I said, or ranchers, these people deserve to have the same kind of tax treatment.

The bill provides for a permanent extension of the deduction, which I think is long overdue, and would provide retroactive deduction for the 1994 returns. These returns are due April 17.

We must act swiftly so that those people who have paid the health insurance claims last year will be able to deduct them. Unfortunately, we were not able to act in time for farmers' returns, which were due on March 1.

If we delay this bill further and are not able to get it to the President on time, even more people who are eligible for the deduction will have to file amended returns.

This is going to burden the IRS with paperwork, not to mention what is even more important, the burdens on the people who have to refile. Mr. President, it is tough enough to have to file an income tax return one time. It is certainly no pleasure to have to file one again.

I think it is also very, very important—and I commend the managers of the bill and the sponsors of the legislation—that we are making this measure permanent. For years the self-employed have been subjected to the uncertainty of not knowing whether the extension would be granted for the deduction. I think it has made it very difficult for those people to plan. This should take that problem away.

I am concerned about the fiscal pressures and the need for deficit reduction, but this is not an area where we ought to economize. Small business, farmers, ranchers, truck drivers—they and their families need to have the health care that this will encourage them to have.

I would like to go further. If we have an opportunity, if the money its available, count me in on seeing if we cannot get the deduction to a par with those people who work for large corporations. But I am very pleased we are moving on this. I commend the managers of the bill, the chairman and ranking member of the committee as well as the sponsors. This will have important impacts on the health of many, many people, many of those who are in small businesses and their families.

I thank the distinguished Senator from New York for yielding the time and I urge my colleagues to support this very important measure.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER (Mr. COCHRAN). The Senator from New York.

Mr. MOYNIHAN. Mr. President, I know I speak for the distinguished chairman when I thank the senior Senator from Missouri for his incisive remarks.

I am pleased to see on the floor our colleague from the Committee on Finance, the distinguished Senator from Illinois. I yield her 10 minutes, as she evidently desires, but in fact as much time as she requires for her statement, which I look forward to.

The PRESIDING OFFICER. The Senator from Illinois.

Ms. MOSELEY-BRAUN. Mr. President, I thank the Senator from New York, and the chairman of our committee. I stand to speak with regard to H.R. 831.

I am a strong supporter of the provision that is at the heart of H.R. 831, the permanent extension and increase of the deduction of health insurance costs for the self-employed. There is no question that the health insurance expenses of millions of self-employed individuals around this country should be treated more like taxpayers who work for larger businesses.

Corporations that provide health insurance coverage for their employees get 100-percent deductibility for the portion of the health insurance costs of their employees that they pay. The employees of those companies use after-tax dollars only for that portion of health insurance costs not paid for by their employers.

Most businesses in this country provide health insurance coverage for their employees, as does the Federal Government, and State and local government. Employer-provided health insurance is at the heart of this country's system of health insurance coverage, and the tax deductibility of employer-financed health insurance costs encourages employers to provide that insurance.

However, millions of Americans do not work for large corporations and do not have access to the kind of group health insurance plans that large corporations often provide. Because they are self-employed, these Americans usually have to pay more for their health insurance. Because they are self-employed, there is no 100-percent tax deduction for the employer-provided portion of health insurance costs.

Congress has attempted to at least partially remedy this serious inequity by providing a 25-percent deduction of the health insurance costs of the self-employed. This provision of the Tax Code, however, was only temporary, and expired at the end of 1993. What that means is that, unless this Congress acts—now—all of the self-employed Americans across this country will face a serious tax increase when they file their 1994 tax returns next month.

That is clearly a totally unacceptable result. It is unfair, it is inequitable. It is simply wrong. That is why I strongly support the provisions in the pending substitute for H.R. 831 that restores the 25-percent deduction for health insurance expenses retroactively, so that it covers the 1994 tax year, the provisions that increase that deduction to 30 percent, beginning in 1995, and the provisions that make that deduction permanent, eliminating any possible future repetition of the kind of situation we find ourselves in right now.

Restoring the deduction, increasing it, and making it permanent is the right thing to do. It eliminates the kind of anxiety and uncertainty that self-employed Americans are facing right now, and assures them that Congress is committed to addressing the disparity in the tax treatment of health insurance costs incurred by self-employed Americans, and Americans who work for larger businesses, for the nonprofit sector, or for government.

Self-employed Americans are hard-working and make an enormous contribution to our economy. We should not, we must not, make it more difficult for them to make that contribution by handicapping their ability to access health care.

Unfortunately, Mr. President, the Finance Committee has chosen to end this unacceptable, inequitable, and unfair situation by creating another one. The price for a public policy of moving towards greater equity in the Tax Code treatment of the health insurance expenses of the self-employed, is the creation of a totally unacceptable, inequitable, and unfair policy in the tax treatment of the purchase of broadcast or certain other communications businesses by minority Americans, and, in some circumstances, women. I am, of court, speaking of the provisions in the committee substitute repealing the provisions known as section 1071.

I strongly oppose the repeal of section 1071 for both procedural and substantive reasons. It is a statement that Congress does not care about diversity of voice in major portions our Nation's communications industry which, after all, are using the public airwaves, or franchises granted by the public. And it is a statement that Congress does not care about Americans who have proceeded in good faith to spend literally millions of dollars based on the existence of section 1071. They are

being taught a very bitter, expensive lesson, never to rely on the government's word, or to take actions based on the law, because the Government may decide, in a matter of just a few weeks to repeal that law—retroactively.

Most Americans, I am sure, have never heard of section 1071, and it is fair to say that, until 2 months ago, most Members of Congress knew little or nothing about it. And there was no particular reason for Congress to focus on the section. After all, it was enacted in 1943 as part of the revenue act of that year to help implement a new policy that prohibited the owners of radio stations from owning more than one radio station in a given market.

What section 1071 action does is to provide the Federal Communications Commission with the authority to defer capital gains taxes arising from transactions involving communications properties. Essentially, it permits those gains to be rolled over as a nontaxable event. It does not eliminate even one dollar of tax liability; it simply postpones the date when that tax liability must be paid.

As initially reported by the Senate Finance Committee in 1943, the provision would have allowed a rollover if the sale or exchange of the property was required by the FCC as a condition of the granting of the application. However, the provision was broadened during the conference with the House of Representatives. The conference report stated that, because:

> . . . the Commission does not order or require any particular sale or exchange, it has been deemed more appropriate to provide that the election, subject to other conditions imposed, shall be available upon certification by the commission that the sale or exchange is necessary or appropriate—I want to emphasize this part—to effectuate the policies of the commission with respect to ownership or control of radio broadcasting stations.

In 1954, the FCC's authority to defer capital gains taxes in transactions involving the sale of radio stations was broadened to include television stations. In 1973, the FCC's authority in this area was broadened yet again, to encompass cable systems.

Until 1978, this authority was used virtually exclusively by the kind of people who then owned radio, television, and cable systems, and that certainly, at the time, did not include minorities or women.

It was not until 1956 that even one radio station in this entire country was owned by a minority, and it was not until 1973 that there was even one television station in the Nation owned by a minority. It was not until 1974 that the FCC first awarded a new radio station license to a minority-owned company the same way it had awarded tens of billions of dollars' worth of broadcast spectrum to nonminorities—for free—by an FCC comparative hearing.

The truth is, Mr. President, that the FCC initially handed out virtually all of the broadcast spectrum to nonminorities free of charge, and then used section 1071 over and over and over again to allow them to roll over the huge capital gains they made in tax-free transactions that allowed them to defer their tax liability. The FCC, as it handed out the spectrum owned by all Americans relied heavily on the question of the previous broadcast experience of competing applicants in awarding new licenses. Yet for several decades, even broadcast training was denied to minorities in this country and in some parts of this country as a matter of law.

State universities were legally barred from admitting minorities at the time these stations were originally given out. State-owned public broadcasting authorities refused to hire or train them. State legislatures denied black State colleges the funds to start broadcasting programs or to apply for broadcasting licenses. For example, the FCC routinely granted broadcast licenses to colleges and universities that were segregated by law, such as WBKY-FM, serving the University of Kentucky, which was licensed in 1941, WUNC-FM, serving the University of North Carolina, which was licensed in 1952, and KUT-FM, serving the University of Texas, among many others.

These segregated policies helped ensure that a generation of minorities would be denied the skills and the access necessary to enter the broadcast industry—with the FCC's full endorsement and ratification.

The extent of the FCC's complicity is illustrated by the case of Broward County Broadcasting versus FCC. This 1963 case involved a radio station, WIXX, located in a community with a large African-American population, a population that received no black-oriented programming from any station serving that market. WIXX decided to devote its program schedule to black-oriented news, public affairs, and music. The city government complained to the FCC that WIXX was offering a format which the city did not need and did not want. The FCC, in turn, threw the station into a public revocation proceeding, which placed its broadcast license in jeopardy. Faced with the loss of the ability to do business, the station dropped its black programming, and the FCC quietly dropped the charges of "character violation."

These policies kept minorities from participating in the free broadcast spectrum "gold rush" that was going on in America. And by the time these policies were ended, the gold rush was over, and there was no more spectrum to allocate for free.

In 1978, the FCC finally recognized its role in denying minorities any opportunity to participate in the gold rush and to enter the broadcast or cable industries. That year, the FCC announced a policy of promoting ownership of broadcast facilities by offering an FCC tax certificate to those who voluntarily sell such facilities to minority individuals or minority-controlled entities. The FCC's policy was based on the view that minority ownership of broadcast properties would provide a significant means of fostering the inclusion of the views of minority Americans in programming, thereby better serving the needs and interests of the minority community and enriching the range of material available to the nonminority audience. The FCC subsequently expanded its policy to cover the sale of cable systems, as well.

In 1982, during the Reagan administration, the FCC further expanded its tax certificate program. At that time, the FCC decided that, in addition to those who sell properties to minorities, investors who contribute to the stabilization of the capital base of a minority enterprise would be able to receive a tax certificate on the subsequent sale of their interest in the minority entity.

This became an incentive for investors to help with preserving and expanding diversity of voice.

The FCC program is not a set-aside or a quota. It functions in the same voluntary manner as the FCC's other uses of tax certificates. The FCC does not require a percentage of licenses to be controlled by minorities, it does not require media properties to be sold to minority-controlled businesses, it does not require a set percentage, nor does it require a nonminority seller of media property to a minority-controlled business to even request a tax certificate.

So there is nothing compulsory. There are no quota aspects of the tax certificate policy at all. The direct beneficiaries of the tax certificate may or may not be the minority member. In many instances it may be the nonminority seller and/or the investors who participate in the acquisition with the minority purchaser. The benefit to potential minority purchasers is the incentive it creates for sellers, and the enhanced access to capital it provides.

The FCC certificate program then operates as a key to unlock the door of opportunity for minorities who have a role in the broadcast industry in our Nation.

There can be no question that minority entrepreneurs have a tougher time accessing the capital markets of this country. The FCC recognized this fact, and the minority ownership program has expanded that access to capital.

In 1987, Congress explicitly endorsed the FCC's actions in expanding the tax certificate program to encourage expanded minority ownership of broadcast and cable systems. That year's Commerce, State, Justice, appropriations bill contained language locking

in the tax certificate program, they thought. The committee report on the bill stated "Diversity of ownership results in diversity of programming and improved service to minority and women audiences." Similar language has been included in every annual appropriations bill since that time, until now.

Between 1978 and 1994, the FCC issued 317 tax certificates under its minority ownership program. Radio stations represented about 83 percent of the certificates issued, television stations 8 percent, and cable systems, about 9 percent. These certificates helped minorities enter a business which, as I have outlined, was virtually completely closed to them. And it did so not by taking away a license from anyone, or through any form of direct financial assistance to the minority buyers, but, as I have already stated, through tax deferrals for potential sellers of radio and TV stations, and cable systems, and potential investors who were willing to enter partnerships with minority buyers to purchase these properties.

The program has begun to make a difference, but it is worth keeping in mind that, out of the 1,342 television stations operating in the United States, only 26, or about 1.9 percent are owned by women. African-Americans owned less than that, only 21 stations, Hispanics owned 9, and Asians owned 1.

In radio, the situation is a little better. Out of the 10,244 radio stations operating in the United States, 394, or about 3.8 percent are owned by women, another 172 are owned by African-Americans, 111 by Hispanics, 4 by Asians, and 5 by native Americans.

These are the public airwaves we are talking about, Mr. President, and cable systems that require public approvals in order to function. Every American ought to have the right to participate in this industry, and there should be enough diversity of voice to ensure that our broadcast and cable systems meet the needs of all of our people.

And research confirms a link, or the nexus, between expanding minority ownership and diversity of voice.

By diversity of voice we mean the notion that the airwaves that we communicate on as Americans will include the views of everybody and not just one segment of the population or community, but of all segments of the population and the community. And in that diversity comes the kind of vitality that will keep our Nation vital and keep our democracy alive.

You will recall George Orwell talked in "1984" about the wave of communication happening, and big brother sent one message to the people at all times. There were no alternative messages, alternative points of view, alternative perspectives to encourage people to think for themselves. The whole idea of diversity of voice is that the entire community benefits when it has the point of view and the perspective of all our people, when the perspective and the information that is communicated through the public airwaves represents the whole panoply of Americans in this country and that we can all participate and draw from our diversity as a source of our strength.

The Supreme Court made this clear, in a case of Metro Broadcasting, Inc. versus FCC. In that case, the Supreme Court held that benign, race-conscious measures mandated by Congress are constitutionally permissible, based on a record of empirical evidence demonstrating a nexus between minority ownership and diversity in programming.

There were five studies of this connection cited in the Metro case, including a study by the Congressional Research Service, "Minority Broadcast Station Ownership and Programming: Is There a Nexus?" (1988).

That is to say, does minority ownership encourage diversity of views?

This study, which looked at radio data collected by the FCC from over 9,000 radio and TV stations, showed a strong correlation between minority ownership and programming targeted to minority ownerships and expansion of diversity of voice for everyone. The other studies all had similar findings, showing differences in programming, including news programming, and differences in the willingness to hire women and minorities as employees.

Mr. President, what the Finance Committee and the House of Representatives are now proposing with this legislation, however, is to terminate this progress toward diversity, to terminate the 1071 tax certificate program and to do so retroactively and with virtually no notice at all.

The committee report sets out three reasons for terminating the program. It says that the tax certificate program has evolved far beyond what Congress originally intended. The report makes this argument even though it was Congress that gave the FCC broad discretion to set the terms of the tax certificate program.

Second, the committee report argues that the FCC standards for issuing the certificates are vague and therefore subject to significant abuse. It asserts that the FCC's determination of control does not guarantee that a minority purchaser will continue to manage the broadcast or cable property after the tax certificate has been issued.

Third, the report argues that the tax certificate program is not supervised and reviewed by the Internal Revenue Service, and that the FCC does not request information regarding the size of the tax benefit or otherwise act to ensure that the nonminority seller does not get the entire benefit of the certificate.

Mr. President, these arguments, it seems to me, are sufficient to warrant a reasoned, deliberate and careful review of this program and not the total elimination retroactively of it. As a general matter, I believe that all Federal programs should be periodically reviewed. We should take a look at everything to make sure it works as it was intended to work by this Congress, to make sure that it is more efficient. However, that commonsense principle, I believe, should not be exploited as a blanket license to just carelessly throw out longstanding Federal laws without any review before the fact, without any chance to take a look at it. And yet that is exactly what we are saying here.

No study of the effectiveness of section 1071 was undertaken by the House of Representatives before it rushed to repeal this legislation. Nor has the Senate undertaken the opportunity to fully study the merits of section 1071. The majority leader of this body stood in the Chamber just last week talking about the fact that there are over 160 Federal programs he would like to see reviewed as part of a comprehensive review of Federal affirmative action policies. And the majority leader asked two Senate committees to hold hearings as part of that review. The majority leader also commended this administration for its ongoing review of affirmative action policies and programs.

All of these suggestions that there be a review indicate to me that the Finance Committee should have at least awaited the results of the administration's efforts and should have considered whether or not section 1071 was working, whether it had problems, whether its objectives were important ones, and whether or not reform rather than retroactive elimination would have been more appropriate.

That is not what is happening with this bill, Mr. President. Instead, we see a rush to judgment. Instead, what we see is an unwillingness to confront the fact that minorities and women have been excluded from the broadcast and cable industries and that minorities and women continue to have access-to-capital problems that are significantly greater and different than other potential acquirers.

Indeed, what we see is a total disregard of the policy considerations having to do with diversity of voice that led to the creation of this tax certificate program in the first place.

This hasty repeal would not just eliminate a genuinely worthy minority ownership program; it would also repeal all of the other uses of the FCC tax certificates. For example, a broadcast or cable licensee is eligible for a tax certificate when it divests a media property in order to comply with the FCC's cable/broadcast cross-ownership policy and the newspaper/TV cross-ownership policy. Repeal of section 1071, therefore, eliminates a reasonable incentive for FCC licensees to comply with FCC policies.

Repealing section 1071, moreover, does not mean ending capital gains rollovers in the future. There will still be many, many ways to structure transactions in ways that will avoid capital gains taxes. And in fact the experience is that the most recent sales in the cable industry have all been tax-free transactions that did not involve the tax certificate program which was calculated to give minorities and women a chance.

Some recent examples illustrate this point. Time/Warner announced in January of 1995 that it will acquire KBL Communication from Houston Industries in a tax-free stock transaction with an estimated purchase price of $2.2 billion. Time/Warner has also announced a tax-free acquisition of Summit Communications for $350 million via a stock exchange. Again, no tax rollover questions there. Cox Cable acquired Times Mirror Cable in a tax-free merger with an estimated price of $2.3 billion. Minority entrepreneurs, however, because they frequently lack the access to capital of long-established companies, cannot rely on section 328 of the Tax Code which authorizes those tax-free transactions. Instead, they have had to rely and have relied on section 1071.

That is why it is particularly troubling that the proposal before the Senate is to retroactively repeal section 1071 simply because a particular African-American businessman is involved in a large transaction that is eligible for a tax certificate and the resulting capital gains tax deferral. The rush to undo this transaction ignores, in my opinion, some important facts. The first is that the transaction that precipitated the House Committee's action, the so-called Viacom transaction, is not the only pending transaction at the FCC. There are at least 19 others.

Second, all of these acquirers have justifiably relied on the existence of section 1071, which has now been in place for over 17 years and which has been explicitly endorsed by Congress over and over again through the appropriations process.

In the Viacom transaction, the purchasing group has incurred literally millions of dollars in out-of-pocket expenses for costs such as legal fees, commitment fees, and travel. The prospective minority purchaser has made it clear that he was entering into the transaction in order to run the company, not to purchase it for a quick resale or turnover. Enormous amounts of time and energy and faith in our Government have been placed in putting this transaction together. Major banks have committed to participate. And the transaction was not hastily entered into in the last 30 days in order to get in under the wire before the repeal of this section. But the House of Representatives and the Finance Committee seemed to ignore all the time and money and energy that have been expended, all the faith and confidence in laws that have been around for 17 years and seemingly went out of its way to repeal this section with a retroactive effective date to get at this transaction which because of its size had made the newspapers.

Mr. President, I believe what we see here is a good example of why people are so cynical about Government. What we see here is an effort to ignore the facts, to ignore the good-faith reliance on section 1071 exhibited by the prospective purchaser in all transactions now pending before the FCC. What we see here is a total disregard of the equities and due process in an effort to rush to judgment.

Mr. President, retroactive effective dates are very unusual in the Senate. In fact, this body has a long and consistent history of using one of three dates as the effective date of a tax change that reduces or eliminates tax redemptions, exclusions or similar provisions. The usual choice for those effective dates are the date of enactment, the first December 31st of the year of enactment, or the first taxable year beginning after one of the first two dates.

Putting aside tax rate changes, Mr. President, the Senate has departed from the usual effective dates only in rare circumstances where there has been a legitimate concern about the ability of taxpayers to rush the market and therefore avoid changes. Even in those rare cases where Congress was closing loopholes in the tax law because taxpayers were abusing the system, Congress adhered to the standards of fairness to ensure that taxpayers would have sufficient notice and could plan their private transactions, so that the business community could plan, the taxpayers could plan, so they could order their affairs in reliance on our activity.

That is not what has happened here, Mr. President. The provisions repealing section 1071 therefore represent a dramatic departure from the general procedure for drafting effective dates. After reviewing the facts and precedents, I remain convinced there is no policy reason to justify singling out this particular section of the Internal Revenue Code for an unprecedented formulation of an effective date.

It is worthwhile to compare the effective date for the repeal of section 1071 in this bill to the precedents. First, there is the January 17, 1995, effective date. What is the significance of this date? Well, Mr. President, it is the date on which the chairman of the House Ways and Means Committee issued a press release indicating the committee would review this section and that they might consider repealing the section, in which case he intended to use a January 17 effective date.

When has this body ever allowed a single Member of the House of Representatives to unilaterally dictate the effective date of a tax change? When the chief of staff of the Joint Committee on Taxation was asked this question during the Ways and Means markup, I understand that he cited the tax-exempt leasing bill that was introduced by former Congressman Jake Pickle. Well, in that case, the majority leader, Senator DOLE, introduced a companion bill in the Senate. And in that case, the retroactive effective date was made all but moot by three very generously, broadly applicable transition rules and a host of targeted rules.

The most recent and more relevant example of an effective date that was sent by press release occurred in the Tax Reform Act of 1986. However, in that case, taxpayers were put on notice in 1984—2 years before the press release—when Treasury published a tax reform proposal. In that case, a press release was issued to revolve the difference between a retroactive January 1, 1986, effective date in a House provision dealing with tax-exempt bonds, and a Senate provision with a January 1, 1987 prospective date. What is important to note is that this was a joint press release; it was signed not only by both chairman of the House and Senate tax-writing committees, but also by the two ranking members and the Secretary of the Treasury. It is also interesting that the parties involved chose a date well after the retroactive January 1, 1986, House bill; they agree instead on September 1, 1986.

It is interesting, in that situation also there was consensus, an agreement between both bodies with regard to the setting of an effective date. Again, that is not what happened here. Here, because of a press release of one Chamber by one individual, the Senate has rushed to judgment to adopt that and thereby undo the work that all these actors in the private sector have undertaken in reliance on section 1071.

This is the precedent that this body will overrule if we approve the effective date in H.R. 831 for the repeal of section 1071.

I mentioned earlier that Congress has departed from the general rule where there was a perceived abuse of the tax law. The general practice in those situations has been to use the date of the committee action as the effective date, and even then to provide fair and reasonable transition rules. For example, in the 1990 revenue reconciliation bill, Congress shut down a loophole through an amendment to section 355 of the Internal Revenue Code. The 1990 act was passed on October 27, 1990, and signed into law on November 5, of that year. In that case, the general effective date applied to securities purchased after October 9, 1990—the day before the Ways and Means Committee reported out the bill, but Congress also provided a transition rule where the material terms of a transaction were described

in a written public announcement before October 10, 1990, and SEC filing was made before that date. The same rule was provided in another section of the 1990 act dealing with debt exchanges.

Another example is provided by the 1989 Revenue Reconciliation Act. Again, there were perceived abuses by businesses making debt-financed stock sales to ESOP's; there, the general effective date for an amendment that modified the partial interest exclusion for ESOP loans was for loans made after July 10, 1989, the day before that provision was presented in a chairman's mark to the Ways and Means Committee.

In the Revenue Act of 1987, which was signed into law on December 22, 1987, Congress closed a loophole that allowed "C" corporations to avoid LIFO recapture by converting to "S" corporation status. There the effective date was December 16, 1987—the date of the conference committee action. Moreover, a transition rule was provided where there was a board of directors resolution before the December 16 date.

Why are taxpayers with applications pending before the FCC not deserving of transition relief? The only concrete answer that I have received to this question is that the size of the one of those transactions, the Viacom transaction, is just too great—the implication is that we would somehow save tax revenues if we refuse to provide a reasonable and appropriate transition rule—and so the committee substitute before the Senate has no reasonable and appropriate transition rule.

Just yesterday, Mr. President, this Senate, by a very strong vote of 69 to 29, approved a form of line-item veto authority for the President of the United States. Senator after Senator stood up to explain how unfair it was that the Congress was, in effect, blackmailing the President, by linking pork-barrel items with must items in a single bill. Yet that is what we see here today. Those who want the Senate to consider the option of reforming section 1071 have no choice but to be linked up, in effect, be blackmailed by the fact that we also want to see the reform with the self-employed health insurance deduction issue. We want to see the health insurance passed, but now we are being forced by the committee action to accept this ill-considered rush-to-judgment, unfair, retroactive repeal of section 1071.

As I stated at the outset, I am a strong supporter of that provision; and I agree that it needs expedited consideration. However, there is no reason that the section 1071 issue had to be linked to that provision. The committee substitute now before us has offsets sufficient to ensure budget neutrality even without the provision repealing section 1071.

However, the provision repealing section 1071 is in the bill. And it is clear that the need for action in the next 2 weeks to complete action on the health insurance provisions effectively precludes this Senator, or any member of the Senate, from acting to try to slow down this train, and to ensure that the objectives of the minority ownership tax certificate program get the attention they deserve.

Let me conclude by reminding my colleagues that diversity of voice in our electronic media remains critically important, and that we have a responsibility to every American to see that entry is open enough to permit that business to meet the needs of all of our citizens. It is also critically important that Government act responsibly, and that Government keep it word. By repealing section 1071 retroactively, we are failing to meet our obligation to those who have in good faith relied on the law of the land, and our obligation to the American people generally to legislate responsibly.

By repealing this section retroactively, we have also, I believe, taken a rush to judgment and put at great peril an important policy consideration having to do with diversity of voice.

Mr. President, I intend to continue working on the issue raised by section 1071 and I intend to continue working to try to convince my colleagues in this body that the objectives of diversity of voice are important ones that must be preserved. I intend to continue speaking out on the issue of the importance of inclusion of women and minorities in every industry in this Nation, but certainly in communications, which has such a broad-range effect on the way that people see our country, the way that people see the world, the kind of information to which they are given access.

It is access to information that is at the heart of the section 1071 program. And the notion that access to that information ought to come from as many places as we can manage, to the extent that section 1071 has had a positive effect in encouraging diversity of voice, encouraging diversity of ownership, allowing women and minorities a chance to participate in an industry in which they were historically deliberately excluded, it had a salutary effect and meaning and reason, and it is something that we should protect and preserve in this body, and not otherwise.

I think it is unfortunate that this retroactive repeal has been associated with this important health care initiative. I think it is something that I intend to continue to fight. And I hope, that as we move down the road in consideration of this tax legislation, we will not lose the one opportunity we had to unlock the door, to provide opportunity as a way of responding to concerns that may be misplaced, to concerns that need to be articulated and talked about, but concerns that we really have not looked closely enough at to see the benefit for all Americans.

And so I hope that the health care deduction passes. I want to support that. I want to help that. But on section 1071, the fight is not over. The fight continues.

I hope that what has happened here with regard to this retroactive repeal is a wake-up call to women, to minorities, to people in this country who care about diversity, who think that it is important, that we cannot sit back. And, as complex as this issue may seem, fundamentally it is a very simple one. It is an issue of whether or not the airwaves of this country are for all Americans or for some Americans. I believe that inclusion and diversity is the strength of our country and not otherwise, and I will fight to maintain access to the airwaves for all Americans.

Thank you, Mr. President.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, I most emphatically wish to state the debt in which we all find ourselves to the Senator from Illinois for her powerful and persuasive statement; her first on this particular subject, but not, I dare think and hope, her last.

We will continue now with this debate.

Mr. President, I yield 5 minutes to my friend and colleague, the senior Senator from Montana.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I thank my good friend, as well, the senior Senator from New York.

Mr. President, in Montana, we have a saying—"it's not what you say, it's what you do."

For too long, Members of Congress said they only wish they could permanently extend the health insurance premium for the self-employed but that they didn't have the money to get the job done.

For too long, Members said they wanted to increase the deduction beyond 25 percent—but they did not have the money.

Today, we will vote on legislation that, at long last, permanently extends the health insurance premium deduction for the self-employed, and increases it from 25 to 30 percent for 1995 and afterward.

What does this mean back home? Well, this is real. This means farmers and small business people get relief.

I heard from Randy Koutnik in Helena who was planning to go into his own business. He needed the deduction so he could continue to afford health insurance coverage. I think this legislation is needed. It will help Randy, and many other hardworking, gutsy entrepreneurs like him start out on their own.

Polly Burke of Missoula called me up to say how angry she was that self-employed individuals were losing their 25-

percent health insurance premium deduction while corporations kept their 100-percent deduction. And I think Polly is right to be angry.

Today we will take a first step to help Polly, Randy, and all self-employed across America.

My only complaint is that we should have acted earlier. For the cash-basis farmers who had to pay their taxes by March 1, Congress is 3 weeks late.

It is true that those farmers can amend their returns and collect a refund. But amending the return will take time and, unless their accountants work for free, will cost these farmers money. Probably 30 to 50 bucks apiece.

But with today's action, Congress will at least do the right thing.

We will permanently extend the health insurance premium deduction so Montana farmers, small business people, and all of America's self-employed have at least one less thing to worry about in the years ahead.

Mr. President, I intend to vote for this legislation and I strongly encourage my colleagues to vote for it. And I will push hard to make sure it gets to the President's desk fast, so the deduction is available to all the self-employed filing their tax returns before April 17.

I thank the Chair, and I yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Oregon [Mr. PACKWOOD] for deferring to me briefly so that I might make a brief statement.

BLACK HUMOR

Mr. BYRD. Mr. President, a cartoon by Mr. Garry Trudeau appeared in the Washington Post last Sunday, March 19, 1995, and I assume in many other newspapers, in which he is syndicated, a cartoon which is an unfortunate example of tasteless, offensive, black humor. It belittles the war record, bravery, and selfless sacrifice of the distinguished majority leader, Mr. DOLE, by ridiculing the wounds he suffered and still carries, and always will, from the Italian campaign of World War II. The war record of all elected officials is usually a matter of some attention during political campaigns, and Mr. DOLE is no exception. But why anyone would take an excursion into cynical dark cartoon humor over this is incomprehensible and inexcusable.

Our political system and culture must be based on civility, mutual respect and honor. The discourse and debate in Presidential campaigns, indeed any campaign, should properly focus on the positions of the candidates on the major issues of the day, and what solutions are being offered. We have had too much of personal attacks, negative campaigning, and the politics of cynicism in America in recent years. I think it would be beneficial if we all tried a little more to elevate the political discourse in America, and that we focus on where we should, constructively, lead the Nation. Our attitude should certainly be positive and, while we differ on many issues, strive for unfailing courtesy and respect.

Mr. DOLE carries with him the symbol and the physical result of his valor in combat, defending our country, defending the very ability of cartoonists to exercise their trade in freedom, and our very ability to conduct an honorable, civil, enlightened debate in a democracy. Mr. DOLE has dedicated his entire life to the service of the Nation. Mr. Trudeau, I believe, owes Mr. DOLE an apology for this entirely inappropriate attack and innuendo.

Mr. President, I yield the floor.

SELF-EMPLOYED HEALTH INSURANCE COSTS DEDUCTION

The Senate continued with the consideration of the bill.

MATERIAL TERMS UNDER THE BINDING CONTRACT EXCEPTION IN H.R. 831

Ms. MOSELEY-BRAUN. Mr. President, I rise to request a clarification to a provision in H.R. 831 relating to the binding contract exception to the repeal of section 1071.

Binding contract exceptions to changes to the tax laws are commonly included in tax legislation to protect taxpayers who, in reliance on the laws, entered into legally binding agreements prior to the effective date of the statutory change but where the transaction itself will not be completed until after that effective date. H.R. 831 includes such a binding contract exception to the repeal of section 1071. The intent of this exception is to honor taxpayers' good faith reliance on the law.

The binding contract exception in this bill, however, would not apply if the contract, or the material terms of the contract, are contingent on issuance of an FCC tax certificate. It is not clear what would constitute a material term being contingent on the issuance of an FCC tax certificate for purposes of this legislation.

It is important that we provide the FCC and the Internal Revenue Service with appropriate guidance in determining whether a contract for the sale of a broadcasting station qualifies for the binding contract exception to the repeal of section 1071 and therefore eligible for an FCC tax certificate. If a transaction contemplates a third-party action, such as the FCC issuing a tax certificate, but the contract requires that the transaction go forward even if the third-party action does not occur, it is only reasonable that the parties to the agreement provide in that agreement for a relatively minor adjustment to offset the effects of the failure of the third-party to act. Such a contract clearly is still binding—the transaction must go forward with the contract-required adjustment. It is my understanding that the "material terms" of a contract are not to be considered contingent on the issuance of an FCC tax certificate simply because the parties provided for a relatively minor adjustment of less than 10 percent of the selling price if the FCC certificate is not issued. Is this consistent with your understanding of what is intended by the clause "or the material terms of such contract"?

Mr. PACKWOOD. Yes, the clause "or the material terms of such contract" is not intended to exclude binding contracts from the benefits of the legislation's binding contract rule simply because the parties included a relatively minor price adjustment of less than 10 percent in the original binding contract to compensate for the failure of the FCC to issue a tax certificate.

Mr. President, we are waiting for Senator DOLE to come, and then we will be ready to close up on this bill, I believe. 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. MOYNIHAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. GORTON. Mr. President, I am here to support this proposal and to praise the Finance Committee and those in the House of Representatives who thought of a way in which to do justice on both sides of the equation of a tax proposal and to provide an extension and ultimately an increase in an overwhelmingly just—but still inadequate—deduction for the health care expenses of the self-employed.

For many years, the Tax Code has permitted a modest deduction of 25 percent of the health care insurance costs of the self-employed—modest, of course, in comparison with the very, very large number of Americans who have health care insurance premiums paid for by their employers, fully deductible to those employers. Yet, even this 25-percent deduction for the self-employed, for hard-working Americans in small towns and large cities and on farms across this country, is threatened. It has for years been a deduction with a terminal point. In every previous year in which that terminal point was reached, the Congress has extended the deduction for a few more years.

In 1994, it did not do so and technically there is no such provision today. There will be, however, if this bill passes. A deduction will be effective for the current year and will move

up modestly from 25 to 30 percent next year. I believe that almost every Member of this body hopes that the time will come that, with a more sound and all-encompassing set of health care reforms, we will be able to allow the deduction of 100 percent of such health care insurance costs. In the meantime, however, to extend the present deduction and modestly to increase the present deduction is clearly overwhelmingly in the public interest.

Standing alone, that would not be a difficult task, except for its effect on the budget deficit. It is here that the thoughtfulness and the genius of the sponsors of this bill are in particular evidence. This bill is going to be paid for by four changes in the Internal Revenue Code, three of which are of considerable significance with respect to the amount of money that they produce.

The first is a denial of the earned-income tax credit to those who have substantial unearned income; that is to say, investment income. The earned-income tax credit, of course, is designed to see to it that the working poor—those who are trying to move out of poverty, who are below the level at which they would normally pay an income tax—literally get some money back from the Government as a reward for that work. To allow it, however, to those who have low levels of earned income but significant levels of unearned income is, of course, a perversion of the whole design of the earned-income tax credit itself. So this narrowing, this focus of the earned-income tax credit on those who are truly the working poor is a matter of tax justice and fiscal equity without regard for its use for this health care insurance deduction.

Second, we are for the first time actually going to penalize those Americans, those I think perverse Americans, who renounce their citizenship in order to save on taxes. They will be hit when they renounce that citizenship with what amounts to a capital gains tax on the assets they take with them out of the United States. The Finance Committee, I should note, has said that this provision is not designed to be a direct offset against the health care insurance premium deduction for the self-employed, but literally to be a modest contribution to our budget deficit.

The most significant of the tax changes, of course, is the cancellation of section 1071 of the Internal Revenue Code, which started out as a recognition of forced sales some 50 or more years ago, when we first developed rules that did not allow more than one radio station, in that case, to be owned by the same people in the same community; but since, that has become a rather famous and notorious form of affirmative action.

This provision, of course, was triggered by a huge sale involving Viacom and one member of a minority group, the cost of which to the Federal Treasury would be over half a billion dollars. It may very well have been one of the triggering causes of the attention being paid today to the whole subject of affirmative action. Yet, I think it is safe to say that this provision should be repealed without regard to the varying views of Members of this body and of the public as a whole on affirmative action overall. The kind of affirmative action that benefits one quite successful and fairly wealthy member of a minority group at the cost of half a billion dollars to the State treasury is a perversion of any kind of theory of equity, affirmative action or otherwise.

We will have in this body more than enough time to debate the whole subject of affirmative action, whether or not it has been a success, whether or not it deserves continuation in whole or in part in the future. In the meantime, however, we need to pass this bill in order to prevent this perverse use of affirmative action and in order to provide justice for literally hundreds of thousands of self-employed Americans. Here, a handful of people who do not deserve tax benefits will be penalized. Hundreds of thousands of hard-working self-employed Americans will at least retain, and ultimately have a slight increase, in a tax deduction for a highly worthy social and economic purpose.

This bill, in other words, does justice to the self-employed, ends a terrible loophole in the field of affirmative action, ends a loophole in the earned-income tax credit, and ends up helping us in some slight manner to reduce our deficit.

We very rarely get bills through this House in which every single element is a plus for our society, and it deserves the support of all Members of the Senate.

Mr. DOMENICI. Mr. President, April 15, is only 22 days away and unless the President signs a bill restoring the 25-percent health insurance deduction for the self-insured more than 4 million small business persons will experience yet another tax increase.

If a person is doing business as a corporation, health insurance is 100 percent deductible. Under the tax law in effect without this legislation, zero percent, zip, none of their health insurance costs is deductible for the self-employed. There is no tax policy justification for treating corporations one way and the self-employed another. The majority of all businesses in this country are self-employed. These are often firms with very little cash, a good idea and talent struggling to make a success. Once they do succeed, they are the ones that create nearly two out of every three net new jobs. These small firms have sustained this job-creating record for more than 20 years. Clearly, the Tax Code should not treat them so shabbily.

The need for the deduction is indisputable. Unincorporated business owners experience the worst of all possible worlds in the health insurance marketplace. Usually they can only buy an insufficient health insurance policy for a very high price and they are denied the same incentives and tax treatment enjoyed by incorporated, bigger businesses.

If this legislation becomes law, the self-employed will be able to take 25-percent deduction for their health insurance costs on their 1994 taxes and receive a 30-percent deduction for tax years 1995 and beyond. I am pleased that Congress is taking this step to address the health insurance deductibility gap and to make it permanent.

We really should be working to achieve 100-percent parity and equity with corporations so that all businesses, regardless of form, would be treated the same. Total deductibility has been a top priority of the various State small business conferences which have been held prior to the 1995 White House Conference on Small business. In the mid-1980's, I sponsored legislation that was enacted calling for a White House Conference on Small Business once every Presidential term. These are valuable conferences because they help identify legislative priorities. In the past, a vast majority of the Small Business Conference recommendations have been enacted into law. I hope we will be able to make good on that record when it comes to the deduction of health insurance for the self-employed.

In addition to tax policy fairness and job creation, restoring the deduction for the self-employed is important because the self-employed are one of the largest groups of uninsured citizens in America. There are 3 million self-employed Americans without health insurance. The 30-percent deduction is a small, but meaningful incentive for unincorporated business owners to purchase health insurance for themselves and their families.

In New Mexico, there are 75,000 self-employed individuals about one-third of them take advantage of the deduction. This number does not include farmers and ranchers who are another group that will benefit from the tax law change we are making today.

I sincerely hope the Congress can complete it work on this legislation in time for the April 15 filing deadline. Making the deduction permanent will stop the uncertainty that has historically accompanied this section of the Tax Code. It will help millions of small business entrepreneurs, farmers, and ranchers provide health insurance for their families.

Mr. GRASSLEY. Mr. President, I want to lend my strong support for H.R. 831 to make the self-employed deduction permanent and to raise it to 30 percent.

There had been a number of threats to hold this legislation up by filibustering or offering numerous contentious amendments. I'm very glad that these threats disappeared, because holding up this bill would have only hurt the millions of taxpayers that are waiting for this relief.

Mr. President, most of the major health care bills introduced in the last Congress called for an increased extension of the 25 percent health insurance deduction for the self-employed. There's a broad consensus that an increased health insurance deduction would contribute to tax fairness and would also lead to a significant reduction in the number of uninsured Americans.

Unfortunately, as we all know, the self-employed health insurance deduction expired on December 31, 1993, with the understanding that an extension, and possible expansion, would be part of health care reform in 1994. However, we all know what happened to President Clinton's disastrous health care reform effort. And, unfortunately, the self-employed deduction went down with it.

Mr. President, if the 25-percent deduction is not retroactively reinstated, the self-employed will be hit with a sizable tax increase. Moreover, it would be a tax increase on predominantly middle-income persons since about 73 percent of those persons who pay self-employment tax earn under $50,000 in adjusted gross income.

Mr. President, I have introduced a separate bill that would reinstate the 25-percent deduction for the 1994 tax year, and then increase the deduction to 50 percent this year, 75 percent next year, and 100 percent the year after.

Organizations as diverse as the Farm Bureau, the National Federation of Independent Businesses, the Association for the Self-Employed, and the National Restaurant Association support this legislation.

I look forward to the Congress finally dealing with this problem by taking care of the 1994 tax year, making it permanent and increasing it to 30 percent. Hopefully, we will be able to expand the deduction up to 100 percent at a later date.

Mr. McCAIN. Mr. President, I strongly support legislation to permanently extend and expand the health insurance tax deduction for self-employed individuals. In addition to allowing these individuals and their dependents to deduct 25 percent of the cost of their health insurance for 1994, it will allow them to deduct 30 percent of these costs for all future years. This bill, which addresses one of the most unfair provisions in the Tax Code, is fully paid for without adding a penny to the budget deficit by eliminating an outdated and inequitable corporate tax break.

This issue has justifiably been a major concern to the small business community for a long time. The 25 percent deduction for the self-employed was first contained in the tax Reform Act of 1986. Due to congressional inaction, it expired at the end of 1993. Consequently, if we didn't pass an extension before April 15, self-employed individuals would not have been able to deduct any of their health insurance expenses this year. This would have been incredibly unfair. Employees of corporations continue to be able to deduct almost all of their health insurance costs.

Since 1989, we have been keeping small business in limbo each year while Congress decides whether to reextend this tax deduction. Small businesses are extremely important to our country. In Arizona, they are the fastest growing component of our economy and, in aggregate, our largest source of employment. They rely upon the modest insurance tax benefit that they are entitled to receive. By passing this bill today, and by making it retroactive so that the deduction can be taken this year, we make a major step forward in providing equity and certainly to small business people throughout our Nation.

Throughout the health reform debate last year, I argued that the deduction for self-employed individuals should be expanded to be comparable to the full deduction that other employees receive. I further contended that the result of allowing the deduction to expire would have been to substantially increase the number of uninsured Americans. It would have imposed a large burden on individuals who we should be helping, those who have taken the initiative and risk associated with small business and self-employment. Today, we vote to start to remedy their problems.

Passing this extension and expansion of the self-employed insurance tax deduction today is a major step in the right direction. I urge President Clinton to sign this bill into law as soon as possible. It is outrageous that self-employed individuals are not permitted to deduct the same percentage of their health insurance costs as do employees of large corporations. It is even more outrageous that we almost took away the small amount that they can currently deduct, and may still do so if President Clinton does not act quickly.

I remain committed to ensuring that all Americans receive the same tax advantages in deducting their health insurance, and to creating a more equitable and efficient health care system.

Mr. KENNEDY. Mr. President, with passage of H.R. 831, the Senate begins the effort to pick up this year where we left off last year on the very important issue of health care reform.

To some extent, this legislation simply extends a tax break for health insurance for small business that expired last year because it was closely related to other health reforms that also failed to pass.

Many of us had hoped to use this legislation as an opportunity to revise this tax deduction and make it fairer to all those involved in small businesses—employees as well as owners.

But because the tax deadline is so near, there is no real opportunity to have such a debate at this time. Small businesses deserve to have the expired provision extended as soon as possible, so that the applicable law will be clear as they file their tax returns for 1994. Many of them purchased their health insurance in expectation that the tax deduction would be continued, and it would be unfair to them to let it lapse now. So I join with many other Senators in expediting action on this bill.

But it is appropriate to point out the key issues involved in this tax incentive, and I am confident we will have an opportunity to address them on other tax bills and as part of our effort in the coming months to enact health reform in this Congress.

In the wake of our failure to enact health reform last year, the health care crisis facing American families has continued to grow worse. Last year, the number of uninsured increased by more than 1 million, to over 40 million of our fellow citizens. If current trends continue, the number of uninsured will exceed 50 million in the year 2000—1 in every 5 nonelderly Americans. But for the expansion of public health insurance coverage to more than 10 million people in the past decade, the current situation would be even worse.

Even those who have insurance are not secure. No family can be confident that the insurance which protects them today will be there for them tomorrow if serious illness strikes.

The decline in health insurance coverage on the job is especially serious. As recently as 1988, two-thirds of all nonelderly Americans received coverage through their employer. Today, that number has fallen to 61 percent. By the year 2000, only about half of all nonelderly Americans will be able to depend on private, job-based coverage for the health protection they need for their families and themselves.

Few, if any, people are more seriously victimized by the health care crisis than small business owners and their employees. If they try to buy coverage, they routinely face insurance company markups as much as eight times greater than large businesses. Despite reforms enacted by many States in recent years, small businesses in many areas of the country still face exorbitant prices or are denied coverage altogether if someone in the business is in poor health, or is elderly, or lives in the wrong part of town, or works in the wrong occupation.

The legislation before us provides some tax assistance for the self-employed, including the owners of small

businesses, but I am disappointed that the imminent tax filing deadline prevents us from taking this opportunity to deal with the problems in a more balanced and more effective way.

The legislation offers a tax subsidy of $800 million a year—$8 billion over the next 10 years—to help the self-employed purchase the coverage they need. Many, many citizens in our society need help in purchasing health insurance. For $800 million a year, we could do a great deal to insure children, or give greater health security to workers who lose their jobs, or more assistance to senior citizens struggling desperately to pay the high cost of long-term care or prescription drugs.

But the entire $8 billion in this bill goes to the owners of small businesses. No one else benefits—not even the employees of those businesses. In fact, more than $3 billion of these funds goes to people making more than $50,000 a year. More than $2 billion goes to people making $75,000 or more—and that isn't fair. The wealthier they are, the bigger their tax benefit. Changing the tax deduction to a tax credit would be fairer, and making the tax credit refundable would be even fairer.

But if we're going to make the current system fairer to small business owners, we should at least make it fairer to their employees too. Small business owners and their families deserve help—but so do their employees and their families.

Under current tax law, any business, large or small, that provides health insurance to its employees can deduct the cost of that insurance as a business expense, just as it can deduct the wages paid to its employees.

The employees who receive the insurance get a significant tax break too, because the value of the insurance is a fringe benefit that is not counted as income to the employees for tax purposes.

This favorable tax treatment was one of the principal engines driving the expansion of private, job-based health insurance coverage in the past generation. It has also been a major factor in helping to make the loss of coverage in recent years less serious than it would otherwise have been.

This tax exclusion for fringe benefits is also one of the most expensive tax subsidies in the entire Internal Revenue Code. It will cost the Treasury $60 billion this year, and that revenue loss will rise to $94 billion in the year 2000.

Under a quirk in the tax laws, however, owners of small businesses that are not incorporated were not eligible for this tax break. In fact, they were at a serious disadvantage. No matter what contribution they made to health insurance coverage for their workers—and some small businesses do make such a contribution—the owners still could not deduct the cost of their own insurance.

So in 1986, Congress reduced this disparity by granting a separate tax deduction for small business owners, equal to 25 percent of the cost of the insurance they bought for themselves. Many people feel that the deduction should be 100 percent, in order to achieve full parity with managers of large corporations, and there is a good deal of merit in that view, at least in cases where the owners provide coverage for their employees.

The 1986 deduction was enacted on a temporary basis. It was extended by Congress on several occasions, but it expired at the end of 1993. A further extension was considered in 1994 as part of comprehensive health reform, but it died when the overall health reform effort failed.

The question now is whether, in this time of limited resources, it is fair to restore the subsidy—and make it permanent—and even sweeten it from a 25 percent deduction to a 30 percent deduction—for small business owners at a cost of $800 million a year, but do nothing for the employees of those small businesses.

Even large corporations don't do this well. The managers of large, self-insured corporations are not eligible for a tax break that is greater than the tax break given to their workers. Yet under the committee bill, owners of small businesses are eligible for the tax break even if they make no contribution at all to the cost of their workers' coverage.

Yet employees of small businesses have even more difficulty than their employers in obtaining good coverage. It is bad enough that 18 percent of all workers are uninsured. It is worse that 25 percent of the self-employed are uninsured. But it is even worse that 33 percent of workers in firms with fewer than 10 workers are uninsured.

The smaller the business, the more serious the problem. More than 90 percent of firms with over 250 employees offer coverage to their workers. But only a third of firms with fewer than 10 workers offer coverage to their employees.

This legislation does the right thing by helping the self-employed. But it should have gone farther. It should have helped both the owners and their employees.

Under this bill, mom and pop, the owners of the small mom and pop store, get a tax break, but the cashier or the worker in the stock room does not.

The partners in the law firms get the tax break, but the secretaries and the filing clerks and the paralegals do not.

The doctors in the group practice get the tax break, but the nurses and technicians and lab assistants and receptionists do not. And that isn't fair.

A fairer bill could have maintained the 30 percent deduction for the small business owners, as provided in the committee bill. But it should have required them to make group health insurance available to their workers as a condition of taking the deduction for themselves.

The owners would not have had to make any contribution to the cost of the coverage for their employees. They would only have to make the coverage available for the employers to purchase themselves. But employees exercising this choice should also be eligible for the same 30 percent tax break available to the owner.

This proposal is not an employer mandate. It does not require employers to contribute to the cost of coverage. It does not even require employers to offer coverage to their employees. All it says is that if they want to take advantage of a tax break to purchase health insurance for themselves, they will have the minimal obligation of arranging the availability of group coverage for their employees.

This proposal is a modest one. It does not even go as far as the Republican health reform bills offered by Senator DOLE and Congressman Michel last year. The Michel bill required all employers to make coverage available to their workers, regardless of whether the employers took a tax deduction for their own coverage. The Dole bill required all employers to administer a payroll deduction program for their employees, even if the employers took no tax deduction for themselves.

This proposal is not an expensive one—just a fair one. Final cost estimates are not yet available from the Joint Tax Committee. But it is likely that the program could be financed by using some of the excess revenue generated by the bill before us, or by retaining the level of the deduction at 25 percent instead of raising it to 30 percent.

Small business owners on the whole are not a wealthy group, and they often have trouble obtaining affordable insurance. They need the help that we are providing in this bill. But their employees have even lower incomes and are even less likely to be insured. Surely, they are at least as deserving a tax subsidy as the owners of the business.

This proposal has other benefits for workers, in addition to the tax subsidy it provides. Group coverage is less expensive than individual coverage. A majority of States have adopted limits on preexisting conditions and limits on premiums. They guarantee the issue of policies and the renewal of policies for such group coverage.

But only a handful of States have enacted comparable rules for individual coverage. By assuring the availability of group coverage to a broader number of people, the benefits of the insurance reforms already enacted by some States can be extended to many more citizens who need them.

Finally, a fair bill should provide tax parity for small business owners who

do contribute to the cost of insurance coverage for their employees. They should be able to deduct 100 percent of the cost of their own coverage, if they pay the full coverage of their workers as well, as some small businesses already do.

Under the reform I favor, whatever share they provide to their workers would also be deductible for them. If they pay 70 percent of the premium for their workers, they could deduct 70 percent of their own premiums. They would have full parity with the manager of a large business.

In summary, the committee bill provides a tax subsidy for health insurance for the owners of small business. I regret that it does not provide a similar tax subsidy for the employees of small business too.

During the course of this Congress, there will be opportunities to consider measures to expand health care for the employees of small businesses, for other members of working families, for children, and for senior citizens. When these reforms come to a vote, I hope that the Members of the Senate will remember that these Americans need health care, too.

I also intend to do all I can, in these times of deep budget cuts and limited Federal resources, to see that the large tax subsidies now available through the Internal Revenue Code meet the same strict scrutiny that Congress is giving to other forms of Federal spending. We made bipartisan progress yesterday by extending the line-item veto to tax subsidies, and we need to do more to rein in this rapidly growing part of the Federal budget.

Mr. GRAMM. Mr. President, I rise today to voice my support for H.R. 831 and the protections it will provide to America's self-employed business owners—the men and women who create the jobs on Main Street.

Today, the Senate is finally ready to deliver the tax relief that should have been provided a long time ago.

And today, more than 3 million small business men and women—including as many as 146,000 in my home State of Minnesota—are breathing a sigh of relief.

Up until last year, the self-employed were allowed to deduct 25 percent of their health insurance premiums.

It was a powerful incentive: Small business owners were much more likely to buy insurance for their employees when they were offered an incentive to purchase health insurance for themselves.

That deduction, however, was allowed to lapse in December 1993 when it appeared that Congress would address health care reform in 1994.

But health care reform never materialized—and Congress never restored the deduction.

The self-employed have seen their 25-percent deduction expire five times over the past 8 years, leaving them in the precarious position of trying to second guess Congress each time as to whether the deduction would be extended.

H.R. 831 will restore the 25-percent deductibility for 1994—increase it to 30 percent this year—and make it permanent.

That is good news for the 3.2 million unincorporated, self-employed Americans the U.S. Treasury Department estimates would claim the deduction on their 1994 returns.

H.R. 831 moves us in the right direction, and I am pleased to join my colleagues in acting swiftly today to approve this desperately needed tax relief.

Yet, Mr. President, we should not look at 30 percent deductibility as our final goal.

We should use this opportunity during the 104th Congress to give small businesses the same benefit enjoyed by big business and their employees—by increasing the health insurance deduction to 100 percent for 1995 and beyond.

That is why I have also committed my support to S. 262, the Grassley-Roth-Pryor-Dole 100 percent deductibility bill.

Self-employers face the worst of all possible worlds in the health insurance marketplace.

Far too often, there aren't enough options—the price is too high—and the self-employed are denied the very incentives and tax treatment big business has come to expect.

And too often, the self-employed lack access to cost-saving managed care arrangements because insurers are reluctant to create and market them in the small towns and rural areas where most self-employers are located.

Even when they do buy insurance, self-employed business owners often pay approximately 30 percent more than larger companies for similar benefits.

That is because of costly State mandates for specific types of insurance coverage, which prevent self-employed business owners from shopping for only the basic care that they and their employees might need.

Larger firms that self-insure, on the other hand, are not subject to these costly mandates. The health insurance deduction helps small business owners defray at least some of the high cost of insurance.

The businesses that would benefit most from deductibility legislation represent almost 10 percent of the working population, and cover a tremendous variety of employers—from farmers and florists—grocers and bankers—to smalltown clothing stores, hardware stores, and photographers.

Mr. President, a tax deduction for the cost of insurance premiums would go a long way to help these self-employed business owners and their employees—especially in high-risk fields such as agriculture, where the hazards of the job often result in relatively high health insurance costs.

The health deduction is simply good business—a simple way for the Federal Government to help the people who create the jobs and deliver the paychecks on Main Street.

Small business needs encouragement, along with some incentives, to survive and continue creating jobs—providing for their employees. It is in our best interest to see that they do.

Since the 1970's small business has created two of every three new jobs in this country, and a substantial majority of those jobs were created in firms with fewer than five employees.

Congress should not neglect these entrepreneurs, Mr. President.

Self-employed business owners are the very people whose firms will have to thrive in order to create the jobs of the future.

These are often people with very little cash, but a lot of good ideas and talent, struggling to make their ideas work.

For them, the health insurance deduction could mean the difference between an "Open for Business" sign on the door and one reading "Going Out of Business."

It is time, Mr. President, for Washington to treat America's job providers equally.

I want to thank my colleagues for coming together in a bipartisan manner to ensure that 3.2 million more Americans will have access to more affordable care.

In fact, this is our first step toward serious and sensible health care reform.

It is legislation like H.R. 831 which I believe helps restore the people's faith in this great institution.

Mr. President, our ultimate aim should be to give the self-employed the same 100 percent health insurance deduction we've granted to incorporated businesses.

But today, passage of H.R. 831 moves us closer toward a goal we all share: Insuring more people, under policies that cost less, that allow them greater access to the health care services and providers they choose.

Mr. DASCHLE. Mr. President, I am pleased we will pass legislation today that, if enacted, will finally make permanent the health insurance deduction for the self-employed. This certainly will be a victory for small business in America.

During my entire tenure in the Senate, I have supported and cosponsored legislation to make the deduction permanent. It is very gratifying, therefore, to see that an overwhelming number of my colleagues share this goal.

Extension of the deduction is a bipartisan issue—one on which there is a very broad consensus. A letter signed

by 75 Members of this body, earlier this year, bears testimony to that fact.

For too long, small businesses, including farmers, have been treated unfairly compared to corporations. Corporations may deduct 100 percent of the cost of qualified health insurance they purchase. But the self-employed do not receive equal treatment. In the past they have been able to deduct only 25 percent of the cost of purchasing health insurance for themselves and their families.

What is more, small businesses have not been able to rely on the availability of this deduction from year to year, preventing them from budgeting for their health insurance costs. For many, the existence of the deduction means the difference between having health insurance or not having it at all.

Frankly, it is not clear why this deduction was subject to sunset in the first place, often forcing an annual extensions of the measure. This is not a case of a controversial provision needing further review. Virtually all Members agree that, as a matter of fairness, the self-employed should be able to deduct at least some portion of these costs, if not the full amount.

I am also pleased that the deduction will be increased to 30 percent. It is my hope that at some point in the future we can increase the amount of the deduction; though it is of paramount importance that any further extension be offset appropriately.

I regret that we were unable to pass this measure earlier this year. Most farmers who are self-employed faced a March 1 filing deadline for their 1994 tax returns. Assuming the measure we are considering today is passed, they will have to go to the expense of filing amended returns for 1994. This situation could have been avoided if not for unnecessary delay in the House of Representatives unrelated to the self-employed deduction.

I am concerned that funding for this measure relies on the repeal of section 1071 benefits used to promote minority ownership of broadcast facilities. I would prefer that section 1071 benefits be reviewed in the context of a comprehensive analysis of affirmative action programs, as the administration has suggested. I ask unanimous consent that the administration's "Statement of Administration Policy" on H.R. 831 be printed in the RECORD at the close of my remarks.

The PRESIDING OFFICER. Without objection it is so ordered.

(See exhibit 1.)

Mr. DASCHLE. I am pleased that the Senate was able to move this bill so quickly. In light of this, I am optimistic that the extension of the deduction will be enacted in time for the remaining self-employed to take advantage of it before they file their returns on April 15.

With the passage of the permanent extension of the self-employed health insurance deduction today, we can all claim victory for bringing greater fairness in the Tax Code to small businesses and for helping ensure that more Americans are covered by health insurance.

EXHIBIT 1

STATEMENT OF ADMINISTRATION POLICY

H.R. 831—PERMANENTLY EXTEND THE TAX DEDUCTIBILITY FOR HEALTH INSURANCE COSTS FOR SELF-EMPLOYED INDIVIDUALS (ARCHER (R) TX AND 3 COSPONSORS)

The Administration supports the primary purpose of H.R. 831, as reported by the Senate Finance Committee—to reinstate for 1994 the 25 percent tax deduction for health insurance premiums for self-employed individuals and increase the deduction to 30 percent on a permanent basis thereafter.

The Administration, however, opposes one of the bill's offsets—i.e., the outright repeal of the current tax treatment for the sale of radio and television broadcast facilities and cable television systems to minority-owned businesses (so-called "section 1071 benefits"). The Administration is undertaking a comprehensive review of affirmative action programs, including certain aspects of section 1071 benefits. As part of the section 1071 review, the Administration will consider possible modifications to the ownership and holding period requirements as well as caps on the amount of gain eligible for deferral.

While the Administration, in the FY 1996 Budget, proposed limiting earned income tax credit (EITC) eligibility based on certain kinds of investment income, the Administration strongly believes that the cap on such income—as set forth in this bill—should be indexed for inflation.

The Administration supports the provision in H.R. 831 that would tax expatriating citizens on untaxed gains—a provision which is very similar to one included in the President's FY 1996 Budget.

SCORING FOR PURPOSES OF PAY-AS-YOU-GO

H.R. 831 would affect receipts; therefore, it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act (OBRA) of 1990.

The Administration's preliminary scoring estimates of this bill are presented in the table below. Final scoring of this legislation may deviate from these estimates. If H.R. 831 were enacted, final OMB scoring estimates would be published within five days of enactment, as required by OBRA.

PAY-AS-YOU-GO ESTIMATES

[Receipts in millions]

	1995	1996	1997	1998	1999	2000	1999–2000
SE Health	−513	−525	−571	−621	−678	−740	−3648
FCC	399	449	213	220	226	233	1740
EITC		23	464	507	543	576	2113
Citizen	60	200	300	410	530	650	2150
Other	8	23	32	40	44	48	195
Totals	−46	170	438	556	665	767	2550

Note.—
SE Health — 30 percent tax deduction for self-employed persons (includes 25 percent tax deduction retroactive to 1994).
FCC — Repeal of current tax treatment on sale of broadcast facilities to minority-owned businesses.
EITC — Modification of the Earned Income Tax Credit.
Citizen — Bar citizens from renouncing their citizenship to avoid tax obligations incurred before they renounced.
Other — Change in Section 1033 of the Internal Revenue Code.

Ms. SNOWE. Mr. President, I rise this morning to express my strong support for passage of H.R. 831, legislation which restores the 25-percent tax deduction for the health insurance costs of the self-employed.

At a time when America's small businesses are under virtual attack from Federal regulations and mandates, we must take a leadership role in Congress to bring them the relief they deserve.

In order to create jobs in Maine and across America, we need to assist small businesses in any way we can; they are the engine that keeps our Nation's economy running. Businesses with fewer than 10 employees make up more than 85 percent of Maine's jobs, and, nationally, small businesses employ 54 percent of the private work force. In 1993, small businesses created an estimated 71 percent of the 1.9 million new jobs. When we call small businesses the engine of our economy, we mean it—and America's small businesses are jump-starting our economy in all 50 States.

From investors to startup businesses, self-employed workers make up an important and vibrant part of the small business sector—and too often they are forgotten in providing benefits and assistance. Indeed, 11 percent of uninsured workers in America are self-employed. By extending tax credits for health insurance to these small businesses—which is what H.R. 831 does—we will help provide health care coverage to millions of Americans.

There is an old saying that is particularly appropriate this time of year: "Nothing is certain but death and taxes." The 3 million self-employed in this country are particularly aware of the tax part this year, as they have sat

and watched and worried about whether we would restore the 25-percent deduction before they had to pay Uncle Sam on April 17.

Earlier this year, I joined 74 of my colleagues in asking the majority leader and the minority leader to expedite the passage of this legislation because of its importance to the self-employed.

In doing so, I promised that I would not offer any amendments and that I would vote against any amendments offered, again, in order to expedite its passage. At this late date, we cannot keep the self-employed taxpayer hostage any longer. As it is, we have forced them to wait until the very end of the tax period to file.

I would like to thank the Senator from Oregon [Mr. PACKWOOD], chairman of the Finance Committee, for getting this bill to the floor and for getting agreement to make this deduction a permanent part of the tax code. That way, neither the self-employed, nor Congress, will have to go through this exercise again. I know that the 74,000 self-employed in my home State of Maine will breathe a sigh of relief once we complete action on this bill.

After all, it is not as if there is disagreement on the need to assist the self-employed in this manner. In fact, amid all the disagreement on health care reform over the last 2 years, this is one of the areas where we all agreed. Why? Because the self-employed—the hard-working, tax-paying, job-creating small business men and women of America—cannot afford their own health care insurance. I am particularly pleased that the bill before us expands the deduction to 30 percent for the 1995 tax year. This is an important step in the right direction, as I believe we should expand it further, and grant the same tax treatment to the self-employed that we provide for corporations. In fact, I have introduced a bill to assist small businesses which includes phasing in a 100-percent deduction.

So I urge my colleagues to join me in support of H.R. 831 and in support of the 3 million self-employed Americans who need our help today.

Mr. PRESSLER. Mr. President, let me begin by emphasizing the fundamental reason why we are here today—to extend the 25 percent tax deduction for health insurance costs of self-employed Americans. This is one of the most important items Congress will consider this year.

We must put the needs of self-employed Americans—small business men and women, farmers and ranchers—at the forefront of our agenda. Passing the 25 percent deduction on a permanent basis is a step in that direction. By doing so, these hard-working individuals can make their business plans knowing they can depend on this reasonable deduction. Without the deduction, self-employed individuals will see their taxes increase and their ability to afford health insurance decrease. That is unfair, and must not happen.

Frankly, Mr. President, the legislation we are considering today is a modest deduction, particularly when compared to the corporate deduction of 100 percent, but it is nonetheless critical. It is critical to the 48,000 small business men and women, farmers and ranchers in South Dakota, as well as the millions of other self-employed people across this country.

As a member of the Finance Committee I supported the legislation before the Senate today. It retroactively reinstates the 25 percent deduction for last year. More importantly, it permanently increases the deduction to 30 percent for 1995 and thereafter. This legislation is a first step toward bringing self-employed individuals onto equal footing with corporations, which are allowed to deduct 100 percent of their health insurance costs.

We have already done a great disservice to our family farmers by not passing this legislation prior to the March 1 filing deadline for their Federal tax returns. It is my hope that we will not do the same for all the other self-employed individuals by missing the April 17 deadline, thereby creating a paperwork avalanche of amended returns.

Approximately 67,200 South Dakotans are either self-employed or are employed by the self-employed. These men and women represent almost 20 percent of South Dakota's total work force—many of them are farmers and ranchers. This tax deduction makes insurance more affordable for them and their families. Immediate passage of this bill should be a top priority for the Senate.

I know that most of my colleagues agree that this is a bill of critical importance. However, as we all know, controversy surrounds the offset. This is unfortunate because it threatens the timely passage of the 25 percent provision.

I support the offset so that we can get this legislation permanently placed in law and also expand it to 30 percent. The FCC tax certificates program—the program we terminate to pay for this legislation—is no longer justifiable.

When the choice is between giving multibillion dollar corporations a tax break or giving small businesses, farmers, and ranchers relief for health insurance coverage, the choice is clear: I side with the hard-working small business people, and farmers and ranchers—not large corporations.

I encourage my colleagues to recognize the core issue here today and to vote to retroactively reinstate the 25 percent deduction for 1994 and to permanently extend the deduction at the 30 percent level thereafter. We must do this for the sake of our farmers, ranchers, small business people, and the families and employees who rely upon them.

I urge my colleagues to vote for H.R. 831 as approved by the Finance Committee, and urge our colleagues in the House to approve it as well.

SECTION 1071

Mr. BRADLEY. Mr. President, section 1071 of the Internal Revenue Code authorizes the FCC to permit sellers of broadcast properties to defer capital gains taxes on a sale or exchange if the sale or exchange is deemed by the agency to be necessary or appropriate to effectuate a change in a policy of, or adoption of a new policy by, the Commission with respect to the ownership and control of radio broadcasting stations. As such, the Commission has used tax deferral certificates for, among other things, the promotion of minority ownership of broadcasting stations and cable television systems.

From a tax perspective, I believe that the FCC's tax deferral program is not appropriate tax policy. Over the past 16 years, and as the author of the Tax Reform Act of 1986, I have consistently advocated that we spend just as easily through the Tax Code as we do through appropriated and mandatory spending. I have consistently opposed these special interest loopholes. Indeed, in this bill, I offered an amendment that eliminated the granddaddy of all tax loopholes—one that benefits those who renounce their U.S. citizenship. By closing this expatriate loophole, we raise $1.3 billion that incredibly benefitted only 12 taxpayers.

Tax loopholes raise taxes on those in society who do not use them and distort rational economic decisionmaking. Thus, as a member of the Finance Committee, I voted to place a moratorium on section 1071 effective as of January 17, 1995, thereby overturning commercial transactions that would have sheltered approximately $500 million in capital gains taxes.

I am profoundly disturbed, however, that the issue of affirmative action has been interjected into the underlying issue of how to finance the 25 percent health insurance deduction for self-employed individuals. I support the concept of affirmative action, which is a remedial measure designed to identify qualified women and minorities and afford them the opportunity to enter the mainstream of American life and contribute their skills and talents to make America more competitive on the world stage. Further, I thought it best to consider affirmative action in full, not simply one small provision. As such, I voted in committee to place a 2-year moratorium on the application of section 1071 so that Congress could study the program and alternative ways to increase broadcast diversity.

As the affirmative action debate rages, I will attempt to broaden the discussion to deal with the underlying issues of race in American society. In addition, I will be offering my views and suggestions about how to assure

that individuals who are truly discriminated against on the basis of race and gender have a means of obtaining a remedy, not simply lip service. I challenge my colleagues to join me in this discussion.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, I will take but a few moments here so we can finish this bill. First, I want to congratulate the managers of the bill, Senator PACKWOOD and Senator MOYNIHAN.

Mr. President, we start debate today on an issue that is important to many Americans across the country. H.R. 831 seeks to make permanent the deductibility of health care insurance costs for self-employed individuals.

Since 1986, Congress has allowed the self-employed a 25-percent deduction for their health care insurance costs. Almost every year, we have had to extend the deduction, but we failed to extend it last year when it expired on December 31, 1993. We were told that we would address this matter in the health care reform debate. And we did address it. In some bills, including mine and Senator PACKWOOD's, we sought to allow up to 100 percent dedication phased in over a period of time. But, in the end, we did nothing. None of the health care reform bills had enough support to pass last year, and so, here we are today again looking at this issue.

H.R. 831 seeks to make this deduction permanent. We don't want to leave the 3.2 million tax filers in 1994, hanging on the edge of a cliff every year. And we do not want to tell them that although corporations can deduct 100 percent of their health care insurance costs, small businesses cannot. We decided 9 years ago that in order to make the playing field more equitable, we should allow small businesses to deduct their health care insurance costs. But we did not give them 100 percent, we gave them only 25 percent—one quarter of what corporations are allowed to deduct. Today, we seek to increase that amount permanently to 30 percent. And we must continue to fight for parity.

In fact, many small businesses strongly believe that increasing the deductibility begins to solve the disparity between self-employed and incorporated businesses and will give even more individuals access to affordable health insurance. I agree when them. I have received many letters from various small business and agricultural associations supporting my efforts to increase the deduction even more than the 30 percent in the committee bill. Letters from: The National Federation of Independent Business, the American Farm Bureau Federation, the National Restaurant Association, the National Association of Wheat Growers, the National Corn Growers Association, the American Soybean Association, the Small Business Legislative Council, the National Small Business Unified, the National Association of Home Builders, the Healthcare Equity Action League [HEAL], Communicating for Health Consumers, U.S. Chamber of Commerce, the National Association of Private Enterprise, and the Society of American Florists.

I know that many in this Chamber share their belief—so much, in fact, that the minority leader and I have sent a letter to both the chairman of the Senate Finance Committee and the chairman of the House Ways and Means Committee to strongly consider raising the deductible percentage higher than 30 percent, but within the confines of the offsetting revenues.

EMPLOYEE DEDUCTION

I also share the concerns of many of my colleagues over the many employees who pay their own health insurance, but do not get to deduct any amount. There is no doubt, that these people deserve fair and equal treatment as well. I am hopeful that when we return to health care reform we will address this issue.

Many believe that the health care reform issue is dead, but it is not. We still have people without insurance. We still have people who are denied insurance because of existing illness. We still have people who cannot change their jobs in fear of losing health insurance. To me, and many of my colleagues, health care reform is still very much alive, and the issue of taxation of employees who pay for their own health insurance, will be addressed.

OFFSETTING REVENUES

In the Senate Finance Committee last week, under Chairman PACKWOOD's leadership, we passed a bill that not only extended the deduction permanently, we raised the deductibility percentage to 30 percent. And we did so by repealing a Federal Communications Commission [FCC] program that I believe is not only ineffective, but costs the Federal Government billions of dollars. This program has gained notoriety in the newspapers in the recent months because one particular transaction could cost the Government in excess of $500 million. One company, 500 million dollars.

The FCC, the agency that administers this program, does not know how much the entire program has cost the Government. And neither does the Treasury Department. The program has been in existence for 17 years, and yet we have no idea how much this has cost the Government. One of my distinguished colleagues on the Finance Committee said it right, "If you are looking for the enemy, the enemy is us." And so, members of the Senate Finance Committee overwhelmingly repealed this program.

THE FCC'S TAX CERTIFICATE PROGRAM

Congress, in 1943, gave the FCC authority to grant tax deferrals to owners of broadcast facilities who were forced to sell their properties to break up monopolies during World War II. Congress' intent was to, and I quote, "Alleviate the burden of taxpayers who had been forced to sell their radio stations under difficult wartime circumstances."

The FCC, in 1978, expanded the provision to give a tax preference to radio, television, and later cable broadcasters who sold their properties to minority-owned firms. For this policy, the FCC defines minorities as including "Blacks, Hispanics, American Indians, Alaska Natives, Asians and Pacific Islanders."

The greatest flaw in this program is that the economic benefit does not go to the minority buyer, the economic benefit goes to the seller. It is like a kickback. If you sell to me and not the other guy, I will give you a little extra something. And I will not be paying for it, the American taxpayer will. I do not understand it, and I do not understand why people would think this is benefiting minorities when the monetary gain is going to the seller.

These are also million-dollar deals. These are tax breaks to millionaires. The average sales price for transactions in which tax certificates were granted is $3.5 million for radio, and $38 million for television. Although there is no data currently available for the cable industry, one of the transactions in the cable industry seeking to utilize the tax certificate, is $2.3 billion.

EFFECTIVE DATE

Some have tried to say that this bill's effective date is retroactive. And that this bill is crafted to target one particular transaction—the Viacom transaction. I disagree.

Chairman ARCHER of the House Ways and Means Committee issued a press release on January 17 of this year entitled, "Archer Announces Review of FCC Tax Provision," putting all FCC tax certificate transactions on notice. It reads, and I quote:

> The Committee on Ways and Means will undertake this review immediately to explore possible legislative changes to section 1071, including the possibility of repeal. Any changes to section 1072 may apply to transactions completed, or certificates issued by the FCC, on or after today, January 17, 1995.

Two days later, on January 19, representatives from Viacom, House Ways and Means Committee, and the Joint Tax Committee met. And Viacom was fully apprised of the situation and the possible consequences on their transaction.

Nevertheless, the parties in the Viacom transaction signed an asset purchase agreement the following day. and even then I do not believe it was not a binding contract. The purchase agreement is contingent upon the FCC granting a tax certificate. They filed a tax certificate application with the FCC on February 3, with full knowledge that Congress would be acting to

repeal the program. On February 6, 1995, H.R. 831 was introduced, and reported by the Ways and Means Committee on February 8. The bill passed the House on February 21.

This transaction is not a small one. This a $2.3 billion transaction. the parties involved are sophisticated players in the mergers and acquisitions world. A world where players are accustomed to reacting quickly. It is clear to me that the parties of this transaction were given reasonable expectation that the FCC tax certificate program would be repealed. And it is clear to met that they decided to sign their agreement regardless. And, remember, they did not file for an FCC tax certificate until February 3. Their agreement continues to be contingent upon a tax certificate being granted.

TURNING TAX BREAKS AND LOOPHOLES FOR MILLIONAIRES INTO HEALTH CARE FOR THE ORDINARY CITIZEN

Let me be clear, if we do not pass this legislation today, then what we are doing is raising taxes for 3.2 million Americans. Make no mistake about it. If we do nothing today, then they will pay more in taxes this year than they did last year.

What we are trying to do here today; what we will accomplish here today is taking a million dollar, unjustifiable tax break for millionaires, not minorities, and turn them into health care for ordinary Americans. Americans who really need it.

Let me also remind everyone here that this bill passed the House of Representatives with an overhwelming majority vote of 388 to 44. I urge my colleagues to vote for this bill.

AFFIRMATIVE ACTION

Mr. DOLE. As the Washington Post reported today, the overwhelming majority of the American people believe that the race-counting game has gone too far.

I am proud of my own civil rights record. I have supported affirmative action in the past. That's no secret.

But my past record did not disqualify me last December from asking the Congressional Research Service to compile a list of all Federal preference laws and Regulations.

And my record does not disqualify me today from raising legitimate questions about the continuing fairness and effectiveness of affirmative action, particularly when the affirmative-action label is used to describe quotas, set-asides, and other group preferences.

Equal treatment, not preferential treatment, should be the standard. Equal opportunity, not equal results, must be the goal.

Earlier today, my distinguished colleague from Maine, Senator COHEN, gave a very eloquent speech on the Senate floor where he pointed out that America is not a color-blind society, and he is right. Discrimination continues to exist. The color-blind ideal is just that—an ideal that has yet to be achieved in the America of 1995.

But, Mr. President, do you become a color-blind society by dividing people by race? Do you achieve the color-blind ideal by granting preferences to people simply because they happen to belong to certain groups? Do you continue programs that have outlived their usefulness or original purpose? The answer to these questions is, of course, a resounding "no."

I look forward to the completion of the President's review of all Federal affirmative action policies, but if the President is seeking a magical "third way," I suspect he is going to run into a dead end: When it comes to the issue of group preferences, you are either for them or against them. There can be no splitting the difference, no "third way."

With that said let us hope that reason prevails as we continue down this road. If we keep our voices low and our intentions good, the debate over affirmative action can, in fact, be an opportunity to unite the American people, and not divide us.

Mr. PACKWOOD. Mr. President, I believe we are prepared to yield back our time.

Mr. MOYNIHAN. Mr. President, I yield back our remaining time.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the committee amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall the bill pass?

So the bill (H.R. 831), as amended, was passed.

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

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

The motion to lay on the table was agreed to.

Mr. PACKWOOD. Mr. President, I move that the Senate insist on its amendment to H.R. 831, request a conference with the House, and that the chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer appointed Mr. PACKWOOD, Mr. DOLE, Mr. ROTH, Mr. CHAFEE, Mr. GRASSLEY, Mr. MOYNIHAN, Mr. BAUCUS, Mr. BRADLEY, and Ms. MOSELEY-BRAUN conferees on the part of the Senate.

MORNING BUSINESS

Mr. PACKWOOD. Mr. President, I ask unanimous consent that there now be a period of morning business.

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

CHILD NUTRITION PROGRAMS

Mrs. MURRAY. Mr. President, I rise today to talk about my deep concern over the House proposal on the child nutrition program and stand before you today to speak about the questions that I have asked and the answers I have looked to to find out whether this is the right road for this body to go down.

I want to relate some of that to you today. The National School Lunch Program, as we all know, began in 1946 in response to concerns that our national security was jeopardized because many of our incoming military personnel suffered from nutrition-related illness.

The Federal Government made a decision that it is in the national security interest of this country to feed and nourish our youth to ensure a strong population and a strong nation.

If we take the time to review this program's record, we will clearly find that it has been successful in boosting health and achievement among our children.

This program touches every family in America. Its elimination will shake the very foundation of the family: health, nutrition, education, and opportunity.

Here is why: Every single school day, more than 25 million children in 93,000 schools across America eat a lunch provided through the National School Lunch Program. More than half of these children receive the meal free or at a reduced price.

I doubt my colleagues know what it is like to sit in a classroom as a small child and try to concentrate on learning when you have not had a meal for several hours.

I doubt that many know what it is like to teach these children.

As a mother and a pre-school teacher, I can assure you that for hungry children, learning is not a priority. It cannot be. Often, the meals they get at school are their only meals for the day.

Often, these lunches are the only nutritious meal they get. I can tell you from first-hand experience that food makes a child—any child—happy and healthy and willing to learn.

Teachers are overburdened as it is. The last thing we need to do is to put more hungry children in our classrooms and then ask our teachers to teach them.

The Women, Infants, and Children Program [WIC], another nutrition program targeted for block granting, is one of the most successful forms of health care cost containment that we have today. It has an outstanding record of reducing the incidence of low-

birth-weight babies born to poor women, and saving lives.

This program serves nearly 7 million mothers and children each month at a cost of less than $1.50 a day for each participating child. The Medicaid savings this program produces outweigh the costs by a 3 to 1 ratio.

It is a model program which should not be lost in the welfare reform debate but rather one we can and should learn from.

I think it is important to point out that these programs have rightfully enjoyed bipartisan support in this body. The Senate has affirmed the issue of nutrition as one of health for our children.

It is one of economics too. This Nation will pay so much more later if growing children do not get the nutrition they need now and if women do not get the parental care they need now.

Let me touch on a few other aspects of this legislation. One of the reasons these nutrition programs have been so successful is because of national nutrition standards. Where do you think the campaign for the five basic food groups came from?

The House proposal would eliminate these and ask each State to set their own. So, instead of one proven, workable national program, we will have 50 individual bureaucracies experimenting on our children.

But that is not all. If we look further into the legislation, we realize that despite what the House would have us believe, their proposal will cut nutrition funds to many States.

The claim that the school lunch program will see a 4.5-percent increase cannot be found in this legislation. What you can say is that the school nutrition block grant would provide 2.5-percent more funding in fiscal year 1996 than schools will receive in fiscal year 1995. However, this does not take into account food price inflation or increases in participation.

Under current law, these programs would see a 5-percent increase in order to keep pace with food costs and participation. Because block grants do not take these into account, the bill will actually provide $170 million less in fiscal year 1996 than would be provided under current law.

By fiscal year 2000, the block grant would provide $760 million less than the levels needed to keep pace with inflation and participation. Over a 5-year period, the block grant would provide $2.3 billion less than current law. These are not block grants; they are block cuts.

The House proposal shifts these funds to discretionary spending. Once this happens, 1996 is the only year funds can be guaranteed. Afterward, State nutrition programs would be subject to arbitrary spending caps, across-the-board cuts, and other money savings gimmicks without regard to the impact on children.

The House proposal does not take into account the possibility of a recession. Nor does it compensate for any increases in population or poverty.

It puts our States in a position of setting nutrition standards they may not be able to afford. It caps administrative costs which will limit each State's ability to establish the new State regulations.

What does this mean? When States run out of funds—and believe me, they will—The children will not eat. The end result will be devastating to our children, our schools, our families, our communities, and our economies.

I have talked with many people since the introduction of this proposal. I know that my State of Washington will lose under the current block grant formula.

I know that hard working parents who need WIC or school lunches are afraid of what the future holds for their children. I know that children are worried about their families.

I understand and share their fears and I urge all of my colleagues to get out and talk with those people who participate in these programs.

Talk to parents, to teachers, and to children so that when the Senate takes up this issue you have a clear and deep understanding of just what you will be doing if you support this effort.

Mr. President, one last issue I want to touch on in regard to this whole block grant effort is the issue of welfare and how it has become associated with abuse and irresponsibility.

I share the view that the programs I just discussed are investments in our future.

The overwhelming majority of those people involved are using these programs as a last resort and not because they choose to. They are necessary for survival.

Mr. President, I have several letters from families in the Washington WIC programs which I ask unanimous consent to print in the RECORD.

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

I am very grealfut for the WIC Program, and to the nurses I have meet. I have learned alot about nutristion.

If I was not recieving WIC, Moniqua my two year old would not have enough milk.

I have felt very support by the ladies that wort there.

There are a lot of ladies that come to the WIC office to learn how to take good care of their new babies. Without the WIC a lot of babies would go hungrey. They givee formula, baby food and sopport you if the mother would like to Breast feed their Baby. These nurses help to keep a lot of Babies healthy.

In school my older girl would not beable eat, because not all the time, I have enough food to send with her for lunch, she able to eat and worry about how hungrey she is. she can concentrate on her school work.

I know what it is like to go to school and be hungrey and not beable to think very clear.

Katheran Northrop.

The WIC program has really helped supply my family with the nutritious foods we need. It has supplemented the food stamps we receive I always feel that the staff here at WIC is very dedicated to the welfare of our children.

Susan Bess.

DEAR SENATOR MURRY: I'm hoping that they don't cut the WIC program because it has really helped me the past 3½ years. Baby milk is really expensive and when you are on a fixed income and only recieve a certain amount of Food stamps it becomes a problem with finance. The WIC program helps us women and children afford milk for their children and even help us afford some things we need but if there wasn't the program we would have alot of under nurished babies. So you see Sen. Murry we really need the WIC program. * * *

Julie Allen.

DEAR SENATOR MURRY: I just want to say that the WIC program has helped me so much and many others that I know. Without the WIC program I don't think I could of made it threw. Formula is very expensive. It would cost about 150.00 dollars more a month if I had to buy it myself then I would probably have to seek other assistance.

Sarah Zottman.

DEAR SENATOR MURRAY: I would like to encourage you to Keep funding WIC. It is a fantastic program. This is my second Child to have on WIC my first was five years ago, She is a healthy beautiful little girl. I am expected another baby in April and thanks to WIC I know this baby will have the Formula She or he will need to grow strong and healthy. WIC is wonderful. WIC is a program that really benifits the Children.

Sincerely,

Diane Aston.

DEAR SENATOR MURRAY: Please continue to support the WIC Program. I'm glad I've join this program because I have learn a lot for my pregnancy this time. Also, the WIC Program help my family a lot for all. Such as financially & family support, etc.

Thank you for your attention.

Sincerely,

Fondy Lee.

Being a mother of three small children ranging from 7 years of age to 3 months, I am currently enrolled in a local WIC Program. I must take this opportunity to tell you how happy and grateful I am to be provided this opportunity.

I started receiving WIC September of 1994 when my husband of 3½ years walked out on me and my children. I was five months pregnant at the time and worrying about the stress involved in caring for my family.

The WIC Program was a life saver. Not only was I able to take care of myself during my pregnancy but it helped to provide for my other children. I learned more about pregnancy and infant care than I knew the two previous pregnancies. I am currently breastfeeding my three month old, and providing overall better nutrition to myself and my children.

None of these things would have been possible without WIC.

Please do not cut WIC funding.

Sincerely,

Janet L. Pettie.

DEAR SENATOR GORTON: I'm writing to inform you of the importance for a WIC Program. Me and my family used WIC for approximately one year and if it hadn't been for the program we wouldn't have made it. WIC enabled me and my family to get on our feet, thus giving us the ability to give back. So please don't cut this program because it would be creating a problem rather than solving one.

Sincerely,

Eddie Carter and Family.

DEAR SENATOR MURRAY: The WIC Program has made a huge difference in the life of all four of my children. My last two pregnancy were monitored by WIC. The nutrition conceling nurse care and social work were invaluable. My daughter age 4 and son age 2 have been on WIC since before they were born. Having WIC has ment they would always have formula or milk. They probably would not have had milk everyday if it wasn't for WIC. I am a working mom and make just a little too much to stay on foodstamps. So WIC has bridged a big gap in our food budget.

Thank you for all the help in the past.

And please don't take it away from the children who really need it.

My family uses WIC and w/out their help I don't know what I would have done. My son used a special formula that was very expensive and I couldn't afford it on my own. Also, being a first time parent, they informed me about all the right foods to feed my child and at what age he should start these foods. They have helped me out in so many ways.

Sincerely,

Martina Sambrano.

DEAR SENATOR MURRAY: Please do not vote to cut the WIC Program. Without it I would not be able to give my kids milk once a day and probably not once a week. We are a struggling family of 7 with a small business. We hope to not need help soon but there are a lot of people still out there who wouldn't survive without this program.

Thank you for your time.

Mischel V. Sullivan.

SENATOR PATTY MURRAY: My infant daughter and I have greatly enjoyed the WIC program. The services are excellent. The staff are profesional and the classes and information are valuable.

Now that I am home with my daughter, (she is our first child), motherhood is a completely new and different world. The WIC program has helped me learn a lot about nutrition. Our daughter is very physically small and the formula provided has greatly helped her growth. In addition, the nutrition program has benefited our entire family.

Please do not reduce the WIC funds. The infants & children we raise today will be our furture leaders, such as yourself. (We need as many positive factors towards their development.)

Thank you.

Mary Jane Brogan.

I am writing to you regarding the WIC program. I was informed today that for some reason you are trying to erase WIC from Seattle. Obviously you do not know the importance of WIC to thousands of pregnant women & their children. Women must eat, receive proper medical care, good social care, & correct knowledge & advise to bring healthy babies (like you once were yourself) into this world. Mothers will do almost anything to protect & provide for their babies including theft & illegal ways of making money. With WIC, these women do not have to submit themselves to the ugly ways of life, but instead feel that they have a whole building of friends they can always come to. Nobody wants to rely on anyone else, but in these days & ages, life is so vastly unfair, that sometimes your low days do outnumber your high days. So, until then, when everyone in this world is totally self-sufficient, programs like WIC are needed & worth every penny the government puts towards it.

Sondra Erskine.

WIC help me to get in Heath for kind good for my children on WIC we learn a lot of how to feed my children to eat good food for health.

Saeleuon, Koi Fong.

WIC has been very helpful to me as a single mother—to be sure that I have the basics. Milk, peanut butter is a real comfort. I don't know what I would do without the support of this office, the vouchers and the support in general. WIC is a great program.

P.S. I'm not on food stamps but I think that program should be more like WIC where there are specific foods allowed—people will be healthier, better educated and tax payers less resentful.

Jennifer Meltzer.

Please don't cut WIC. It means a lot to our family. It helps a lot with the children. We need WIC to help like families like ours. In times of need.

Thanks,

Barbara Wilkens.

The WIC program is extremely good, the program help my child so much as he was growing. They had choices of milk for him. A lot of it is very expensive and with my income God knows how I would have purchase what he needed. They (WIC) were very helpful in the right foods he needed and just very helpful in all my questions. I highly recommend WIC for any mother and wish the program would stay around for many years to come.

Phyllis Sanders.

I support continued funding of the Women, Infants and Children (WIC) program. I do not believe we should make any cuts to the funding of this program. This program is extremely vital to the well being of many of our country's young children. We need to continue to ensure the well being of these children by continuing all funding to programs, such as WIC, that help children begin life with a healthy start.

Donna M. Fine.

Mrs. MURRAY: Let me quote a few:

I am writing to you regarding the WIC program. I was informed today that for some reason you are trying to erase WIC from Seattle. Obviously, you do not know the importance of WIC to thousands of pregnant women and their children. Women must eat, receive proper medical care, good social care, and correct knowledge and advice to bring healthy babies (like you once were yourself) into this world. Mothers will do almost anything to protect and provide for their babies. Including theft and illegal ways of making money.

She goes on to say that:

Nobody wants to rely on anyone else, but in these days and ages, life is so vastly unfair, that sometimes your low days outnumber your high days. So until then, when everyone in this world is totally self-sufficient, programs like WIC are needed and worth every penny the government puts towards it.

Another letter writer talks about how important WIC has been to her children and ends by saying that:

Having WIC has meant my children would always have formula or milk. They probably wouldn't have had milk everyday if it weren't for WIC. I am a working mom and make just a little too much to stay on food stamps so WIC has bridged a big gap in our food budget. Please don't take it away from the children. They need it.

Another letter:

We are a struggling family of 7 with a small business. We hope to not need help soon but there are a lot of people still out there who wouldn't survive without this program.

I think you will find that these are caring, responsible, hard-working individuals who have benefited tremendously from this program. It has been the safety net they need.

Finally, I want to share a few quotes from some letters children wrote:

"If we don't get our lunch we would starve. Don't do this to us. You are breaking our hearts."

"Instead of taking something that we do not need you are taking something that we do need. I am one of those children that needs those programs."

"We need school lunches because we do not have lunch at home. I do not like you for taking this away."

I could go on and on but will not as time will not allow it.

I will, however, submit these for the record so that others can read them. I wanted to make the point that these are caring, responsible, hard-working individuals who have benefited tremendously from these programs.

These are children who know the only full meal they or many of their friends get is at school. It has been the safety net they need. These letters make that point so much better than I can.

In closing, I want to say that I do not argue that our welfare system is in need of some change. What I do not like is the assumption that every person utilizing these programs is out to take the Government and the taxpayers.

Like so many other issues, the House has gone too far on child nutrition.

Welfare reform merits in-depth, serious consideration and I am anxious to begin that process. I think a little common sense will go a long way on this issue.

However, in the case of child nutrition programs, I am appalled that such little time or consideration was taken before this bill was reported out of committee. We cannot afford to follow the House lead and expect responsible, effective legislation to result.

This legislation affects a group of Americans who are completely unable to come to Congress and speak out. I strongly urge my colleagues to oppose

the wholesale slashing of child nutrition when the issue comes to the Senate.

I yield the floor.

THE BALANCED BUDGET AMENDMENT DEBATE

Mr. DORGAN. Mr. President, there was a column in the Washington Post this morning entitled, "More 'Trust Fund' Whoppers" by a columnist named Charles Krauthammer. I felt it necessary to come over and respond to this column. Mr. Krauthammer was upset about a response that Senator CONRAD and I had written to the Washington Post in response to his first column about us that was titled "Social Security 'Trust Fund' Whopper."

His first column was so devoid of facts and reasonable conclusions that we wrote a column back and said, in our part of the country we expect people to tell the whole truth. We did not like what he had done in his first column in which he called our arguments with respect to the constitutional amendment to balance the budget and looting of the trust funds in Social Security to do so as "fraudulent." Now he is upset at the column we wrote back and so he wrote a second long column, a long-winded column this morning.

As I read that, I was thinking, I come from ranching country in southwestern North Dakota. And occasionally you refer to people as "all hat and no cattle." I thought about that when I finished reading his column this morning. It was hard for me to understand how, with facts so evident, he can reach a conclusion so flawed.

The Presiding Officer, the Senator from Wyoming, also comes from ranching country, and I brought along a piece of cowboy poetry that I thought might describe the difference in perspectives, and the difference, sometimes, is simply that some do not have the capability of understanding the clear perspective. It is sort of described as the difference between tongue and egg in this poem.

A cowboy poet, whose name I do not have, wrote a piece and I thought about this piece as it might apply to the disconnect of logic in Mr. Krauthammer's column. Let me read the piece to you, the poem called "The Disputed Epicure." It is about a cowboy who is queried by a high-born lady.

"What's your favorite cut of beef?"
The high-born lady queried.
Of an old cowboy who long ago
Had grown, both wise and wearied,
Of direct infernal questions
On the ways of cowpoke lore.
So he considered on this question
That he'd not been asked before.

With rapt anticipation,
On his pause, the lady hung.
Until, at last the cowboy said,
"I'd have to say it's tongue.
Tongue's got flavor, 'n texture,
And nary a bit of bond.
A cinch to cook. I'd put her up
On top there, all alone."

Recoiling, the lady said aghast,
"Surely air, you jest."
The idea is disgusting.
Your grossness I protest.
Eat something from out a cow's mouth?
Your suggestion's crude, I beg."
The cowboy then said softly,
"Don't s'pose you've ate no egg."

Sometimes cowboy poets are able to say simply and clearly what we in politics fumble around to try to express.

I guess this difference between us and Charles Krauthammer is really kind of the tongue and egg difference here. Mr. Krauthammer, in his column today, first is upset that I responded to his first column on the balanced budget amendment and the misuse of the Social Security trust fund by saying on the floor of the Senate that, based on his column, I thought he might qualify as a candidate for O.J.'s defense team. He seems almost unmoved by facts and evidence.

He was upset by that, and, maybe I overreached. It may be I overreached because the column Mr. Krauthammer writes today demonstrates his talent is not in law, his talent truly is in fiction. Let me go through, if I might, the fiction that I see in Mr. Krauthammer's column, and perhaps just briefly review the dispute.

The dispute is that, briefly, in 1983 we had to solve some problems in the Social Security System. We did that by deciding to save for the long term. We, in fact, forced a national pool of savings so that each year we would raise more money in Social Security than we spent. This year we will raise $69 billion more than we spend. That surplus in the Social Security System is not an accident. Mr. Krauthammer, in his last column, said this is a pay-as-you-go system. But that is not true. This is not an accident. This is a deliberate strategy to force a national pool of savings in the Social Security trust funds to meet the time when the baby boomers retire after the turn of the century.

Since the surplus began to accumulate it has been used as an offset to show a lower Federal deficit. I do not think there is much dispute about that. And it is also true, and demonstrably true that, since 1983 when I offered the first amendment on the Ways and Means Committee, and time after time after time on the floor of the House and on the floor of the Senate, I have raised the question, offered the amendments, and objected to the looting of the Social Security trust fund or using those moneys to offset against a lower budget deficit because I think it is dishonest budgeting.

Then we had a constitutional amendment brought to the floor of the Senate and the constitutional amendment was written very precisely. It prescribed that by the year 2002, the U.S. budget shall be in balance and it shall be in balance when you use all expenditures and all receipts counting toward that balance. Under that constitutional amendment to balance the budget it would enshrine forever the practice, that I have objected to in recent years, of looting the Social Security trust funds to balance the budget. In fact, the way the constitutional amendment to balance the budget was written, it was clear that is the case. Senator REID offered an amendment to provide that would not happen. That amendment was defeated. So it was clear that is exactly what would happen and we were told, my colleague Senator CONRAD and I, that those who offer this amendment had no intention of using the Social Security trust funds to balance the budget.

But back in that room behind this Chamber we were told by the same people, "Look fellows, let's all be honest. We cannot balance the Federal budget without using the Federal trust funds." Those are direct quotes. Then they gave us handwritten pieces of paper that said we will stop using the trust funds in the year 2012; and then the second piece of paper said we will stop using the trust funds—that they were saying we will not do any time—by the year 2008; in other words, we will stop doing something we claim we are not doing 13 years from now. What twisted sense of logic that is.

Senator CONRAD and I refused to budge. We said we will support the constitutional amendment to balance the budget, but you must guarantee we are not going to enshrine in the Constitution the use of the Social Security trust funds to get there. They refused to do that. We refused to budge.

I happen to think that the Social Security System is important in this country. I happen to think the principles that I was involved with in 1983 when I helped write the Social Security Reform Act were important. I just refused to change the Constitution in a way that would have guaranteed in the next 13 years what I consider the misuse of $1.3 trillion of Social Security trust funds.

So the Krauthammer column was calling our argument fraudulent. We responded and said Mr. Krauthammer was clearly misinformed. He was offering a misinformed defense of an indefensible practice, some neat trick for a pundit.

Now, there is a new column from Mr. Krauthammer. And I would like to go through just a couple of points in this new column. Mr. Krauthammer, if I can review this column, says a number of things. First, he says that he had checked with our offices because he says he wonders about the sincerity of our charge about looting the Social Security trust funds. He says if we were sincere about that, could we provide evidence that we had complained about that before? Well, yes. He did call our

office. My first thought was to respond by telling his assistant: "Do your own research. You make lots of money." But then I thought better of that.

So we sent many examples of what I said on the floor of the Senate and on the floor of the House—yes, during President Clinton's Presidency and during previous Presidencies—saying this practice is wrong; this practice is dishonest budgeting. So he had the examples. He apparently chose to ignore them or misrepresent them by saying we had not been sincere because we had not complained about that before. Speaking for myself, he knows better than that, and he has an obligation to put that in his column.

Second, he says that Senators CONRAD and DORGAN then accused him of seeking to enshrine a procedure in the Constitution of counting Social Security in calculating the deficit in the Constitution. He said this is pure invention. This balanced budget amendment is entirely silent on the issue. "It is up to Congress to decide whether to count Social Security surpluses in calculating the budget," he says. Oh, really? I am trying to figure out what Mr. Krauthammer is reading. Has he read the proposal before the Congress, the proposal that says in the Constitution, "all revenues and all expenditures" would be counted? Is there some new law school that you can apply to on the back of a matchbook that teaches a different kind of law, one that allows you to misread these proposals?

Well, you know. Some of us believe, especially out in western ranching country, that things mean what they say they mean. If you write it, that is what you mean. If you say it, that is what you mean.

Mr. Krauthammer says no, that is pure invention. Apparently a Washington thought, not one that I subscribe to. The constitutional amendment means what the words in the amendment say it means, and until Mr. Krauthammer wrote this column, I did not think there was any serious dispute about that.

Mr. Krauthammer says, third, until 1969, it was not our practice to use surpluses in calculating the deficit. Only since 1983 have we begun developing a consistent, deliberate strategy of very large surpluses to save for the future. So what counts is after 1983, Mr. Krauthammer would probably know.

In any event, he misses the point on the 1983 amendment. He apparently just missed the whole body of law in which we decided that we would enforce a national pool of savings. Mr. Krauthammer said, you know, the Social Security system is a pay-as-you-go system, and the reason we have all this money is because we have these baby boomers working. False! Wrong! As with a lot of the rest of his column. He knows it. We told him he was wrong, of course. He did not point out in his column that, yes, he had made an error. Had he read the 1983 amendments, he would have known it is not a pay-as-you-go system. It is a system designed now with a tax base to create a deliberate national pool of savings with which to meet our future obligations.

Mr. Krauthammer says the amendment that CONRAD and DORGAN killed would have required a balanced budget by law—it would not be by law, of course. It would have to be by Constitution, unlike other such laws that could not be changed by a movement of truth, by a cowardly Congress. "It would have forced people like CONRAD and DORGAN to stop scaring the electorate and buckle down to the real deficit reduction problem."

I wonder what Mr. Krauthammer would write with respect to buckling down in 1993? We buckled down. In 1993, we passed the deficit reduction package through this Chamber that raised some taxes that were unpopular. I understand that. It cut some spending that was unpopular. I understand that. It was an act to reduce the deficit of over $500 billion, and the actual experience is over $600 billion in deficit reduction in 5 years.

Do you know something? We did not even get one accidental vote from the other side of the aisle, Mr. Krauthammer's friends. You would expect somebody to vote wrong by accident now and then. It took every single vote we could muster to win on that issue because it was unpopular, and we knew it. We had the courage to do what was necessary to reduce the deficit. We did not get one single vote from Mr. Krauthammer's friends.

So I say, when Mr. Krauthammer uses words like "cowardice," and so on, he might want to rethink who has exhibited courage in recent years, who has decided that they are willing to do what is unpopular if it is right, in order to help their country.

Well, we will, of course, send another response to try to correct some of the whoppers in Mr. Krauthammer's column. Again, I keep thinking that Mr. Krauthammer must believe that double-entry bookkeeping means you can use the same money twice. Of course, the first accounting course you take tells you that is not what double entry means. You cannot use the same money twice. There are some bookkeepers in America that have done that. They are now doing 4 years of hard tennis in minimum security prisons. You cannot use the same money twice. You cannot do it in businesses, and you cannot do it in the Federal budget.

When I finished reading his column this morning, it reminded me of something Clement Freud's grandson said. Clement Freud's grandson said this: "When you hit someone over the head with a book and get a hollow sound, it does not mean the book was empty."

Mr. President, I yield the floor.

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER (Mr. COATS). The Senator from North Dakota.

Mr. CONRAD. Mr. President, I want to thank my colleague from North Dakota.

The PRESIDING OFFICER. Who yields time?

Mr. MOYNIHAN. Mr. President, I ask my friend from North Dakota how much time he would like?

Mr. CONRAD. Ten minutes.

Mr. MOYNIHAN. Mr. President, I am happy to yield 10 minutes off the bill to the Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, I thank the Senator from New York for his courtesy, and I thank my colleague from North Dakota for his discussion of the latest Krauthammer column.

Let me just say that it is very apparent to me why Mr. Krauthammer is a columnist and not an accountant, because he clearly does not get it. He just does not understand why it is wrong to take Social Security trust fund moneys to balance the Federal operating budget. He does not understand why it is wrong to take a dedicated trust fund and use it to pay the other operating expenses of Government. But most people understand why that is wrong. Most people understand that you do not take a trust fund and loot it in order to pay other expenses and then say you have balanced the budget.

Mr. Krauthammer, in his latest work, indicates that the balanced budget amendment is "entirely silent on the issue." The issue he is talking about is taking trust funds and using them for the other operating expenses of Government. It makes me wonder if Mr. Krauthammer has ever read the amendment that was before this body.

I brought along just one section of the balanced budget amendment that was before this Chamber. It says very clearly. "Total receipts shall include all receipts of the United States Government * * * total outlays shall include all outlays of the United States Government."

By definition, this amendment was including the Social Security funds because they are receipts of the U.S. Government. And, of course, Social Security is not contributing to the deficit. Social Security is in surplus.

So, by definition, Social Security surplus moneys would have been used, and used to balance the operating budget of the Federal Government. And those surpluses would have been used to pay other expenses. That is precisely the point.

Mr. President, to say you are balancing the budget when you are using trust fund moneys is a fraud. It reminds me of the Reverend Jim Bakker. Do you remember Rev. Jim Bakker,

Jim and Tammy, that used to have the show "PTL" on television? He was an evangelist, a television evangelist. Does anyone know where he has been for the last several years? He has been in a Federal facility in Minnesota. He has been in a Federal jail. He has been there because he raised money for one purpose and used it for another, and that is called fraud.

That is precisely what is happening with the Social Security trust funds. We are taking money from people's paychecks. We are telling them that is going to be used to secure their retirement. We are taking that money and the part that is in surplus is being used to pay for other operating expenses of Government. The trust fund? There is no money in the trust fund. IOU's are in the trust fund, but there is no money there because we have spent it.

We are as guilty of fraud as Rev. Jim Bakker. And at some point the chickens are going to come home to roost in this country. To have put that kind of flawed policy in the Constitution of the United States would have been a profound mistake because then we would have had very little chance to change it.

Let me give an example of what is wrong with the Krauthammer thinking. Let us take a company that is earning $1 million a year, has $1 million of income but is spending $1.5 million a year. That company is experiencing losses of $500,000.

Now, of course, it could borrow from the retirement funds of its employees and say that it is balancing the budget. That is the kind of approach that apparently Mr. Krauthammer would endorse. I do not think many people in this country would think, if you were earning $1 million a year as a company and were spending $1.5 million, and you were making up the difference by looting the trust fund of your employees, you would balance the budget. But that is the policy that he endorses. That is the policy Mr. Krauthammer thinks makes sense. I think most people would recognize you may have balanced cash against cash, but you have run up a $500,000 liability. You owe it, and you are going to have to pay it back or you are going to renege on your obligation.

Mr. President, that is what is wrong with the approach we are taking. That is what is wrong with what we would have done if we would have put that principle into the Constitution of the United States.

Mr. Krauthammer apparently belongs to the school of thought which believes that in order to save Social Security we must loot the Social Security trust funds. I do not belong to that school of thought. I think that is a profound mistake.

Mr. Krauthammer has one thing right. One of the threats to Social Security is the debt that we are accumulating in this country. When we spend more than we take in, we are mortgaging the long-term future of this country—no question about it. That is a threat to Social Security just as it is a threat to the economic security of the United States.

There is a second threat. The second threat to Social Security is the raiding of the Social Security trust funds. The reason we are running a surplus now, and the reason we are going to be running surpluses for the next 10 or 15 years is to prepare for the day the baby boom generation retires. That generation, which is twice as large in terms of people who are eligible to receive Social Security as the current generation, is going to put enormous pressure on the system. When we changed the Social Security methodology in 1983, we changed it in order to prepare for the day when the baby boom generation retires. That is why we are running surpluses. That is why those surpluses ought to be preserved.

The notion that the only way to save Social Security is to loot its trust funds is mere nonsense. That is the position Mr. Krauthammer endorses. I think he is entirely wrong in that proposition. I think the people of this country have the common sense to reject that theory. I think by all of the reaction we have received from the balanced budget amendment debate the people of this country recognize we are on a course that cannot be sustained. It ought to be changed. Mr. Krauthammer might want to be a guardian at the gate of the gridlock of the past, the policies of the past. Senator DORGAN and I do not choose to join him in that endeavor. We do not think defending the policies of the past is defensible. There ought to be a change. To have enshrined those failed policies in the Constitution of the United States would have been an insult to the Framers of that document who put together, after all, a method of operating for this Government that has made us the envy of the world. That document has made this Nation the greatest country in human history. We should not tamper with it lightly. We certainly should not enshrine in it a flawed policy, one that says you have balanced the budget when you have looted trust funds in order to do so. That is not a policy that belongs in the Constitution of the United States.

I thank the Chair. I yield the floor.

COMMEMORATING GREEK INDEPENDENCE DAY

Mr. BRADLEY. Mr. President, I rise today to commemorate Greek Independence Day—a national day of celebration of Greek and American democracy. Tomorrow, on March 25, 1995, all people of Greek descent will celebrate the 174th anniversary of the beginning of the revolution which freed the Greek people from the Ottoman Empire.

A historic bond exists between Greece and America, forged by our shared democratic heritage. America is truly indebted to the ancient Greeks for giving the world the first example of direct democracy. As the solid stone of this neoclassically designed building provides a protected place for our own democratic government to flourish, the philosophical and democratic influences of the ancient Greeks provides the inspiration. It is therefore fitting that Members of this Chamber join in paying tribute to the long struggle for freedom that Greece endured.

On March 25, 1821, when Germanos, the archbishop of Patros, proclaimed Greek independence, another link between Greece and the United States was forged. The American revolution served as a model for the Greek struggle for freedom and when the Declaration of Independence, translated into Greek, served as the declaration of the end of the Greek struggle, a circle was completed.

The interconnection between Greek and American democracies lies not only in the philosophical underpinnings of our Government, but in many areas of American life. Percy Bysshe Shelley once said, "We are all Greeks! Our laws, our literature, our religion, our art, have their roots in Greece." The tremendous influence that Greece has had on American life continues today through the activities of the vibrant Greek community in America. In every field—politics, entertainment, business, and education—Greek-Americans continue to contribute to American life.

In particular, I wish to pay a tribute to the Greek-American community in New Jersey. Groups that are leaders in the New Jersey Greek community include: the Greek American Chamber of Commerce of New Jersey, the Greek American Voters League of New Jersey, the Hellenic American Bar Association of New Jersey, the Pan Gregorian Enterprises & Foundation, P.G.E.I. of America Charitables Foundation, Inc., the Council Generals of Greek Cypriot, the Order of AHEPA and the Joint Public Policy Committee of Hellenic American Women. On behalf of these organizations, the Greek community in New Jersey and all Americans of Greek descent, I am honored to pay tribute, on behalf of the Nation, to the Greek community on the anniversary of their independence day.

Mr. DASCHLE. Mr. President, I will use some of my leadership time to speak as if in morning business.

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

NOMINATION OF DR. FOSTER TO BE SURGEON GENERAL

Mr. DASCHLE. Mr. President, I want to take this opportunity to state my

concern about the direction and tenor of the debate on the nomination of Dr. Henry Foster to be Surgeon General.

I spoke on the floor a month ago about this nomination. At that time, I expressed hope that this debate could be restored to its proper perspective—an honest assessment of whether Dr. Henry Foster's skills fit the Nation's needs for the position of Surgeon General.

So far, Mr. President, that has not occurred.

First of all, there has not been much substantive discussion about this nomination. At a time when many of the public health problems historically addressed by the Surgeon General are reaching crisis proportions, it seems that there should be more discussion about the contributions Dr. Foster can make in this capacity and the urgency of approving his nomination.

Unfortunately, what little debate there has been has not centered on Dr. Foster's qualifications, skills, and contributions to society. Instead, it has revolved around Dr. Foster's performance of a legal medical procedure, and how many times he has performed it.

Little attention has been paid to the thousands of lives Dr. Foster has brought into the world over his 35-year career, or the hundreds of lives he has saved.

Little attention has been paid to the evidence that supports President Clinton's evaluation that Dr. Henry Foster has much to contribute as Surgeon General of the United States.

Do not be fooled into believing the evidence is lacking. Nothing can be further from the truth.

Before being nominated to the post of Surgeon General, Dr. Foster was perhaps best known for his efforts in establishing the I Have A Future Program. This teen pregnancy prevention program, which stresses abstinence and attempts to help teens understand the positive reasons for delaying pregnancy, was selected by President Bush as one of his Thousand Points of Light.

Listen to the words of Dr. Louis Sullivan, President Bush's Health and Human Services Secretary.

> [The] I Have a Future [program] turns young people's lives around . . . [it is] the kind of program that the country needs.

Dr. Foster has pledged to focus on teen pregnancy prevention as Surgeon General. That cause certainly should be a national priority, and Dr. Foster would bring great experience and credibility to it.

Little attention has been paid to the stories of Dr. Foster's commitment and heroism. Like the time he saved the life of the mayor's son when his wife developed complications with her pregnancy.

Or the time a pregnant patient of Dr. Foster's called him up in the middle of the night because she was bleeding, and Dr. Foster met her at the hospital in his bedroom slippers.

Or the time Dr. Foster talked a young, pregnant and unmarried woman out of having an abortion. Her child later went on to become high school valedictorian.

These are the elements that are missing in the debate over the Surgeon General nomination. These are the reasons Dr. Foster deserves every consideration for this post.

It is my sincere hope that Dr. Foster will receive a fair hearing. It is unfair to judge a candidate before having heard all the facts. I hope that those who have reservations about the nomination will keep an open mind until committee hearings are held.

I also hope that these hearings will be held sooner rather than later. The Nation needs a Surgeon General.

Every day approximately 2,781 teenagers become pregnant.

Mr. President, this many teenagers become pregnant while we wait to confirm a Surgeon General who plans to make teen pregnancy prevention the centerpiece of his tenure in that post.

We should not delay action on this nomination. I urge the Chair of the Labor Committee to schedule hearings on this issue as soon as possible and do everything within her power to ensure that Dr. Foster is given a full and fair hearing.

Mr. President, I yield the floor. I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. KERREY. Mr. President, is there a time limit for morning business?

The PRESIDING OFFICER. It has been 10 minutes per Senator.

FARM POLICY REFORM

Mr. KERREY. Mr. President, every year the President of the United States is required by law to send an economic report not just to the Congress but to the people of the country. It is a very, very important report. It provides us with the administration's assessment of where the economy is and what needs to be done both to sustain economic recovery and to adjust in certain areas.

There is a section in the President's economic report described as farm policy reform. I would like to comment upon that here this afternoon in the time that I am allowed.

Mr. President, one of the first statements that this document says is:

> Efficiency requires that farmers be given greater opportunity to respond to marketing incentives, and the cost-effective public policies used to correct market failures in agriculture. Revising agriculture to meet better these objectives will help unleash more of the innovative energy that has long characterized American agriculture.

Mr. President, there is very little barrier between the farmer and the marketplace today, notwithstanding a lot of the political rhetoric that seems to imply that somehow agriculture is heavily subsidized. If agriculture was heavily subsidized, Mr. President, one would expect an economic analysis to reveal very low rates of productivity. That is typically what one sees.

If I subsidize somebody a great deal—we hear this in the welfare debate—subsidize somebody a great deal, it is apt to encourage not increased productivity, it encourages just the opposite.

If agriculture was heavily subsidized, one would expect to see very low rates of productivity and would expect to see economic analysis, particularly analysis that showed how the agriculture sector compared to other sectors of the U.S. economy and our international competitors, it would show that we are relatively unproductive. Just the opposite, Mr. President.

Compared to our OECD competitors, agriculture is more productive than computers, more productive than automobiles, more productive than steel, more productive than pharmaceuticals, more productive than chemicals, more productive than all other sectors of our economy.

This report, Mr. President, implies that the Government of the United States of America somehow is standing in between farmers out there who would like to be competitive and the market, and it just is not true.

The report, in my judgment, distorts what is actually in plain view out there in the countryside. The report says that "The farm sector no longer looms large in the macroeconomy."

Now, that is based on a GAO analysis that showed that only 2 percent of the U.S. population is now in agriculture production. But 18 percent of all the jobs, according to this report, are either directly or indirectly related to agriculture production. So if farmers are not making money, if the profit shifts someplace else, Mr. President, these businesses are going to have a tough time making ends meet and, thus, production in agriculture is still vital not just in the micro-sense but in the macro-sense of the entire U.S. economy.

Now, let me provide what I would have hoped this kind of report would have provided. Instead of beginning with, I think, an incorrect identification of what is going on in agriculture, let me provide those in America who are wondering what this farm program is all about with some basic facts.

First, there are only 500,000 full-time farmers left in this country. This report has a statement in here, a commonly applied statement, that agriculture production is increasingly concentrated. Well, you would think—increasingly concentrated—does that

mean that it is like automobiles, where we have three? Is that like pharmaceuticals, where we have 9 or 10? Is that like computers, where we have half a dozen? Is that what we are talking about? No.

There are 500,000 fully competitive, relatively small businesses—even a big farm is relatively small, Mr. President. A farm that an economist might describe as a large farm might not have as much revenue as an average McDonald's restaurant, for gosh sakes. So these are very competitive businesses.

Indeed, if you ask a Nebraska farmer, "Honestly, what is your idea of an enlightened policy?", they will say, "We pray for bad weather in Iowa." Well, you know, we do not honestly do that.

But the truth is, it is very competitive. We are competing out there not just with each other, but we are competing throughout the world. We would not be this productive were we not faced with the blessing of having this large number, still relatively large number, of full-time, highly competitive small businesses, family-operated businesses, mostly, that are manufacturing food products.

Now, one of the common things that I very often hear, not just in Washington, but I hear in Grand Island or Hastings and other communities in Nebraska, they will say, "Well, why do we have to have any kind of a Government program?"

Well, there are a couple of reasons that we do this. This report here, by the way, traces it all the way back to the 1920's and 1930's. It says in this report, "Today's agriculture commodity support programs are rooted in landmark New Deal legislation that followed the agricultural depression of the 1920's and 1930's." Again, feeding a misperception that this is a 60-year old program, started by Franklin Roosevelt, no longer needed; modern times no longer needs this sort of thing.

Well, Mr. President, one thing today is true that was true in 1930. And Americans who wonder why we have a program need to take this into consideration. Unlike other manufacturing businesses that I have referenced—automobiles, textiles, computers—we manufacture food out of doors. You might think that is kind of a silly and simple observation, but as long as we manufacture food out of doors we are always going to be dependent upon God to give us good weather. If we do not have good weather, if we have drought, we do not produce food. It is as simple as that, Mr. President.

You think, well, that is not a big deal.

Well, in 1987, I remember just after I left the office of Governor and went back into business, in 1987, swirling in the country was this big debate: What are we going to do with these enormous reserves that built up after the 1985 farm program was enacted? It is too costly—$125 billion a year, I believe it was. What are we going to do with these large reserves?

We had a drought in 1987. Then in 1988, we had another drought. I was campaigning at the time for the U.S. Senate. I almost remember the day when the American people stopped talking about these excess reserves and they started to say to themselves, "Oh, my gosh. Maybe we do not have enough inventory." Suddenly, the reserves became an inventory.

Now, I say that to Americans who are saying, "Is this worth it?"

We have an $8 billion program, the Commodity Credit Corporation program. There are $450 billion worth of food purchases in the United States. So you really pay $458 billion, $8 billion through farm price deficiency payments and $450 billion at the supermarket.

The reason that this reserve issue is important, I say to consumers, is because—I will tell you, as somebody who represents about 55,000 of those full-time farmers in the State of Nebraska, if we cut this program back too much and listen to the rhetoric, both Republican and Democrat, around here, it leads me to believe that may happen. You may find this Senator on the floor saying to the American consumer, no longer are we going to maintain a reserve, because that reserve serves the American consumer, Mr. President. It does not serve the producer.

In spite of what this report says, that reserve is there because the American consumer is concerned about what happens if we find ourselves short of food. You say, "Well, that's an exaggeration." It is not.

In 1993—and again, this report would lead you to believe that farm policy does not have any impact at all on macroeconomic policies—in 1993, the Secretary of Agriculture, at that time Secretary Espy, was having to make a decision: What should our reserve program be? Should we set a 5-percent reserve, a 10-percent reserve, a 0-percent reserve? What should our reserve be?

The farmers in Nebraska, the farmers in Iowa, but particularly in Nebraska where we are polled a lot, said, "Set it at 10 percent acreage reduction program."

Secretary Espy said out loud and in public, "I am going to set a 0-percent acreage reduction program." Go back and look at what Secretary Espy said. He said:

> I'm afraid if I set a 10-percent ARP that my food prices are going to be higher, and if food prices get higher, inflation comes back in the economy, high interest rates could come back in the economy and this entire recovery could get shut down.

That was the economic analysis done by the administration. You say, "Well, OK, so he did that, what is the impact?" It is a big impact. Farmers were asking for a 10-percent acreage reduction program. They got a 0-percent acreage reduction program, and here is the effect:

In 1993, the corn payments under CCC in the State of Nebraska were $600 million. In 1994, they dropped to $160 million. This year they are probably in the $700 million range again. You say, "My gosh, why are they going back and forth? Why is it 600, 160, 700?" The answer is, the price is impacted by the decision that the Secretary makes to set the reserve. When the Secretary set the reserve at 0 percent, farmers wanted 10 percent. When he set the reserve at 10 percent, we produced a bumper crop in 1994, along with tremendous weather that we had in 1994, we have lower prices and higher deficiencies in 1995.

So the higher budget exposure in 1995, which would probably be $700 million in my State, is not something I asked for. I asked for a 10 percent reserve which probably would have cost the taxpayers $160 million again. But USDA says, "No, we're going to go with the 0-percent reserve." The cost to the taxpayers ends up being four times greater, and guess who gets blamed? The farmer. The farmers in Nebraska are accused of wanting more welfare. The farmers in Nebraska are accused of wanting more money from the Government. Mr. President, American taxpayers should understand that the farmers were asking for a higher reserve which would have resulted in lower payments by the Federal Government.

Now it may be, I must say, that this kind of language, and others that I have heard, will result this year in deficiency payments being cut back. Perhaps the permission granted to this program is going to be pulled out if we change it radically. Mr. President, if we change it radically, consumers need to understand that this representative for American farmers is going to come to the floor and say we ought to get out of the reserve business altogether. No more reserve for the American consumer, no more holding food back on behalf of the American consumer, and we will just let the market set the prices. There will be times, as a consequence of that, when the price ends up being much higher.

This is not the only area where increasingly we come down and hear this mantra: Well, 60 years of failure, 40 years of failure. You hear it a lot about welfare today. You hear it a lot about other programs. I heard the chairman of I guess it is called the Health and Economic Opportunity Committee. They renamed it over on the House side. The committee chairman, Representative GOODLING, stood on the floor of the House of Representatives the other evening—I watched on C-SPAN—and he said, "Just name me one thing this Federal Government of ours does well. Just name me one."

I wish that he was a Senator in some way so in unlimited debate we had an

opportunity to challenge that. I would have said, "Senator Goodling, how about you, are you one good thing? Are you efficient and effective? Because, if you are not, get out of here, resign and let somebody else take your job. If the answer is yes, then at least we found one."

Then I would pursue it.

How about your staff, buddy? They work about 16 hours a day. Are they efficient and effective? Are the taxpayers getting their money's worth out of your staff? How about those folks over at NIH trying to find a cure for AIDS or cancer? Are you getting your money's worth? How about those folks up in the *Endeavor* a week ago exploring space? Are you getting your money's worth there?

I must say, Mr. President, I think as we come and debate, particularly as we are trying to find ways to balance the Federal budget and trying to find ways to restore America's confidence in Government, we ought to take care not to throw out those things and, in fact, to work it and take care not to throw out those things that, in fact, are lifting a little bit of hope in the country.

I find, as well, a tendency to blame the wrong people, blaming farmers for the farm program, while farmers are arguing for something that would cost taxpayers less; blaming the poor, for gosh sakes, for their own behavior. We know that the nonpoor behavior is having some difficulty as well.

Mr. President, I came to the floor because I did not like the language in the President's economic report to the Nation. I hope, though I am not overly optimistic given what I have seen thus far, I hope that we are, in 1995, able to write not just a farm program but a health program, a children's program, an education program, a welfare program that takes into account what is going on in the countryside.

I yield the floor.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, before my friend from Nebraska leaves the Senate floor, I would like to respond through the Chair to my friend the Congressman from the State of Pennsylvania that I do believe without any question that we do have in this body a person who is efficient and effective, and I believe the State of Nebraska is certainly getting its money's worth from the junior Senator from the State of Nebraska.

NEVADA PARTNERS

Mr. REID. Mr. President, we come to this floor often, and most of the things we talk about are in a negative sense, whether it is the farm program, taxes, delinquency, schools, students, teachers, health care, floods, earthquakes, deficits, lost species, endangered species, all types of crimes—murders, rapes, robberies, battering of women—unemployment.

Mr. President, I am here today to talk about something on a positive note, something that has taken place in the State of Nevada that is now to the point where we can talk about it as being effective and having worked.

We all know that work is the cornerstone upon which we can do something about welfare reform. I have long been a supporter of a welfare-to-work program. I, with a couple of my colleagues in this body, sponsored legislation that would have modern-day American welfare programs handled like they were handled during and after the Depression, programs like the Civilian Conservation Corps, the Works Progress Administration, where people who needed Government help would work in exchange for that help.

That legislation—five pilot programs—passed the House and the Senate and was sent to the President. Because this very important legislation was part of an overall tax bill that President Bush did not like, he vetoed the legislation. I am sorry that our bill was part of the tax bill because, on its face, I am sure he would not have vetoed it. But those are the kinds of programs that we need to recognize have worked in the past and will work again if we allow them to come into being.

As we continue to debate these welfare-to-work proposals, Mr. President, I think it is important that we, as an example, look to the private sector, programs there that we know are already successful, and are placing people into the work force. A program in Nevada like that is called Nevada Partners.

Nevada Partners came into being after the Rodney King riots that took place in southern California and in Las Vegas, NV. We had significant civil unrest in Las Vegas, and the community joined together to find out what could be done so that this would not take place in the future. This effort was led by Gov. Robert Miller, who was then Governor and is still Governor of the State of Nevada. This was in 1992. He was the guiding light, along with the mayor of Las Vegas, Jan Laverty Jones, a number of State legislators, and others, to set up a program that has worked very well.

Nevada Partners works with business, industry, and government, to provide job readiness, training, and placement to the at-risk and disadvantaged and unemployed in southern Nevada. Too often, we have people who we train, but they are trained for jobs that do not exist or jobs that they cannot find. Well, this program includes all them all.

I want to take a minute here to talk about the reason this program came into being. It was as a result of the generosity of one man by the name of Kirk Kerkorian. He is a man who came from, to say the least, humble beginnings, a person who has made it on his own, and who is now, it is no secret, one of the richest men in America. Kirk Kerkorian has been a very successful businessman all over the United States, but especially in Nevada. It was as a result of his generous contribution of a million dollars that this program was able to get started. The program received its funding from an organization that he established called the LINCY Foundation. Nevada Partners now is wholly funded by the private sector. It receives no Government funding, not a single penny.

Since its inception, Nevada Partners has placed more than 2,200 applicants into the work force. This is not a statistic used to make a report to some Government agency just to look good. These are 2,200 people who are actually working now and who were not working previously. As part of their job readiness training, participants with Nevada Partners must take a 2-week class focusing on personal success, pre-employment and post-employment issues such as stress management, hygiene, dressing for success, interviewing techniques, résumé writing, filling out an application, and what to expect from an employer.

Remember, Mr. President, many of these people are people who have never worked and if, in fact, they have worked, it has been unsuccessful, or they would not be out of work now, most of the time. In addition, Nevada Partners, in collaboration with the Training Station, which is a private sector computer training school, offers a 3-week computer fundamentals course designed to equip the trainee with the skills necessary to obtain positions requiring some computer literacy.

What is unique about Nevada Partners is that this program not only assists those on public assistance, but—and this is important—it helps many avoid the welfare rolls. It has been successful in that we have taken people who are on welfare and put them into the work force. But it has also taken people who are on the verge of going on welfare and put them to work.

This program deals especially with young people. It recognizes the importance of reaching out to our young people to break the cycle of dependency. That is why, Mr. President, we must be concerned about the summer jobs programs that have taken such a hit in the other body. I was happy to see in the original markups over here that the committees of jurisdiction within the Appropriations Committee have not treated them accordingly. I think that is good.

We must reach out to youth. Mr. President, the Youth Employment for the Summer Program that is part of this Nevada Partners Program targets youths ages 16 to 21. This program,

which is known as the YES Program, is a summer jobs program offering a series of workshops designed to help applicants to gain an understanding of the tools and skills necessary to obtain employment. Working with local employers who have committed to providing summer opportunities, Nevada Partners offers these young people critical exposure to professional environments, as well as the opportunity to become acquainted with community role models.

Mr. President, I had the good fortune many years ago, when I practiced law, to be one of the attorneys in my law firm representing the interests of Kirk Kerkorian and his family. He has done a lot of things of which he is very proud. He created thousands and thousands of jobs in America. But there is nothing that he is any more proud of than what has happened here with Nevada Partners. As a result of his investment, we now have over 2,200 people working. And from the time these remarks were outlined for me, we have a lot more. The number is unknown.

One of Nevada Partners' most compelling programs—perhaps a model for welfare reform—is the Women in Transition Program. Women in Transition provides 6 weeks of in-depth transition training in addition to task-oriented counseling provided by the University of Nevada-Las Vegas masters of social work interns. Focusing on empowerment issues such as domestic violence, evaluating and selecting child care, and women in the work force, this pilot project is providing an alternative to public assistance by successfully placing women in the work force.

The key ingredient to the success of Nevada Partners is the commitment and participation of the private sector. Private sector involvement allows Nevada Partners and its participants to respond more quickly to changes in the business climate than many Government programs allow. Moreover, the private sector can easily and readily assist in identifying real job opportunities and has a vested interest in ensuring new employees become trained team members as quickly as possible. Here is one of the good things that comes from programs like this. More than 80 businesses, including hotels, casinos, banks, and utilities are consistently providing employment opportunities for Nevada Partners' applicants.

Programs such as Nevada Partners provide an invaluable service to southern Nevada and all of its communities. Providing individuals with work greatly enhances their self-esteem, their sense of responsibility and citizenship. Employment is a key factor, as we know, in reducing drug use, crime, teen pregnancy, and other social ills that affect all of America. This program saves untold amounts of money in our criminal justice system, our welfare system, and our educational system.

Mr. President, I believe that people want to lead productive lives, not collect handouts. I think it is programs like this that we, the Government, can use as a model to develop successful welfare-to-work programs. I look forward to the debate that is coming soon dealing with welfare and to talking with my colleagues about the program that has worked in Nevada, a program that we can use to help formulate what we need to do to reform welfare on the Federal level.

Mr. President, I look forward to working with my colleagues in the ensuing months to formulate welfare-to-work proposals that include and incorporate programs that are working—programs like Nevada Partners.

Mr. DOLE. Mr. President, are we in morning business?

The PRESIDING OFFICER. We are in morning business.

EXECUTIVE SESSION

CONVENTION ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF CERTAIN CONVENTIONAL WEAPONS

Mr. DOLE. I ask unanimous consent that the Senate proceed to executive session to consider the following treaty: convention on prohibitions or restrictions on the use of certain conventional weapons (Treaty Cal. 1).

I further ask unanimous consent that the treaty be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification: that the seven conditions recommended by the Committee on Foreign Relations be considered as having been offered and agreed to, en bloc, and that the motion to reconsider be laid upon the table; that no other amendments, conditions, declarations, provisos, reservations or understandings be in order; that any statements be inserted in the CONGRESSIONAL RECORD as if read; that when the resolution of ratification is agreed to, the motion to reconsider be laid upon the table; that the President be notified of the Senate's action and that the following disposition of the treaty, the Senate return to legislation session.

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

Mr. DOLE. Mr. President, I ask for consideration of the resolution of ratification by a division vote.

The PRESIDING OFFICER. A division is requested. Senators in favor of the resolution of ratification will please stand and be counted. [After a pause.]

Those opposed to ratification please rise and stand to be counted.

On a division, two-thirds of the Senators present and voting having voted in the affirmative, the resolution of ratification is agreed to as follows:

Resolved (two-thirds of the Senators present concurring therein), That (a) the Senate advise and consent to the ratification of the following Convention and two accompanying Protocols, concluded at Geneva on October 10, 1980 (contained in Treaty Document 103-25), subject to the conditions of subsections (b) and (c):

(1) The Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed To Be Excessively Injurious or To Have Indiscriminate Effects (in this resolution referred to as the "Convention").

(2) The Protocol on Non-Detectable Fragments (in this resolution referred to as "Protocol I").

(3) The Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, together with its technical annex (in this resolution referred to as "Protocol II").

(b) The advice and consent of the Senate under subsection (a) is given subject to the following conditions, which shall be included in the instrument of ratification of the Convention:

(1) RESERVATION.—Article 7(4)(b) of the Convention shall not apply with respect to the United States.

(2) DECLARATION.—The United States declares, with reference to the scope of application defined in Article 1 of the Convention, that the United States will apply the provisions of the Convention, Protocol I, and Protocol II to all armed conflicts referred to in Articles 2 and 3 common to the Geneva Conventions for the Protection of War Victims of August 12, 1949.

(3) UNDERSTANDING.—The United States understands that Article 6(1) of Protocol II does not prohibit the adaptation for use as booby-traps of portable objects created for a purpose other than as a booby-trap if the adaptation does not violate paragraph (1)(b) of the Article.

(4) UNDERSTANDING.—The United States considers that the fourth paragraph of the preamble to the Convention, which refers to the substance of provisions of Article 35(3) and Article 55(1) of Additional Protocol I to the Geneva Conventions for the Protection of War Victims of August 12, 1949, applies only to States which have accepted those provisions.

(c) The advice and consent of the Senate under subsection (a) is given subject to the following conditions, which are not required to be included in the instrument of ratification of the Convention:

(1) DECLARATION.—Any amendment to the Convention, Protocol I, or Protocol II (including any amendment establishing a commission to implement or verify compliance with the Convention, Protocol I, or Protocol II), any adherence by the United States to Protocol III to the Convention, or the adoption of any additional protocol to the Convention, will enter into force with respect to the United States only pursuant to the treaty-making power of the President, by and with the advice and consent of the Senate, as set forth in Article II, Section 2, Clause 2 of the Constitution of the United States.

(2) DECLARATION.—The Senate notes the statements by the President and the Secretary of State in the letters accompanying transmittal of the Convention to the Senate that there are concerns about the acceptability of Protocol III to the Convention from a military point of view that require further examination and that Protocol III should be given further study by the United States Government on an interagency basis.

Accordingly, the Senate urges the President to complete the process of review with respect to Protocol III and to report the results to the Senate on the date of submission to the Senate of any amendments which may be concluded at the 1995 international conference for review of the Convention.

(3) STATEMENT.—The Senate recognizes the expressed intention of the President to negotiate amendments or protocols to the Convention to carry out the following objectives:

(A) An expansion of the scope of Protocol II to include internal armed conflicts.

(B) A requirement that all remotely delivered mines shall be equipped with self-destruct devices.

(C) A requirement that manually emplaced antipersonnel mines without self-destruct devices or backup self-deactivation features shall be used only within controlled, marked, and monitored minefields.

(D) A requirement that all mines shall be detectable using commonly available technology.

(E) A requirement that the party laying mines assumes responsibility for them.

(F) The establishment of an effective mechanism to verify compliance with Protocol II.

Mr. DOLE. Mr. President, I ask unanimous consent a letter directed to the chairman be printed in the RECORD.

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

UNITED STATES SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, March 22, 1995.

Hon. JESSE HELMS,
Chairman, Foreign Relations Committee, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Committee on Armed Services has conducted a brief review of the military implications of the Convention on Conventional Weapons (Treaty Document 103-25). We understand that the Administration has requested the Senate to provide its advice and consent to ratification at the earliest possible time, so that the United States may participate in the Review Conference scheduled to begin September 25, 1995.

The Committee's understanding is that for humanitarian purposes the Convention is intended to restrict the use of specific types of conventional weapons in armed conflicts, specifically, landmines and booby-traps.

Like the Committee on Foreign Relations, the Committee on Armed Services has concerns about the Treaty, which include:

(1) The effectiveness of the Convention having been ratified by only 42 States Parties;

(2) Future amendments to the Convention, that are meant to improve its effectiveness; and,

(3) The impact of Protocol III on NATO operations.

EFFECTIVENESS OF CONVENTION

We understand that the Convention is part of a broader program of humanitarian conventions to restrict the production, use, and export of landmines, which the Administration would like to have other countries join, to reduce civilian casualties.

The United States military services have identified landmines as a significant threat to future force projections and military operations other than war, including peacekeeping and humanitarian assistance. The use of landmines in internal conflicts in undeveloped countries is particularly acute in Africa, Asia, and Latin America. Training and education assistance for humanitarian landmine clearing activities, as well as development of technology for mine detection, classification, mapping and neutralization, is being provided to these regions by the Department of Defense and the military services.

The Committee strongly urges the Administration to encourage the countries in the regions in which the United States is providing assistance in humanitarian landmine activities, to ratify, and adhere to the Convention. Additionally, the Committee urges the Administration to seek assistance from the other parties to the Convention, during the Review Conference, and in bilateral discussions with non-parties, to encourage the undeveloped nations of Africa, Asia and Latin America to ratify the Convention.

FUTURE AMENDMENTS TO THE CONVENTION

The Committee understands that the Administration intends to offer amendments to the Convention during the September 1995 Review Conference with regard to establishing a verification and compliance commission, to tighten restrictions on the use of landmines, and to ensure exclusion of command-detonated Claymore mines from such restrictions.

The Committee enjoins the Administration to consult closely with the relevant congressional committees prior to the tabling and negotiation of amendments to the Convention.

NATO OPERATIONS AND PROTOCOL III

The United States is concerned about restrictions on the use of air-delivered incendiaries in Protocol III, from both a military and humanitarian perspective, and as such, the Administration did not submit it to the Senate for its advice and consent to ratification.

During a briefing on the Convention with the Administration interagency team, it was brought to the Committee's attention that with the exception of France, all other countries ratifying the Convention accepted Protocol III.

The Committee is concerned about the impact on NATO operations resulting from ratification of Protocol III by a number of our alliance partners.

COMMITTEE RECOMMENDATION

The Committee has reviewed the Convention on Conventional Weapons Convention Resolution of Ratification approved by the Committee on Foreign Relations on March 22, 1995. With the following concerns noted, the Committee agrees with the Foreign Relations Committee's actions on this Treaty.

The Committee is concerned about the Administration's plans for amendments to the Convention, particularly the establishment of a Commission. The Committee believes it is important to ensure that a large, expensive bureaucracy is not established and that the precedent-setting nature of an enforcement commission must be carefully considered.

Second, the Committee believes that command-detonated Claymore-type mines must be excluded from the coverage of any future amendments intended to tighten restrictions on the use of landmines.

We have consulted with all Members of the Committee on the views, recommendations, and understandings contained in this report.

We are pleased to advise you of the Committee's advice and consent to ratification of this Convention.

Sincerely,

SAM NUNN,
Ranking Member.
STROM THURMOND,
Chairman.

EXECUTIVE CALENDAR

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate immediately proceed to the consideration of the following nominations on the Executive Calendar en bloc; Calendar Nos. 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47 and 48, and all nominations placed on the Secretary's desk; further that the nominations be confirmed en bloc, the motions to reconsider be laid upon the table en bloc, that any statements relating to the nominations appear at the appropriate place in the RECORD, the President be immediately notified of the Senate's action, and that the Senate then return to legislative session.

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

The nominations considered and confirmed en bloc are as follows:

THE JUDICIARY

Karen Nelson Moore, of Ohio, to be United States Circuit Judge for the Sixth Circuit, vice Robert B. Krupansky, retired.

Janet Bond Arterton, of Connecticut, to be United States District Judge for the District of Connecticut.

Willis B. Hunt, Jr., of Georgia, to be United States District Judge for the Northern District of Georgia.

Charles B. Kornmann, of South Dakota, to be United States District Judge for the District of South Dakota.

DEPARTMENT OF JUSTICE

J. Don Foster, of Alabama, to be United States Attorney for the Southern District of Alabama for the term of four years vice J.B. Sessions III, resigned.

Martin James Burke, of New York, to be United States Marshal for the Southern District of New York for the term of four years.

DEPARTMENT OF STATE

Ray L. Caldwell, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, for the rank of Ambassador during his tenure of service as Deputy Assistant Secretary of State for Burdensharing.

Philip C. Wilcox, Jr., of Maryland, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, for the rank of Ambassador during his tenure of service as Coordinator for Counter Terrorism.

UNITED STATES INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

John Chrystal, of Iowa, to be a Member of the Board of Directors of the Overseas Private Investment Corporation for a term expiring December 17, 1997. (Reappointment)

George J. Kourpias, of Maryland, to be a Member of the Board of Directors of the Overseas Private Investment Corporation for a term expiring December 17, 1997. (Reappointment)

Gloria Rose Ott, of California, to be a Member of the Board of Directors of the Overseas Private Investment Corporation for a term expiring December 17, 1996.

Harvey Sigelbaum, of New York, to be a Member of the Board of Directors of the Overseas Private Investment Corporation for a term expiring December 17, 1996.

Nominations placed on the Secretary's desk:

IN THE COAST GUARD, FOREIGN SERVICE

Coast Guard nominations beginning Daniel V. Riley, Jr., and ending Heather L. Morrison, which nominations were received by the Senate and appeared in the Congressional Record of January 6, 1995

Coast Guard nominations beginning Ralph R. Hogan, and ending John W. Kolstad, which nominations were received by the Senate and appeared in the Congressional Record of January 6, 1995

Coast Guard nominations beginning Genelle T Vachon, and ending Gregory A Howard, which nominations were received by the Senate and appeared in the Congressional Record of February 3, 1995

Coast Guard nominations beginning James M. Begis, and ending Jon W. Minor, which nominations were received by the Senate and appeared in the Congressional Record of February 16, 1995

Coast Guard nomination of Louise A. Stewart, which was received by the Senate and appeared in the Congressional Record of February 16, 1995

Foreign Service nominations beginning Christopher E. Goldthwait, and ending William L. Brant, II, which nominations were received by the Senate and appeared in the Congressional Record cf January 10, 1995

Foreign Service nominations beginning John Thomas Burns, and ending Van S. Wunder, III, which nominations were received by the Senate and appeared in the Congressional Record of January 10, 1995

Foreign Service nominations beginning Luis E. Arreaga Rodas, and ending Jeffrey A. Wuchenich, which nominations were received by the Senate and appeared in the Congressional Record of January 10, 1995

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

MAKING MAJORITY PARTY APPOINTMENTS

Mr. DOLE. Mr. President, I send resolutions to the desk regarding Senator CAMPBELL's new committee assignments as a majority Member, and ask they be considered en bloc and the motion to reconsider be laid upon the table.

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

The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 92) amending Rule XXV of the Standing Rules of Senate; a resolution (S. Res. 93) making majority party appointments to the Energy and Natural Resources Committee, the Veterans' Affairs Committee, and the Committee on Indian Affairs; a resolution (S. Res. 94) making a majority party appointment.

The PRESIDING OFFICER. The question is on agreeing to the resolutions en bloc.

The resolutions (S. Res. 92, S. Res. 93, S. Res. 94) were agreed to en bloc as follows:

SENATE RESOLUTION 92

Resolved, That Rule XXV, paragraph 2, of the Standing Rules of the Senate is amended as follows:

Strike the figure after "Agriculture, Nutrition, and Forestry" and insert in lieu thereof "18".

Strike the figure after "Energy and Natural Resources" and insert in lieu thereof "20".

SEC. 2. That Rule XXV, paragraph 3(c) of the Standing Rules of the Senate is amended as follows:

Strike the figure after "Indian Affairs" and insert in lieu thereof "16".

SENATE RESOLUTION 93

Resolved, That the following shall constitute the majority party's membership on the following Senate committees for the 104th Congress, or until their successors are appointed:

Energy and Natural Resources: Mr. MURKOWSKI (Chairman), Mr. HATFIELD, Mr. DOMENICI, Mr. NICKLES, Mr. CRAIG, Mr. CAMPBELL, Mr. THOMAS, Mr. KYL, Mr. GRAMS, Mr. JEFFORDS, and Mr. BURNS.

Veterans' Affairs: Mr. SIMPSON (Chairman), Mr. MURKOWSKI, Mr. SPECTER, Mr. THURMOND, Mr. JEFFORDS, Mr. CAMPBELL, and Mr. CRAIG.

Indian Affairs: Mr. MCCAIN (Chairman), Mr. MURKOWSKI, Mr. GORTON, Mr. DOMENICI, Mrs. KASSEBAUM, Mr. NICKLES, Mr. CAMPBELL, Mr. THOMAS, and Mr. HATCH.

SENATE RESOLUTION 94

Resolved, That the Senator from Colorado (Mr. CAMPBELL) is hereby appointed to the Committee on Agriculture, Nutrition, and Forestry, and that the following be the majority membership on that committee for the 104th Congress, or until their successors are appointed:

Agriculture, Nutrition and Forestry: Mr. LUGAR (Chairman), Mr. DOLE, Mr. HELMS, Mr. COCHRAN, Mr. MCCONNELL, Mr. CRAIG, Mr. COVERDELL, Mr. SANTORUM, Mr. WARNER, and Mr. CAMPBELL.

UNANIMOUS-CONSENT AGREEMENT—S. 219

Mr. DOLE. Mr. President, I ask unanimous consent that at 11:30 a.m., Monday, March 27, the Senate begin 6 hours of general debate equally divided in the usual form on the subject of S. 219, the regulatory moratorium bill; further that at the hour of 10 a.m., Tuesday, March 28, the Senate proceed to the consideration of S. 219.

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

MEASURE INDEFINITELY POSTPONED—S. RES. 49

Mr. DOLE. Mr. President, I ask unanimous consent that Calendar No. 15, Senate Resolution 49 be indefinitely postponed.

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

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-40. A joint resolution adopted by the Legislature of the State of California; to the Committee on Armed Services.

ASSEMBLY JOINT RESOLUTION NO. 5

"Whereas, the state has endured billions of dollars in losses through a disproportionate share of federal Department of Defense facilities closures mandated by the federally appointed Base Closure and Realignment Commissions in 1988, 1991 and 1993; and

"Whereas, it has been documented that this state has suffered more than its share of economic devastation during the current worldwide economic recession, and is the last of the states to show signs of positive recovery; and

"Whereas, the state has sustained disasters, both natural and manmade, in recent years from earthquakes in the San Francisco and Los Angeles areas, fires in northern and southern California, and from riots in the greater Los Angeles area; and

"Whereas, Southern California, through its particular world preeminence in the technologies of earth and space travel, military defense systems, and interglobal communications has been the free world's guarantor of peace through strength of leadership; and

"Whereas, the Long Beach Naval Shipyard is being considered for closure as part of the military base closure and realignment process; and

"Whereas, built in 1943, the Long Beach Naval Shipyard is the Navy's primary surface ship repair facility on the west coast in addition to having the highest aircraft carrier usage of any public shipyard; and

"Whereas, the Long Beach Naval Shipyard is a large, full service facility that includes 347 acres, four industrial piers, two wharves, and three drydocks; and

"Whereas, the Long Beach Naval Shipyard represents approximately $757,000,000 in total local spending and 10,100 jobs in the southern California region so that closing the shipyard would have a devastating impact on that area of the state; now, therefore, be it

"*Resolved by the Assembly and Senate of the State of California, jointly*, That the Legislature hereby memorializes the President and the Congress of the United States to provide for the continued operation of the Long Beach Naval Shipyard as an essential facility and as an integral part of the southern California economy; and be it further

"*Resolved*, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-41. A joint resolution adopted by the Legislature of the State of Maine; to the Committee on Armed Services.

U.S. NAVAL AIR STATION AT BRUNSWICK, ME.

"Whereas, the Department of the Navy has maintained a naval air station at Brunswick, Maine during World War II and continuously since 1951; and

"Whereas, the United States Naval Air Station at Brunswick has performed in an exemplary manner throughout its more than 4 decades of history; and

"Whereas, the United States Naval Air Station at Brunswick is one of the most up-to-date facilities available in the United States for long-range maritime patrol; and

"Whereas, the United States Naval Air Station at Brunswick is the only remaining operational naval air station in the northeast quadrant of the United States and the only military airfield in northern New England; and

"Whereas, on the entire east coast, only the United States Naval Air Station at Brunswick and Key West has been identified as having "strategic military value"; and

"Whereas, the United States Naval Air Station at Brunswick offers unencumbered air space, no encroachment problems and expansion capability to handle all 7 of the projected Atlantic Fleet VP squadrons with no additional military construction required; and

"Whereas, the State of Maine is firmly committed to actively supporting the continuation of the United States Naval Air Station at Brunswick; now therefore, be it

"*Resolved:* That We, your Memorialists, respectfully recommend and urge the Congress of the United States to continue to operate, develop and diversify the United States Naval Air Station at Brunswick, Maine; and be it further

"*Resolved:* That We further urge the Congress of the United States to take all necessary action to ensure that the United States Naval Air Station at Brunswick remains an integral part of our nation's defense; and be it further

"*Resolved:* That suitable copies of this Memorial, duly authenticated by the Secretary of State, be transmitted to the Honorable William J. Clinton, President of the United States, to the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States and to each member of the Maine Congressional Delegation."

POM-42. A joint resolution adopted by the Legislature of the State of Maine; to the Committee on Armed Services.

U.S. NAVAL SHIPYARD AT KITTERY, ME

Whereas, the Department of the Navy has maintained a shipyard at Kittery, Maine since June 12, 1800; and

Whereas, the United States Naval Shipyard at Kittery has performed duties in an exemplary manner throughout its almost 2 centuries of history; and

Whereas, the Kittery shipyard is one of the most up-to-date facilities available in the United States for the repair, overhauling and refueling of naval vessels; and

Whereas, the communities in Maine, New Hampshire and Massachusetts located near the Kittery shipyard offer an abundance of highly trained, skilled and experienced workers who have an outstanding work ethic; and

Whereas, the State of Maine is firmly committed to actively supporting the continuation of the United States Naval Shipyard at Kittery; now, therefore, be it

"*Resolved:* That We, your Memorialists, respectfully recommend and urge the Congress of the United States to continue to operate, develop and diversify the United States Naval Shipyard at Kittery, Maine; and be it further

"*Resolved:* That we further urge the Congress of the United States to take all necessary action to ensure that the Kittery shipyard remains an integral component in a post-Cold War defense strategy; and be it further

"*Resolved:* That suitable copies of this Memorial, duly authenticated by the Secretary of State, be transmitted to the Honorable William J. Clinton, President of the United States, to the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States and to each Member of the Maine Congressional Delegation."

POM-43. A joint resolution adopted by the Legislature of the State of New Jersey; to the Committee on Armed Services.

ASSEMBLY RESOLUTION NO. 130

"Whereas, the Pentagon is recommending the closure of the Bayonne Military Ocean Terminal; and

"Whereas, the closure of the terminal would cost 100 military and over 1,200 civilian jobs and indirectly almost 750 additional jobs; and

"Whereas, even though some of the present employees could be relocated to Fort Monmouth in Eatontown, New Jersey, this closure would create a significant disruption in employees' lives; and

"Whereas, the closure would also create a significant disruption in the economic life of Bayonne with the loss of about $44 million annually in contracts with New Jersey firms and about $71 million annually in salaries; and

"Whereas, the terminal performs critical functions in shipping and storing military cargo, providing sealift capability for the Pentagon, and handling traffic management for East Coast ports; and

"Whereas, with the location at the Bayonne Military Ocean Terminal of the Military Transportation Management Command Eastern Area Headquarters and the traffic management portion of the 1301st Major Port Command, the terminal is an integral part of the United States military operations; and

"Whereas, the closure of this terminal would not reflect sound financial or military logic; now, therefore, be it

"*Resolved by the General Assembly of the State of New Jersey:*

"1. This House calls upon the Base Closure and Realignment Commission to remove the Bayonne Military Ocean Terminal from the list of base closings recommended by the Pentagon and to maintain the operation of the terminal.

"2. Duly authenticated copies of this resolution, signed by the Speaker of the General Assembly and attested by the Clerk thereof, shall be transmitted to the Base Closure and Realignment Commission, the President of the United States, the Vice President of the United States, the Speaker of the House of Representatives, and every member of Congress elected from this State."

POM-44. A resolution adopted by the Senate of the Legislature of the Commonwealth of Pennsylvania; to the Committee on Armed Services.

BASE CLOSURE

"Whereas, military installations in this Commonwealth provide employment for 163,000 Pennsylvanians; and

"Whereas, military installations in this Commonwealth constitute 2.9 percent of all State employment and 4.1 percent of all State output and represent 2.7 percent of the Department of Defense budget spent within this Commonwealth; and

"Whereas, the closure or realignment of military installations in this Commonwealth could result in the termination of not only those jobs on operating bases, but also thousands of base-related jobs and the loss of millions of dollars in total income; and

"Whereas, this Commonwealth has lost 11.5 percent of all defense jobs eliminated in the United States as a result of the Defense Base Closure and Realignment Commission's 1991 and 1993 recommendations; therefore be it

"*Resolved*, that the Senate of the Commonwealth of Pennsylvania memorialize the President of the United States and Congress to oppose the closure or realignment of military installations in Pennsylvania for the reasons stated in this resolution; and be it further

"*Resolved*, that copies of this resolution be transmitted to the President of the United States, to the presiding officers of each house of Congress, to each member of Congress from Pennsylvania and to the members of the Defense Base Closure and Realignment Committee."

POM-45. A resolution adopted by the Senate of the Legislature of the State of Hawaii; to the Committee on Commerce, Science, and Transportation.

"Whereas, the future success of Hawaii's economy and the future welfare of its citizens rests upon its ability to increase the employment skills and competitiveness of its people and to stimulate economic growth; and

"Whereas, the improvement of Hawaii's employment capabilities and competitiveness of its people requires high quality education; and

"Whereas, increases in the productivity and competitiveness of Hawaii's education and library system are essential to upgrading the quality of the existing education system; and

"Whereas, the development of an advanced state-of-the-art telecommunications infrastructure, utilizing modern information processing technology in Hawaii's education and library system, linked locally, nationally, and internationally to businesses, residences, and other public and private services, is essential for achieving a quality educational system in a cost-effective manner; and

"Whereas, the development of an advanced state-of-the-art telecommunications infrastructure in Hawaii is essential to promoting the economic competitiveness of the State, improving the literacy and employment skill level of its citizens, and ensuring the future vitality of its educational and library systems; and

"Whereas, Hawaii must ensure that the State benefits from telecommunications infrastructure advances and ensure universal access to information and education resources for all residents of the State; and

"Whereas, Hawaii must assume a position of economic leadership and national prominence in the information age by funding school and library information infrastructure; and

"Whereas, current funding mechanisms may not provide Hawaii's schools and libraries with the funds needed to construct the infrastructure necessary to take advantage of telecommunications technologies and services, to purchase those services, or to provide the educational, training, and information they are intended to service; and

"Whereas, the current Congress of the United States has expressed its belief in the concept that the individual states are better able to determine their individual needs and are better positioned to determine who moneys should be spent to address those needs; and

"Whereas, the Federal Communications Commission (FCC) is charged with the responsibility of administering the radio frequency spectrum as a national asset for the benefit of the American public; and

"Whereas, the FCC is currently conducting an auction of radio spectrum that will be used by winners of that auction to provide personal communications services (PCS); and

"Whereas, the FCC auction will generate moneys in excess of $4,000,000,000 that should be shared with the individual states such that they will be better able to construct

their education infrastructure; now, therefore, be it

"Resolved by the Senate of the Eighteenth Legislature of the State of Hawaii, Regular Session of 1995, That the Congress of the United States is requested to enact whatever laws are necessary to allow the individual states to share in the proceeds of the current Federal Communications Commission auction of radio spectrum for purposes of funding the states' schools' and libraries' telecommunications and information infrastructure; and

"Be it further resolved, That the Public Utilities Commission, the Consumer Advocate, and the Department of Education are requested to prepare a plan for the efficient expenditure of revenues received by the State of Hawaii as a result of this Resolution; and

"Be it further resolved, That certified copies of this Resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of Hawaii's congressional delegation."

POM-46. A concurrent resolution adopted by the Legislature of the State of Hawaii; to the Committee on Commerce, Science, and Transportation.

S.C.R. No. 20

"Whereas, the future success of Hawaii's economy and the future welfare of its citizens rest upon its ability to increase the employment skills and competitiveness of its people and to stimulate economic growth; and

"Whereas, the improvement of Hawaii's employment capabilities and competitiveness of its people require high quality education; and

"Whereas, increases in the productivity and competitiveness of Hawaii's education and library system are essential to upgrading the quality of the existing education system; and

"Whereas, the development of an advanced state-of-the-art telecommunications infrastructure, utilizing modern information professing technology in Hawaii's education and library system, linked locally, nationally, and internationally to businesses, residences, and other public and private services, is essential for achieving a quality educational system in a cost-effective manner; and

"Whereas, the development of an advanced state-of-the-art telecommunications infrastructure in Hawaii is essential to promoting the economic competitiveness of the State, improving the literacy and employment skill level of its citizens, and ensuring the future vitality of its educational and library systems; and

"Whereas, Hawaii must ensure that the State benefits from telecommunications infrastructure advances and ensure universal access to information and education resources for all residents of the State; and

"Whereas, Hawaii must assume a position of economic leadership and national prominence in the information age by funding school and library information infrastructure; and

"Whereas, current funding mechanisms may not provide Hawaii's schools and libraries with the funds needed to construct the infrastructure necessary to take advantage of telecommunications technologies and services, to purchase those services, or to provide the educational, training, and information they are intended to service; and

"Whereas, the current Congress of the United States has expressed its belief in the concept that the individual states are better able to determine their individual needs and are better positioned to determine how moneys should be spent to address those needs; and

"Whereas, The Federal Communications Commission (FCC) is charged with the responsibility of administering the radio frequency spectrum as a national asset for the benefit of the American public; and

"Whereas, The FCC is currently conducting an auction of radio spectrum that will be used by winners of that auction to provide personal communications services (PCS); and

"Whereas, the FCC auction will generate moneys in excess of $4,000,000,000 that should be shared with the individual states such that they will be better able to construct their education infrastructure; now, therefore, be it

"Resolved by the Senate of the Eighteenth Legislature of the State of Hawaii, Regular Session of 1995, the House of Representatives concurring, That the Congress of the United States is requested to allow the individual states to share in the proceeds of the current Federal Communications Commission auction of radio spectrum for purposes of funding the states' public schools', universities', and libraries' telecommunications and information infrastructure; and

"Be it further resolved, That the Public Utilities Commission, the Consumer Advocate, and the Department of Education are requested to prepare a plan for the efficient expenditure of revenues received by the State of Hawaii as a result of this Concurrent Resolution; and

"Be it further resolved, That certified copies of this Concurrent Resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, the members of Hawaii's congressional delegation, the public utility/public service commissions of the fifty states, the National Association of Regulatory Utility Commissioners, the National Governors Association, the National Conference of State legislatures, the National Association of State Universities and Land Grant Colleges, and EDUCOM."

POM-47. A concurrent resolution adopted by the Legislature of the State of Iowa; to the Committee on Commerce, Science, and Transportation.

HOUSE CONCURRENT RESOLUTION 17

"Whereas, the Federal Trade Commission has published an agreement containing a consent order, file number 941-0124, dealing with the proposed acquisition of Alpo by Nestle Food Company; and

"Whereas, Nestle Food Company owns a processing facility in Fort Dodge, Iowa, operating as Friskies PetCare Products; and

"Whereas, the consent order requires Nestle to divest the Fort Dodge Friskies PetCare plant within 12 months; and

"Whereas, the Friskies PetCare Products has operated in Fort Dodge for more than 19 years and has been an excellent corporate citizen, providing good jobs and benefits to 141 employees; and

"Whereas, the direct economic impact of the Friskies plant in Webster County and Fort Dodge approaches $100 million per year; and

"Whereas, the complaint filed with the Federal Trade Commission alleges that the acquisition of Alpo by the Nestle Food Company will eliminate substantial actual competition between Nestle and Alpo, increase the likelihood that Nestle will unilaterally exercise market power in the relevant market, and increase the likelihood of, or facilitate collusion or coordinated interaction among, firms in the relevant market; and

"Whereas, the relevant market in the complaint is the manufacture and production of canned cat food for the geographies market of the United States of America; and

"Whereas, the Fort Dodge facility produces 24,000,000 cases of canned pet food per year of which 66 percent is canned cat food and 33 percent is canned dog food; and

"Whereas, Nestle officials have stated that they will increase the production at other Nestle-owned plants to replace the lost production from the sale of the Fort Dodge plant; and

"Whereas, the Federal Trade Commission has indicated that it is unlikely that it will allow the sale of the Fort Dodge plant to any other major competitor in the pet food industry; and

"Whereas, the citizens of Fort Dodge and Webster County, the Mayor and City Council of Fort Dodge, the Webster County Board of Supervisors, the employees of Friskies, and the Webster County Industrial Development Commission all believe that the remedy proposed by the Federal Trade Commission will not accomplish the stated goals, and will, in fact, result in the loss of 141 good jobs in Fort Dodge and have a disastrous effect on the local economy, including the loss of more than $200,000 per year in Iowa sales taxes; now therefore, be it *"Resolved by the House of Representatives, the Senate concurring,* That the Federal Trade Commission is urged to amend the agreement containing consent order, file number 941-0124, so that Nestle is not required to divest itself of the Fort Dodge Friskies PetCare Plant; and

"Be it further resolved, That the entire Iowa congressional delegation, Governor Branstad, and the Director of the Iowa Department of Economic Development are urged to support the citizens of Fort Dodge in their efforts to appeal to the Federal Trade Commission to amend the consent order; and

"Be it further resolved, That copies of this resolution be sent to the Governor, the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the Chairperson of the Federal Trade Commission, and members of the Iowa congressional delegation."

POM-48. A joint resolution adopted by the Legislature of the State of Maine; to the Committee on Commerce, Science, and Transportation.

SUPPORT AMTRAK

"Whereas, Amtrak is energy-efficient and environmentally beneficial, consuming about ½ as much energy per passenger mile as airlines and causing less air pollution; and

"Whereas, Amtrak provides mobility to citizens of many smaller communities poorly served by air and bus services, as well as to those senior citizens, people with disabilities, students and people with medical conditions who need trains as a travel option; and

"Whereas, Amtrak is 9 times safer than driving per passenger mile and operates even in severe weather conditions; and

"Whereas, Amtrak travel rose 48% from 1982 to 1993 and Amtrak dramatically improved coverage of its operating costs from revenues; and

"Whereas, expansion of Amtrak service using existing rail rights-of-way would cost less and use less land than new highways and

airports and would further increase the advantage of Amtrak's efficiency; and

"Whereas, federal investment in Amtrak has fallen in the last decade while it has risen for airports and highways; and

"Whereas, states may use highway trust fund money as an 80% federal match for a variety of nonhighway programs but are prohibited from using the money for Amtrak projects; and

"Whereas, Amtrak pays a fuel tax that airlines do not pay; and

"Whereas, Amtrak workers and vendors pay more in taxes than the Federal Government invests in Amtrak; now, therefore, be it

"*Resolved*, That We, your Memorialists, respectfully urge the President and Congress of the United States not to reduce federal funding of Amtrak; to exempt Amtrak from paying fuel taxes that airlines do not pay; to allow the states flexibility in using federal highway trust fund money on Amtrak projects; and to require that federal officials include a strong Amtrak system in any plans for a national transportation system; and be it further

"*Resolved*, That suitable copies of this Memorial, duly authenticated by the Secretary of State, be transmitted to the Honorable William J. Clinton, President of the United States, the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States and to each Member of the Maine Congressional Delegation."

POM-49. A resolution adopted by the Legislature of the State of Nebraska; to the Committee on Commerce, Science, and Transportation.

LEGISLATIVE RESOLUTION 48

"Whereas, the Nebraska Educational Telecommunications Commission employees an impressive variety of television and radio broadcast and non-broadcast technologies to serve the residents of this state; and

"Whereas, the commission is a major cultural and educational resource serving and unifying Nebraska residents of all ages and locations; and

"Whereas, the commission is widely recognized as both the pioneer employer of educational communications technologies and one of the premiere statewide educational and public telecommunications systems in the United States; and

"Whereas, the Commission assists every Nebraska educational sector and institution, public and private, in providing quality teaching and learning and making education more readily accessible; and

"Whereas, the commission brings a wide variety of national, international, and Nebraska-produced programs to the schools and homes of the state, as well as repeatedly brings national recognition to Nebraska; and

"Whereas, the commission is the only entity, public or private, with both the capability to provide picture and sound throughout Nebraska and the responsibility to employ that capacity to pursue educational equity, maintain educational quality, and provide responsible and constructive programming for the people of Nebraska; and

"Whereas, the commission provides on a daily basis children's, cultural, public affairs, informational, and distance-learning programs of impressive substance and quality; and

"Whereas, the commission employs an appropriate and interdependent mix of state, federal, and private funding to address this important mission on behalf of the people of Nebraska; now, therefore, be it

"*Resolved by the Members of the ninety-fourth Legislative of Nebraska, first session:*

"1. That the Legislative commends the Nebraska Educational Telecommunications Commission for forty years of exemplary service, and urges the Congress of the United States, in partnership with the people of Nebraska, to continue critical support of educational and public telecommunications and the national public broadcasting organizations providing programs of significant quality to rural and urban residents alike, which are of particular importance as Nebraska and the nation move increasingly into the information age and the next century.

"2. That the Clerk of the Legislative transmit a copy of this resolution to the Speaker of the House of Representatives, and President of the Senate of the Congress of the United States, to all members of the Nebraska delegation to the Congress of the United States, and to the President of the United States with the request that it be officially entered in the Congressional Record as a memorial to the Congress of the United States."

POM-50. A resolution adopted by the General Assembly of the State of New Jersey; to the Committee on Armed Services.

"Whereas, Picatinny Arsenal at Dover, New Jersey, traces its roots to the "middle Forge" which was established in 1749 at the foot of Picatinny Peak and later became part of the Mount Hope Iron Works, which provided cannon shot, bar iron, shovels and axes for the Revolutionary Army; and

"Whereas, the Army purchased the site and established the Picatinny Powder Depot in 1880 when the War Department needed a location which to construct a black powder magazine; and

"Whereas, Picatinny Arsenal produced high explosives and ammunition from 1902 until 1977, when its role as an arsenal changed from manufacturing to research and development; and

"Whereas, Picatinny Arsenal is the United States Army's principal research, development and engineering facility for assigned weapon systems, responsible for developing 90 percent of the Army's weaponry; and

"Whereas, the Army Armament Research, Development and Engineering Center (ARDEC) at Picatinny Arsenal has assignments which include artillery, infantry, surface vehicle mounted and aircraft mounted weapons and ammunition; rocket and missile warhead sections; fire control systems; demolition munitions; mines, bombs and grenades, pyrotechnic systems and munitions; explosives and propellants; and practice and training munitions; and

"Whereas, for the past four years, ARDEC management has downsized and reduced operating costs while retaining core capabilities and the ability to expand to accommodate new missions or to respond to national emergencies; and

"Whereas, Picatinny is staffed by more than 5,000 civilian engineers, scientists and support personnel, with a technical staff of whom more than 30 percent have graduate degrees; and

"Whereas, Picatinny Arsenal has a national mission and represents a unique intellectual community that cannot easily be duplicated; and

"Whereas, if the arsenal is closed, no assurance exists that the functions therein performed can be replaced or will be assumed anywhere else; and

"Whereas, the kind of institutional knowledge located at Picatinny Arsenal is critical because U.S. laws restrict the munitions and weapons marketplace, both domestic and international, deterring industry from substantial investment or retention of staff and facilities in a commodity arena where there is no commercial market; and

"Whereas, Picatinny Arsenal, invaluable to the Nation's defense with its specialized facilities on 6,500 acres, faces possible consolidation or closure as the Department of Defense reduces its budget with another round of base closures; now, therefore, be it

Resolved by the General Assembly of the State of New Jersey:

1. This House urges the President and the Congress of the United States to carefully examine the impact of the closure of the Picatinny Arsenal upon the Nation's defense readiness and to reject such closure.

2. Duly authenticated copies of this resolution, signed by the Speaker of the General Assembly and attested by the Clerk thereof, shall be transmitted to the President of the United States, the Vice President of the United States, the Speaker of the House of Representatives and every member of Congress elected from this State."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HATFIELD, from the Committee on Appropriations, without amendment:

S. 617. An original bill making additional supplemental appropriations and rescissions for the fiscal year ending September 30, 1995, and other purposes (Rept. No. 104-17).

By Mr. THURMOND, from the Committee on Armed Services:

Special report entitled: "The Activities of the Committee on Armed Services United States Senate, 103d Congress, First and Second Sessions" (Rept. No. 104-18).

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. BRADLEY (for himself and Mr. LAUTENBERG):

S. 611. A bill to authorize extension of time limitation for a FERC-issued hydroelectric license; to the Committee on Energy and Natural Resources.

By Mr. ROCKEFELLER (for himself, Mr. DASCHLE, Mr. GRAHAM, and Mr. MURKOWSKI):

S. 612. A bill to amend title 38, United States Code, to provide for a hospice care pilot program for the Department of Veterans Affairs; to the Committee on Veterans' Affairs.

By Mr. ROCKEFELLER (for himself, Mr. GRAHAM, Mr. AKAKA, Mr. DORGAN, Mr. MURKOWSKI, Mr. JEFFORDS, Mr. DASCHLE, Mr. LEAHY, Mrs. MURRAY, and Mr. WELLSTONE):

S. 613. A bill to authorize the Secretary of Veterans Affairs to conduct pilot programs in order to evaluate the feasibility of participation of the Department of Veterans Affairs health care system in the health care systems of States that have enacted health care reform; to the Committee on Veterans' Affairs.

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 614. A bill to confer jurisdiction of the U.S. Court of Federal Claims with respect to

land claims of Pueblo of Isleta Indian Tribe, and for other purposes; to the Committee on the Judiciary.

By Mr. AKAKA (for himself and Mr. CRAIG):

S. 615. A bill to amend title 38, United States Code, to require the Secretary of Veterans Affairs to furnish outpatient medical services for any disability of a former prisoner of war; to the Committee on Veterans' Affairs.

By Mr. BINGAMAN:

S. 616. A bill to amend the Tariff Act of 1930 to provide parity between the United States and certain free trade agreement countries with respect to the exemption for personal and household effects purchased abroad by returning residents, and for other purposes; to the Committee on Finance.

By Mr. HATFIELD:

S. 617. An original bill making additional supplemental appropriations and rescissions for the fiscal year ending September 30, 1995, and for other purposes; from the Committee on Appropriations; placed on the calendar.

By Mr. COATS (for himself and Mr. LIEBERMAN):

S. 618. A bill to provide a low-income school choice demonstration program; to the Committee on Labor and Human Resources.

By Mr. SMITH (for himself, Mr. LAUTENBERG, Mr. FAIRCLOTH, Mr. MCCONNELL, Mr. SIMON, Mr. MACK, Mr. BOND, Mr. GRAHAM, Mr. LIEBERMAN, Mr. WARNER, and Mr. REID):

S. 619. A bill to phase out the use of mercury in batteries and provide for the efficient and cost-effective collection and recycling or proper disposal of used nickel cadmium batteries, small sealed lead-acid batteries, and certain other batteries, and for other purposes; to the Committee on Environment and Public Works.

By Mr. CRAIG (for himself and Mr. DOMENICI):

S. 620. A bill to direct the Secretary of the Interior to convey, upon request, certain property in Federal reclamation projects to beneficiaries of the projects and to set forth a distribution scheme for revenues from reclamation project lands; to the Committee on Energy and Natural Resources.

By Mr. BENNETT (for himself, Mr. CAMPBELL, Mr. BROWN, Mr. JEFFORDS, Mr. STEVENS, and Mr. HATCH):

S. 621. A bill to amend the National Trails System Act to designate the Great Western Trail for potential addition to the National Trails System, and for other purposes.

By Mr. LEVIN (for himself, and Mr. ABRAHAM):

S. 622. A bill to amend the Clean Air Act to provide that a State containing an ozone nonattainment area that does not significantly contribute to ozone nonattainment in its own area or any other area shall be treated as satisfying certain requirements if the State makes certain submissions, and for other purposes; to the Committee on Environment and Public Works.

By Mr. SPECTER (for himself and Mr. HATCH):

S. 623. A bill to reform habeas corpus procedures, and for other purposes; to the Committee on the Judiciary.

By Mr. HATFIELD:

S. 624. A bill to establish a Science and Mathematics Early Start Grant program, and for other purposes; to the Committee on Labor and Human Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DOLE:

S. Res. 92. A resolution amending Rule XXV of the Standing Rules; considered and agreed to.

S. Res. 93. A resolution making majority party appointments to the Energy and Natural Resources Committee, the Veterans' Affairs Committee, and the Committee on Indian Affairs; considered and agreed to.

S. Res. 94. A resolution making a Majority party appointment; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BRADLEY (for himself and Mr. LAUTENBERG):

S. 611. A bill to authorize extension of time limitation for a FERC-issued hydroelectric license; to the Committee on Energy and Natural Resources.

FERC-ISSUED LICENSE AUTHORIZATION EXTENSION ACT

• Mr. BRADLEY. Mr. President, I introduce legislation which would allow the Federal Energy Regulatory Commission to extend a license already granted to the Mount Hope pumped storage project. It is my understanding that the FERC has no objection to this extension and that the agency itself would grant the extension, if it were not statutorily prohibited from doing so.

I am very pleased to have Senator LAUTENBERG as a cosponsor on this legislation.

The Mt. Hope project is an advanced pumped-storage hydroelectric plant. It will be constructed on an existing industrial site that has been active for almost 300 years. It will be largely underground, once it is established, and should have a very limited environmental impact.

This project will cost $1.8 billion to construct and will be financed entirely by the private sector. It is estimated that this single project will create up to 1,300 jobs during construction and provide about $20 million annually in property taxes.

Mr. President, the project's existing license will expire in August, 1996. When the license was originally requested and granted in the early 1990's, the sponsors presumed that the financing would be complete and construction underway by 1996, as required. Unfortunately, the extended economic recession intervened. Because of the general economic climate and the difficulty of financing any project of this magnitude, the start-up date has slipped.

Normally, I am very hesitant to intervene in any way in a regulatory process. However, since I understand that the FERC has no objections and will support this extension, I am willing to move ahead. I also understand that the Congressman representing this district, Rodney Frelinghuysen, is preparing companion legislation.

When the FERC granted the original license, they required public hearings and an extensive environmental analysis. While I understand that there is substantial local support for this project, this legislation will now be the subject of additional hearings. Before agreeing to move the legislation in the Senate, I will weigh carefully any new comments or concerns about the project and I will be contacting local community members to gauge the level of their enthusiasm and support.

Mr. President, I ask unanimous consent to have the text of the bill printed following these remarks.

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

S. 611

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding the time limitation of section 13 of the Federal Power Act, the Federal Energy Regulatory Commission, upon the request of the licensee for FERC Project No. 9401 is authorized, in accordance with the good faith, due diligence, and public interest requirements of section 13 and the Commission's procedures under such section, to extend until August 3, 1999, the time required for the licensee to commence the construction of such project. This section shall take effect for the project upon the expiration of the extension (issued by the Commission under section 13) of the period required for commencement of construction of such project.•

By Mr. ROCKEFELLER (for himself, Mr. DASCHLE, Mr. GRAHAM, and Mr. MURKOWSKI):

S. 612. A bill to amend title 38, United States Code, to provide for a hospice care pilot program for the Department of Veterans Affairs; to the Committee on Veterans' Affairs.

VETERANS' HOSPICE CARE SERVICES ACT

• Mr. ROCKEFELLER. Mr. President, in the spirit of strengthening our commitment to provide a comprehensive package of health care benefits to veterans eligible for care in the VA health care system, I am today introducing a bill that would require VA to conduct a hospice care pilot program to determine how best to provide hospice care services to terminally ill veterans. I am proud that Senators DASCHLE, GRAHAM, and MURKOWSKI have joined with me as original cosponsors. As the number of veterans who are elderly or have terminal illnesses continues to grow, the need and demand for VA hospice care is likely to increase. We must stay ahead of the surge and explore the various ways to provide such care, so our veterans and their families will have the best choices available to them.

Our legislation is derived from S. 1141, which I sponsored and which was incorporated into the committee bill, S. 1030, of the 103d Congress. Though S.

1030 passed the Senate, it did not pass the House. The bill also builds upon S. 1358 of the 102d Congress which Senator GRAHAM introduced on June 24, 1991, and the Senate passed on October 16, 1991.

Although VA has expanded and improved hospice care services over the past 4 years, it continues to fall short of the goals we envisioned. Thus we feel compelled to introduce the Veterans' Hospice Care Services Act of 1995.

SUMMARY OF PROVISIONS

Mr. President, this legislation would expand comprehensive VA hospice care programs and promote VA research on hospice care. The bill would amend chapter 17 of title 38 to establish a new subchapter VII, the provisions of which would:

First, require VA, during the period beginning on October 1, 1995, and ending on December 31, 2000, to conduct a pilot program in order to assess the desirability of furnishing hospice care services to terminally ill veterans, and determine the most effective and efficient means of furnishing such services.

Second, require VA to furnish hospice care services under the pilot program to any veteran who has a life expectancy of 1 year or less, as certified by a VA physician and who is entitled to VA hospital care, eligible for and receiving VA hospital or nursing home care, eligible for and receiving care in a community nursing home under a VA contract, or eligible for and receiving care in a State veterans home for which VA is making per diem payments to offset the costs of that care.

Third, specify that the hospice care services that VA must provide to veterans under the pilot program are: The services to which Medicare beneficiaries are entitled under the Medicare's hospice care benefit, and personal care services, including care or services relating to activities of daily living, such as dressing, personal hygiene, feeding, and housekeeping.

Fourth, require the Secretary to establish hospice care demonstration projects that would provide these services at not fewer than 15 but mote than 30 VA medical centers [VAMC's] by one of these means: A hospice operated by a VAMC, a non VA hospice under contract with a VAMC and pursuant to which the VA facility furnishes any necessary inpatient services, or a non-VA facility furnishes any necessary inpatient services.

Fifth, require that each of the three means for furnishing hospice care services be used at not fewer than five VAMC's.

Sixth, require the Secretary to ensure, to the maximum extent feasible, that VAMC's selected to conduct demonstration projects under the pilot program include facilities that: Are located in urban areas and rural areas, encompass the full range of affiliations between VAMC's and medical schools, operate and maintain various numbers of beds, and meet any additional criteria or standards that the Secretary may deem relevant or necessary.

Seventh, provide that the amount paid by VA or a non-VA hospice under a hospice care services contract generally may not exceed the amount that would be paid to that hospice under the Medicare hospice benefit, and authorize the Secretary to pay an amount in excess of the Medicare reimbursement rate, if the Secretary determines, on a case-by-case basis, that the Medicare rate would not adequate compensate the hospice for the costs associated with furnishing necessary care to a terminally ill veteran.

Eighth, require the Secretary to designate not fewer than 10 VAMC's that would function as a control group and furnish a less comprehensive range of hospice care services to terminally ill veterans that the range that VAMC's participating in the pilot program must provide, by VA personal providing one or more hospice care services to veterans at a VAMC, or VA personal monitoring the furnishing by non-VA provider of one or more hospice care services to veterans.

Ninth, require the Secretary to ensure, to the maximum extent practicable, that terminally ill veterans receive information regarding their eligibility, if any, for Medicare's hospice care benefit.

Tenth, require the Secretary, not later than September 30, 1996, and on an annual basis thereafter, until October 1, 2001, to submit periodic written reports to the House and Senate Committee on Veterans' Affairs about the pilot program.

Eleventh, require the Under Secretary for Health, not later than August 1, 1999, to submit to the House and Senate Committees on Veterans' Affairs a detailed final report on the pilot program, including an assessment of the desirability of furnishing hospice care services to terminally ill veterans, an assessment of the optimal means of furnishing hospice care services to terminally ill veterans, and his recommendations, if any, for additional legislation regarding such care.

Twelth, clarify that the pilot program would not preclude VA from furnishing hospice care services at VAMC's not participating in the pilot program or the control group.

BACKGROUND

Clearly, terminally ill veterans need an alternative to customary, curative care, and the Department of Veterans Affairs has made steady progress in meeting the demand.

However, VA headquarters officials have given only general guidance to VAMC's regarding the types of hospice care services they must provide and the manner in which they must provide them. Not surprisingly, significant variations exist in the manner in which VAMC's provide these services. Only 39 of 171 VAMC's operate their own hospice units. These units are freestanding buildings or separate units where a homelike atmosphere is created. Other VAMC's provide hospice in units that are converted patient rooms where cure-oriented care is administered adjacent to the hospice rooms. Still other VAMC's only provide some hospice services such as caregiver counseling and pain management. Many offer only an assessment of a terminally ill veterans' needs and referral to a non-VA hospice.

Neither uniformity nor marked variation in the provision of VA hospice care may be the answer. Each local area may need to tailor its programs and services to the unique needs of the veterans they serve, as well as the delivery modalities in their areas.

Yet I continue to believe that there are important questions that need to be asked and answered about the ways to provide such care. For example, some claim that we can best meet terminally ill veterans' needs by integrating hospice concepts into mainstream care for terminally ill persons. Others believe that because most VAMC's are affiliated with medical schools that emphasize technology-intensive, curative interventions, veterans would be better served if VA contracted with community hospice providers. There may not be only one correct approach, and that is fine. But I do know that we must address these difficult questions if we truly care about meeting terminally ill veterans' needs.

The pilot program this legislation envisions could be of great help in assessing these concerns. The bill calls for VA to establish hospice demonstration projects at 15 to 30 VAMC's that will provide a comprehensive range of hospice care services. Ten other VAMC's will constitute a control group and offer a less comprehensive range of hospice services. In essence, an experiment will be set up, whereby consistent data can be generated and valuable information extrapolated. This study will help health care providers identify veterans most likely to benefit from that program and tailor the program's services to meet their needs.

This year's bill, like S. 1030 of the 103d Congress, contains a provision that explicitly states that VA can continue to provide hospice care services at any VAMC, which would guarantee that no veteran will lose access to hospice care as a result of the pilot program. We certainly do not want VA to eliminate its existing hospice programs. Rather, we seek to ensure that VA studies and learns from them.

CONCLUSION

Mr. President, many terminally ill veterans do not want to spend their last days in a hospital environment receiving high technology, curative care.

These veterans, who have served our country with honor and dignity, choose a different type of environment, one where pain management and emotional support are the focus. They are veterans like Tom, a West Virginian whose plight the committee learned of in 1991. The executive director of the Hospice of Huntington, WV, Charlene Farrell, told the committee that while Tom was in the hospital, suffering from cancer, this depressed veteran asked that the drapes be closed so he could sit in darkness. Eventually, his daughters decided to use their modest resources to purchase hospice care from a non-VA provider, because their father longed for the type of care and support that a hospital simply cannot offer. We owe veterans like Tom nothing less than the best hospice care our Nation can provide. The Veterans Hospice Care Services Act of 1995 will help us meet our obligation to these brave men and women.

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. 612

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 "Veterans' Hospice Care Services Act of 1995".

SEC. 2. PROGRAMS FOR FURNISHING HOSPICE CARE TO VETERANS.

(a) ESTABLISHMENT OF PROGRAMS.—Chapter 17 of title 38, United States Code, is amended by adding at the end the following:

"SUBCHAPTER VII—HOSPICE CARE PILOT PROGRAM; HOSPICE CARE SERVICES

"§ 1761. Definitions

"For the purposes of this subchapter—

"(1) The term 'terminally ill veteran' means any veteran—

"(A) who is (i) entitled to receive hospital care in a medical facility of the Department under section 1710(a)(1) of this title, (ii) eligible for hospital or nursing home care in such a facility and receiving such care, (iii) receiving care in a State home facility for which care the Secretary is paying per diem under section 1741 of this title, or (iv) transferred to a non-Department nursing home for nursing home care under section 1720 of this title and receiving such care; and

"(B) who has a medical prognosis (as certified by a Department physician) of a life expectancy of six months or less.

"(2) The term 'hospice care services' means—

"(A) the care, items, and services referred to in subparagraphs (A) through (H) of section 1861(dd)(1) of the Social Security Act (42 U.S.C. 1395x(dd)(1)); and

"(B) personal care services.

"(3) The term 'hospice program' means any program that satisfies the requirements of section 1861(dd)(2) of the Social Security Act (42 U.S.C. 1395x(dd)(2)).

"(4) The term 'medical facility of the Department' means a facility referred to in section 1701(4)(A) of this title.

"(5) The term 'non-Department facility' means a facility (other than a medical facility of the Department) at which care to terminally ill veterans is furnished, regardless of whether such care is furnished pursuant to a contract, agreement, or other arrangement referred to in section 1762(b)(1)(D) of this title.

"(6) The term 'personal care services' means any care or service furnished to a person that is necessary to maintain a person's health and safety within the home or nursing home of the person, including care or services related to dressing and personal hygiene, feeding and nutrition, and environmental support.

"§ 1762. Hospice care: pilot program requirements

"(a)(1) During the period beginning on October 1, 1995, and ending on December 31, 2000, the Secretary shall conduct a pilot program in order—

"(A) to assess the desirability of furnishing hospice care services to terminally ill veterans; and

"(B) to determine the most effective and efficient means of furnishing such services to such veterans.

"(2) The Secretary shall conduct the pilot program in accordance with this section.

"(b)(1) Under the pilot program, the Secretary shall—

"(A) designate not less than 15 nor more than 30 medical facilities of the Department at or through which to conduct hospice care services demonstration projects;

"(B) designate the means by which hospice care services shall be provided to terminally ill veterans under each demonstration project pursuant to subsection (c);

"(C) allocate such personnel and other resources of the Department as the Secretary considers necessary to ensure that services are provided to terminally ill veterans by the designated means under each demonstration project; and

"(D) enter into any contract, agreement, or other arrangement that the Secretary considers necessary to ensure the provision of such services by the designated means under each such project.

"(2) In carrying out the responsibilities referred to in paragraph (1) the Secretary shall take into account the need to provide for and conduct the demonstration projects so as to provide the Secretary with such information as is necessary for the Secretary to evaluate and assess the furnishing of hospice care services to terminally ill veterans by a variety of means and in a variety of circumstances.

"(3) In carrying out the requirement described in paragraph (2), the Secretary shall, to the maximum extent feasible, ensure that—

"(A) the medical facilities of the Department selected to conduct demonstration projects under the pilot program include facilities located in urban areas of the United States and rural areas of the United States;

"(B) the full range of affiliations between medical facilities of the Department and medical schools is represented by the facilities selected to conduct demonstration projects under the pilot program, including no affiliation, minimal affiliation, and extensive affiliation;

"(C) such facilities vary in the number of beds that they operate and maintain; and

"(D) the demonstration projects are located or conducted in accordance with any other criteria or standards that the Secretary considers relevant or necessary to furnish and to evaluate and assess fully the furnishing of hospice care services to terminally ill veterans.

"(c)(1) Subject to paragraph (2), hospice care to terminally ill veterans shall be furnished under a demonstration project by one or more of the following means designated by the Secretary:

"(A) By the personnel of a medical facility of the Department providing hospice care services pursuant to a hospice program established by the Secretary at that facility.

"(B) By a hospice program providing hospice care services under a contract with that program and pursuant to which contract any necessary inpatient services are provided at a medical facility of the Department.

"(C) By a hospice program providing hospice care services under a contract with that program and pursuant to which contract any necessary inpatient services are provided at a non-Department medical facility.

"(2)(A) The Secretary shall provide that—

"(i) care is furnished by the means described in paragraph (1)(A) at not less than five medical facilities of the Department; and

"(ii) care is furnished by the means described in subparagraphs (B) and (C) of paragraph (1) in connection with not less than five such facilities for each such means.

"(B) The Secretary shall provide in any contract under subparagraph (B) or (C) of paragraph (1) that inpatient care may be provided to terminally ill veterans at a medical facility other than that designated in the contract if the provision of such care at such other facility is necessary under the circumstances.

"(d)(1) Except as provided in paragraph (2), the amount paid to a hospice program for care furnished pursuant to subparagraph (B) or (C) of subsection (c)(1) may not exceed the amount that would be paid to that program for such care under section 1814(i) of the Social Security Act (42 U.S.C. 1395f(i)) if such care were hospice care for which payment would be made under part A of title XVIII of such Act.

"(2) The Secretary may pay an amount in excess of the amount referred to in paragraph (1) (or furnish services whose value, together with any payment by the Secretary, exceeds such amount) to a hospice program for furnishing care to a terminally ill veteran pursuant to subparagraph (B) or (C) of subsection (c)(1) if the Secretary determines, on a case-by-case basis, that—

"(A) the furnishing of such care to the veteran is necessary and appropriate; and

"(B) the amount that would be paid to that program under section 1814(i) of the Social Security Act would not compensate the program for the cost of furnishing such care.

"§ 1763. Care for terminally ill veterans

"(a) During the period referred to in section 1762(a)(1) of this title, the Secretary shall designate not less than 10 medical facilities of the Department at which hospital care is being furnished to terminally ill veterans in order to furnish the care referred to in subsection (b)(1).

"(b)(1) Palliative care to terminally ill veterans shall be furnished at the facilities referred to in subsection (a) by one of the following means designated by the Secretary:

"(A) By personnel of the Department providing one or more hospice care services to such veterans at or through medical facilities of the Department.

"(B) By personnel of the Department monitoring the furnishing of one or more of such services to such veterans at or through non-Department facilities.

"(2) The Secretary shall furnish care by the means referred to in each of subparagraphs (A) and (B) of paragraph (1) at not

less than five medical facilities designated under subsection (a).

"§ 1764. Information relating to hospice care services

"The Secretary shall ensure to the extent practicable that terminally ill veterans who have been informed of their medical prognosis receive information relating to the eligibility, if any, of such veterans for hospice care and services under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

"§ 1765. Evaluation and reports

"(a) Not later than September 30, 1996, and on an annual basis thereafter until October 1, 2001, the Secretary shall submit a written report to the Committees on Veterans' Affairs of the Senate and House of Representatives relating to the conduct of the pilot program under section 1762 of this title and the furnishing of hospice care services under section 1763 of this title. Each report shall include the following information:

"(1) The location of the sites of the demonstration projects provided for under the pilot program.

"(2) The location of the medical facilities of the Department at or through which hospice care services are being furnished under section 1763 of this title.

"(3) The means by which care to terminally ill veterans is being furnished under each such project and at or through each such facility.

"(4) The number of veterans being furnished such care under each such project and at or through each such facility.

"(5) An assessment by the Secretary of any difficulties in furnishing such care and the actions taken to resolve such difficulties.

"(b) Not later than August 1, 1999, the Secretary shall submit to the committees referred to in subsection (a) a report containing an evaluation and assessment by the Under Secretary for Health of the hospice care pilot program under section 1762 of this title and the furnishing of hospice care services under section 1763 of this title. The report shall contain such information (and shall be presented in such form) as will enable the committees to evaluate fully the desirability of furnishing hospice care services to terminally ill veterans.

"(c) The report under subsection (b) shall include the following:

"(1) A description and summary of the pilot program.

"(2) With respect to each demonstration project conducted under the pilot program—

"(A) a description and summary of the project;

"(B) a description of the facility conducting the demonstration project and a discussion of how such facility was selected in accordance with the criteria set out in, or prescribed by the Secretary pursuant to, subparagraphs (A) through (D) of section 1762(b)(3) of this title;

"(C) the means by which hospice care services care are being furnished to terminally ill veterans under the demonstration project;

"(D) the personnel used to furnish such services under the demonstration project;

"(E) a detailed factual analysis with respect to the furnishing of such services, including (i) the number of veterans being furnished such services, (ii) the number, if any, of inpatient admissions for each veteran being furnished such services and the length of stay for each such admission, (iii) the number, if any, of outpatient visits for each such veteran, and (iv) the number, if any, of home-care visits provided to each such veteran;

"(F) the direct costs, if any, incurred by terminally ill veterans, the members of the families of such veterans, and other individuals in close relationships with such veterans in connection with the participation of veterans in the demonstration project;

"(G) the costs incurred by the Department in conducting the demonstration project, including an analysis of the costs, if any, of the demonstration project that are attributable to (i) furnishing such services in facilities of the Department, (ii) furnishing such services in non-Department facilities, and (iii) administering the furnishing of such services; and

"(H) the unreimbursed costs, if any, incurred by any other entity in furnishing services to terminally ill veterans under the project pursuant to section 1762(c)(1)(C) of this title.

"(3) An analysis of the level of the following persons' satisfaction with the services furnished to terminally ill veterans under each demonstration project:

"(A) Terminally ill veterans who receive such services, members of the families of such veterans, and other individuals in close relationships with such veterans.

"(B) Personnel of the Department responsible for furnishing such services under the project.

"(C) Personnel of non-Department facilities responsible for furnishing such services under the project.

"(4) A description and summary of the means of furnishing hospice care services at or through each medical facility of the Department designated under section 1763(a)(1) of this title.

"(5) With respect to each such means, the information referred to in paragraphs (2) and (3).

"(6) A comparative analysis by the Under Secretary for Health of the services furnished to terminally ill veterans under the various demonstration projects referred to in section 1762 of this title and at or through the designated facilities referred to in section 1763 of this title, with an emphasis in such analysis on a comparison relating to—

"(A) the management of pain and health symptoms of terminally ill veterans by such projects and facilities;

"(B) the number of inpatient admissions of such veterans and the length of inpatient stays for such admissions under such projects and facilities;

"(C) the number and type of medical procedures employed with respect to such veterans by such projects and facilities; and

"(D) the effectiveness of such projects and facilities in providing care to such veterans at the homes of such veterans or in nursing homes.

"(7) An assessment by the Under Secretary for Health of the desirability of furnishing hospice care services by various means to terminally ill veterans, including an assessment by the Director of the optimal means of furnishing such services to such veterans.

"(8) Any recommendations for additional legislation regarding the furnishing of care to terminally ill veterans that the Secretary considers appropriate.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following:

"SUBCHAPTER VII—HOSPICE CARE PILOT PROGRAM; HOSPICE CARE SERVICES

"1761. Definitions.
"1762. Hospice care: pilot program requirements.
"1763. Care for terminally ill veterans.
"1764. Information relating to hospice care services.
"1765. Evaluation and reports.".

(c) AUTHORITY TO CARRY OUT OTHER HOSPICE CARE PROGRAMS.—The amendments made by subsection (a) may not be construed as terminating the authority of the Secretary of Veterans Affairs to provide hospice care services to terminally ill veterans under any program in addition to the programs required under the provisions added by such amendments.

(d) AUTHORIZATION OF APPROPRIATIONS.—Funds are authorized to be appropriated for the Department of Veterans Affairs for the purposes of carrying out the evaluation of the hospice care pilot programs under section 1765 of title 38, United States Code (as added by subsection (a)), as follows:

(1) For fiscal year 1996, $1,200,000.
(2) For fiscal year 1997, $2,500,000.
(3) For fiscal year 1998, $2,200,000.
(4) For fiscal year 1999, $100,000.●

By Mr. ROCKEFELLER (for himself, Mr. GRAHAM, Mr. AKAKA, Mr. DORGAN, Mr. MURKOWSKI, Mr. JEFFORDS, Mr. DASCHLE, Mr. LEAHY, Mrs. MURRAY, and Mr. WELLSTONE):

S. 613. A bill to authorize the Secretary of Veterans Affairs to conduct pilot programs in order to evaluate the feasibility of participation of the Department of Veterans Affairs health care system in the health care systems of States that have enacted health care reform; to the Committee on Veterans' Affairs.

VA STATE HEALTH CARE REFORM PILOT PROGRAM ACT

● Mr. ROCKEFELLER. Mr. President, although the efforts of the last Congress to provide national health care reform failed, many States have already enacted reform legislation. These States have taken the first, important steps on the road to universal coverage. I applaud the efforts of these courageous legislators. They are giving their citizens health care security. These State plans provide Congress with the perfect opportunity to learn from their successes and to study the effects of reform on existing Federal medical programs, including the VA medical system.

The VA medical system—the Nation's largest health care system—cannot participate fully in health care reform efforts in specific States because current Federal law makes it impossible for VA facilities to do so. This deprives VA of the kinds of experiences and information it needs to thrive under national health care reform. If this situation continues, we will miss a valuable opportunity to study the effects of reform.

At a February 9, 1994, Senate Committee on Veterans' Affairs' hearing on VA participation in State health care reform, then-Acting Deputy Under Secretary of Health, Elwood Headley, M.D., stated that as a public health care system, VA lacks experience in participating in a competitive environment.

Mr. President, I believe VA will do well in a national plan under which

costs are controlled and coverage is expanded for all Americans, because VA already operates within a fixed budget. VA must, however, have the opportunity to learn what kinds of changes are needed in the VA medical system as a whole.

It is in the spirit of improving VA medical services for veterans that I am today introducing a bill that would require VA to conduct a pilot health care reform program. This VA State Health Care Reform Pilot Program would enable VA to participate in the health care reform programs of several States. I am delighted to be joined in sponsoring this bill by Committee members BOB GRAHAM, DAN AKAKA, BYRON DORGAN, FRANK MURKOWSKI, and JIM JEFFORDS, and by Senators TOM DASCHLE, PATRICK LEAHY, PATTY MURRAY, and PAUL WELLSTONE.

At the committee's February 9, 1994, hearing, John Bollinger, deputy executive director of the Paralyzed Veterans of America, testified that "the pilot programs will give VA in those states the opportunity to become a full participant in the health care system. It will also provide valuable experience to draw upon when the full VA system faces the same challenges in the context of national health care reform." I agree wholeheartedly.

SUMMARY OF PROVISIONS

Mr. President, this legislation would enable VA to evaluate the most appropriate means of participating in reformed State health care systems, providing invaluable information to help them prepare for national health care reform.

This bill would give VA the authority to select up to five States with comprehensive health benefit plans in place, or where such plans are imminent, to participate in the pilot program for a period of 2 years. The bill would authorize VA facilities in the selected States to offer free comprehensive care to all compensable service-connected veterans and to all veterans with incomes below the current levels that apply to inpatient care.

The legislation would grant the Secretary authority to waive certain laws and regulations that could interfere with the ability of VA facilities to participate in State health care reform activities.

This legislation would give VA medical center directors flexibility in allocating their resources, except with respect to regional programs, such as spinal cord injury services, post-traumatic stress disorder, blind rehabilitation, and substance abuse programs, which are funded from central office.

The bill would give the head of the VA in selected States—the VA health system director—the authority to contract out for medical services without prior review from VA central office. For other services, VA facilities within the State would have the authority to enter into contracts below $250,000 without prior review by central office. Contracts above $250,000 would be reviewed by central office, but would automatically be approved if central office did not make a decision within 30 days. This would give local VA facilities the autonomy they need to increase their number of providers in a timely manner.

This bill would also give local VA facilities more flexibility in the hiring process, by extending authority that is currently available for hiring certain title 38 personnel to the hiring of all staff. This is intended to help VA facilities hire the best possible employees in a timely manner.

The bill would exempt VA facilities in the pilot program from FTE cuts. Arbitrary FTE cuts could make it impossible for VA facilities to compete under health care reform.

The legislation would give the participating VA facilities the authority to carry over leftover funding from one year to the next. Again, this would help VA facilities make better use of limited funds.

Finally, this legislation would give VA the authority to collect employer contributions and other third-party payments for noncore veterans who choose VA health care. These payments would enable VA facilities to provide care for all veterans who choose VA health care, not just core veterans.

CONCLUSION

Mr. President, VA needs legislative relief from restrictions in current law which, although enacted for good and appropriate reasons, could prevent VA facilities from competing as providers in certain States. The major obstacle which must be overcome is that VA facilities cannot qualify as providers under some state plans because of current eligibility requirements. Under various State proposals, all citizens would be eligible to choose a provider, and all providers must offer the same basic package of services. In most States, VA could not be considered a provider for several reasons, including the restrictions which limit preventive and primary care.

Mr. President, the "VA State Health Care Reform Pilot Program" would provide VA with invaluable experience regarding how it needs to change in order to survive and thrive under health care reform. The "VA State Health Care Reform Pilot Program" will help us meet our obligation to the brave men and women who served in every branch of the Armed Forces, by improving the VA medical system that serves them.

Mr. President, one final note before closing. On Friday, March 17, 1995, Secretary of Veterans Affairs Jesse Brown submitted to our committee notice of a plan to realign the field management of the Veterans Health Administration. Pursuant to section 510(b) of title 38, United States Code, this realignment cannot go into effect for 90 days of continuous session of Congress.

Should there be no action of the Congress to modify the Secretary's proposed plan—and I know of no such proposed action at this point—VA will undertake a very significant realignment of the field management structure of VHA. I mention this possibility in the context of my introduction of this measure today, because it is likely that the proposed pilot authority would have to be modified in light of the realignment. Such changes in the legislation can be discussed later in the committee's consideration of the issue, at which time we will have a better sense of the outcome of the Secretary's proposed field realignment.

Mr. President, I am looking forward to working with Senator SIMPSON and all the members of the Senate Committee on Veterans' Affairs, as well as with the chairman of the House Committee on Veterans' Affairs, BOB STUMP, and chairman of the House Subcommittee on Hospitals and Health Care, TIM HUTCHINSON. This legislation was passed by the Senate in the last Congress, and I hope that we can move forward with it in this Congress.

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. 613

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 "VA State Health Care Reform Pilot Program Act".

SEC. 2. PURPOSE OF PILOT PROGRAMS.

The purpose of this Act is to authorize the participation of the Department of Veterans Affairs health care system in the health care systems of States that have enacted health care reform in order to evaluate the most appropriate means of enabling the Department health care system to participate in such systems and in the National health care system contemplated under any plans for National health care reform.

SEC. 3. HEALTH CARE PILOT PROGRAMS.

(a) IN GENERAL.—The Secretary may carry out pilot programs on the participation of the Department of Veterans Affairs health care system in the health care systems of States that have adopted comprehensive health benefit plans. The Secretary shall carry out any pilot program under this Act in accordance with the provisions of this Act.

(b) STATES ELIGIBLE FOR DESIGNATION.—(1) The Secretary shall designate each of not more than five States as a location for a pilot program under this Act. The Secretary shall complete the designation of States as locations for pilot programs not later than 30 days after the date of the enactment of this Act.

(2) The Secretary may designate a State as a location for a pilot program under this Act if the Secretary determines that—

(A) the State has enacted, or will soon enact, a statute establishing or providing for a comprehensive health benefit plan; and

(B) the participation of the health care system of the Department under the plan is feasible and appropriate in light of the purpose of this Act.

(c) DEPARTMENT PARTICIPATION IN STATE HEALTH BENEFIT PLANS—(1) To the maximum extent practicable, the Secretary shall provide eligible persons under each pilot program under this Act with the comprehensive package of basic health care benefits that would otherwise be available to such persons under the comprehensive health benefit plan of the State in which the pilot program is carried out. The Secretary shall provide such benefits through the health care system of the Department in such State as if such system were a provider of such benefits under such plan.

(2) Notwithstanding any other provision of law, a State may not prohibit the participation of the Department under the comprehensive health benefit plan of the State under a pilot program unless the chief executive officer of the State certifies to the Secretary that—

(A) the benefits to be provided by the Department under the pilot program do not meet requirements for quality of benefits established by or provided under the plan; or

(B) the location of Department facilities (including facilities providing services by contract or agreement with the Secretary) in the State is such that the proximity of eligible persons to such facilities does not meet requirements so established for such proximity.

(3) Not later than 30 days after the designation of a State as a location for a pilot program under this Act, and at such other times as the Secretary may determine, the Secretary and the health system director for that State shall jointly determine the regulations under the authority of the Secretary the waiver or modification of which is necessary in order to facilitate the carrying out of the pilot program. Upon such determination, the Secretary shall waive or modify the application of such regulations to the pilot program.

(4) The Secretary shall furnish any eligible person living in a State in which a pilot program is carried out (including any eligible person electing to receive benefits under the pilot program and any eligible person not electing to receive benefits under the pilot program) with the health care benefits for which such person is eligible under chapter 17 of title 38, United States Code, notwithstanding that the comprehensive package of basic health care benefits provided under the comprehensive health benefit plan of the State does not otherwise include such health care benefits. The Secretary shall furnish any health care benefits under this paragraph in accordance with the provisions of that chapter.

(5) The Secretary may not provide any health care benefit under a pilot program under this Act that the Secretary is not otherwise authorized to provide under the laws administered by the Secretary.

(d) HEALTH SYSTEM DIRECTOR.—(1) The Secretary shall designate a health system director for each State in which a pilot program is carried out under this Act. To the maximum extent feasible, the Secretary shall delegate to the health system directors the responsibilities of the Secretary under this Act.

(2)(A) Subject to subparagraph (B), the Secretary shall designate an individual as health system director for a State from among nominees for that position selected by a panel composed of individuals who are senior management personnel of the Department medical centers located in that State.

(B) An individual selected for nomination to be a health system director of a State under subparagraph (A) shall be—

(i) the director or chief of staff of a Department medical center located in the State in which the pilot program is carried out; or

(ii) any other individual having experience with the Department medical system that is equivalent to the experience with that system of an individual in a position referred to in clause (i).

(e) ADMINISTRATIVE REORGANIZATION.—The Secretary may carry out any administrative reorganization of an office, facility, activity, or function of the health care system of the Department in a State in which a pilot program is carried out that the Secretary and the health system director jointly determine to be necessary in order to facilitate the carrying out of the pilot program. Section 510(b) of title 38, United States Code, shall not apply to any such administrative reorganization.

(f) PROVISION OF BENEFITS.—(1)(A) Except as provided in subparagraph (B), the Secretary shall provide health care benefits under a pilot program—

(i) through the direct provision of such services by the health care system of the Department in the State in which the pilot program is carried out; or

(ii) by contract or other agreement in accordance with paragraph (2).

(B) The Secretary may exclude facilities of the Department from participation in a pilot program. Any facilities so excluded shall continue to provide health care benefits to veterans and other persons eligible for such benefits in accordance with the provisions of laws administered by the Secretary.

(2) The health system director of a pilot program may enter into contracts and agreements for the provision of health care services and contracts and agreements for other services with respect to the pilot program under paragraph (1)(A)(ii). Any such contract or agreement (including any lease) shall not be subject to the following provisions of law:

(A) Section 8110(c) of title 38, United States Code, relating to contracting of services at Department health-care facilities.

(B) Section 8122(a)(1) of such title, relating to the lease of Department property.

(C) Section 8125 of such title, relating to local contracts for the procurement of health-care items.

(D) Section 702 of title 5, United States Code, relating to the right of review of agency wrongs by courts of the United States.

(E) Sections 1346(a)(2) and 1491 of title 28, United States Code, relating to the jurisdiction of the district courts of the United States and the United States Court of Federal Claims, respectively, for the actions enumerated in such sections.

(F) Subchapter V of chapter 35 of title 31, United States Code, relating to adjudication of protests of violations of procurement statutes and regulations.

(G) Sections 3526 and 3702 of such title, relating to the settlement of accounts and claims, respectively, of the United States.

(H) Subsections (b)(7), (e), (f), (g), and (h) of section 8 of the Small Business Act (15 U.S.C. 637(b)(7), (e), (f), (g), and (h)), relating to requirements with respect to small businesses for contracts for property and services.

(I) The provisions of law assembled for purposes of codification of the United States Code as section 471 through 544 of title 40 that relate to the authority of the Administrator of General Services over the lease and disposal of Federal Government property.

(J) The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), relating to the procurement of property and services by the Federal Government.

(K) Chapter 3 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), relating to the procurement of property and services by the Federal Government.

(L) Office of Management and Budget Circular A-76.

(3)(A) Notwithstanding any other provision of law, contracts and agreements for the provision of health care services under this subsection may include contracts and other agreements with insurers, health care providers, or other individuals or entities that provide health care services.

(B) Contracts and agreements under this paragraph may be entered into without prior review by the Central Office of the Department.

(4)(A) Contracts and agreements under this subsection for services other than the services referred to in paragraph (3) (including contracts and agreements for procurement of equipment, maintenance and repair services, and other services related to the provision of health care services) shall not be subject to prior review by the Central Office if the amount of such contracts or agreements is less than $250,000.

(B) Contracts and agreements for services under this paragraph shall be subject to prior review by the Central Office if the amount of such contracts or agreements is $250,000 or greater. If the Central Office fails to approve or reject a contract or agreement under this clause within 30 days of its submittal to the Central Office, such contract or agreement shall be deemed approved by the Central Office.

(g) DEPARTMENT PERSONNEL.—(1) Notwithstanding any other provision of law and to the extent necessary to carry out the purpose of a pilot program, the Secretary may—

(A) appoint personnel to positions in the health care system of the Department in the State in which the pilot program is carried out in accordance with such standards for such positions as the Secretary may establish; and

(B) promote and advance personnel serving in such positions in accordance with such standards as the Secretary may establish.

(2) Not later than 60 days after the designation of a State as a location for a pilot program under this Act, or at such other time as the Secretary may determine, the Secretary shall request authority from the Director of the Office of Management and Budget to permit the Secretary to employ a number of full time equivalent employees in the health care system of the Department in that State which exceeds the number of such employees that would otherwise be authorized for such employment by the Director.

(3) Notwithstanding any other provision of law, employees of the Department at facilities of the Department under a pilot program shall not, during the carrying out of the pilot program, be subject to any reduction in the number of full time employees of the Department or as a result of a reduction in the number of full time employees of the Federal Government.

(h) ELIGIBLE PERSONS.—(1) A person eligible for health care benefits under a pilot program is any person residing in a State in which a pilot program is carried out as follows:

(A) Any veteran.

(B) Any spouse or child of a veteran.

(C) Any individual eligible for care under paragraph (2) or (3) of section 1713(a) of title 38, United States Code.

(2) Notwithstanding any other provision of law, a State may not require that any person other than a person referred to in paragraph (1) be eligible for health care benefits through the Department under a pilot program.

(i) COPAYMENTS AND OTHER CHARGES.—(1) Except as provided in paragraph (2), the Secretary may collect from or on behalf of any individual receiving health care benefits from the Secretary under a pilot program under this Act a premium, deductible, copayment, or other charge with respect to the provision of a benefit under the pilot program. The amount of the premium, deductible, copayment, or other charge collected with respect to a benefit provided under a pilot program may not exceed the maximum amount otherwise permitted for a premium, deductible, copayment, or other charge with respect to that benefit under the comprehensive health benefits plan of the State in which the pilot program is carried out.

(2)(A) Except as provided in subparagraph (B), the Secretary shall not collect under the pilot programs premiums, deductibles, copayments, and other charges with respect to the benefits provided by the Department to the following:

(i) Veterans with compensable service-connected disabilities.

(ii) Veterans whose discharge or release from active military, naval, or air service was for a compensable disability that was incurred or aggravated in the line of duty.

(iii) Veterans who are in receipt of, or who, but for a suspension pursuant to section 1151 of title 38, United States Code (or both a suspension and the receipt of retired pay), would be entitled to disability compensation, but only to the extent that such veterans' continuing eligibility for such care is provided for in the judgment or settlement provided for in such section.

(iv) Veterans who are former prisoners of war.

(v) Veterans of the Mexican border period or of World War I.

(vi) Veterans who are unable to defray the expenses of necessary care, as determined in accordance with section 1722(a) of such title.

(B) The Secretary may collect premiums, deductibles, copayments, and other charges with respect to benefits provided under a pilot program to veterans referred to in subparagraph (A) from any third party obligated to provide, or to pay the expenses of, such benefits to or for such veterans under the comprehensive health benefits plan of the State in which the pilot program is carried out.

(j) FUNDING.—(1) There is established in the Treasury a fund to be known as the Department of Veterans Affairs Health Care Reform Fund (hereafter referred to in this subsection as the "Fund").

(2)(A) Notwithstanding any other provision of law, amounts shall be deposited in the Fund as follows:

(i) Amounts collected under a pilot program in accordance with subsection (i).

(ii) Amounts made available to a pilot program based upon a determination under paragraph (3).

(iii) Amounts transferred to the Fund with respect to a pilot program under paragraph (4).

(iv) Such other amounts as the Secretary and the health system directors of the pilot programs jointly determine to be necessary in order to carry out the pilot programs.

(v) Such other amounts as may be appropriated to the pilot programs.

(B) The Secretary shall make available amounts under clauses (ii) and (iv) of subparagraph (A) from amounts appropriated to the Department of Veterans Affairs for the provision of health care services.

(C) The Secretary shall establish and maintain a separate account under the Fund for each pilot program carried out under this Act. Any deposits and expenditures with respect to a pilot program shall be made to or from the account established and maintained with respect to that pilot program.

(3)(A) For each year of the operation of a pilot program under this Act, the Secretary shall deposit in account of the Fund for the pilot program an amount (as determined by the Secretary) equal to the amount that would otherwise be made available to the health care system of the Department in the State in which the pilot program is carried out for the payment of the cost of health care services by such system in that State in that year. The Secretary shall deposit such amount at the beginning of such year.

(B) The costs referred to in subparagraph (A) shall not include costs relating to the provision by the Secretary of the following services:

(i) Services relating to post-traumatic stress disorder.

(ii) Services relating to spinal-cord dysfunction.

(iii) Services relating to substance abuse.

(iv) Services relating to the rehabilitation of blind veterans.

(v) Services relating to prosthetics.

(4) Funds deposited in the Medical-Care Cost Recovery Fund established under section 1729(g) of title 38, United States Code, during any fiscal year in an amount in excess of the Congressional Budget Office baseline (as of the date of the enactment of this Act) for deposits in that fund for that fiscal year shall not be subject to paragraph (4) of section 1710(f), 1712(f), or 1729(g) (as the case may be) of that title, but shall be transferred to the fund established under this subsection. Such transfer for any fiscal year shall be made at any time that the total of amounts so received less amounts estimated to cover the expenses, payments, and costs described in paragraph (3) of section 1729(g) of that title is in excess of the applicable Congressional Budget Office baseline.

(5)(A) Notwithstanding any other provision of law, the health system director for a State in which a pilot program is carried out shall determine the costs for which amounts in the Fund may be expended in carrying out the pilot program.

(B)(i) Except as provided in clause (ii), the costs of carrying out a pilot program under this paragraph shall include any costs of marketing and advertising under the program, costs of legal services provided to such pilot program by the General Counsel of the Department of Veterans Affairs, and costs relating to acquisition (including acquisition of land), construction, repair, or renovation of facilities.

(ii) Costs under this subparagraph shall not include any costs relating to a major medical facility project or a major medical facility lease as such terms are defined in subparagraphs (A) and (B) of section 8104(a)(3) of title 38, United States Code, respectively.

(C) Amounts in the Fund for the payment of costs of a pilot program under this subsection shall be available for such purpose without fiscal year limitation.

(k) TERMINATION.—A pilot program carried out under this Act shall terminate not later than 2 years after the date of the commencement of provision of benefits under the pilot program.

SEC. 4. REPORTS ON PILOT PROGRAMS.

(a) COLLECTION OF INFORMATION.—(1) The Secretary shall collect such information with respect to the provision of health care benefits under each pilot program as is necessary to permit the Secretary to evaluate the pilot program in light of the purpose of the pilot program under this Act.

(2) The information collected by the Secretary under paragraph (1) shall include aggregated data on the following:

(A) The number of persons participating in each pilot program, including the age, sex, health status, disability ratings (if any), employment status, and incomes of such persons.

(B) The nature of benefits sought by such persons under each pilot program.

(C) The nature and quantity of benefits provided to such persons under each pilot program.

(D) The cost to the Department of providing such benefits under each pilot program.

(b) REPORTS.—(1) Not later than 14 months after the date of the completion of the designation of States as locations for pilot programs under this Act, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the progress of the Secretary in carrying out the pilot programs. Such report shall include the information referred to in subsection (a)(2) on the date of the report.

(2) Not later than November 30 of the year of the termination of the final pilot program under this Act, the Secretary shall submit to the committees referred to in paragraph (1) a report on the pilot programs carried out under this Act. The report shall include the following:

(A) The information referred to in subsection (a)(2), together with the comments and conclusions of the Secretary with respect to such information.

(B) An assessment by the Secretary of the utility of each pilot program for carrying out the purpose of this Act.

(C) An assessment by the Secretary of appropriate means of integrating the health care system of the Department into the health care systems of States that have enacted health care reform and into the National health care system contemplated under any plans for National health care reform.

(D) Such other information, assessments, and conclusions as the Secretary considers appropriate.

SEC. 5. DEFINITIONS.

For the purposes of this Act—

(1) The terms "Secretary", "Department", "veteran", "child" and "spouse" have the meanings given such terms in paragraphs (1), (2), (4), and (31) of section 101 of title 38, United States Code, respectively.

(2) The term "comprehensive health benefit plan", in the case of a State, means a plan or system established under the law of the State that—

(A) attempts to ensure the access of residents of the State to a comprehensive package of basic health care benefits; and

(B) ensures such access by providing that such benefits shall be provided directly or by contract by public and private entities.

(3) The term "comprehensive package of basic health care benefits" means the health care benefits provided for by a State under

the comprehensive health benefit plan of the State.

(4) The term "health care system of the Department", in the case of a State designated as a location for a pilot program, means the facilities and personnel of the Department located in that State that provide health care services under chapter 17 of title 38, United States Code.●

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 614. A bill to confer jurisdiction of the U.S. Court of Federal Claims with respect to land claims of Pueblo of Isleta Indian Tribe, and for other purposes; to the Committee on the Judiciary.

PUEBLO OF ISLETA LAND CLAIMS ACT

Mr. BINGAMAN. Mr. President, I rise today with my good friend and distinguished colleague, Senator DOMENICI, to reintroduce a bill on behalf of our constituents, the people of the Pueblo of Isleta in New Mexico. The Senate approved and passed an identical version of this measure in the previous Congress. Unfortunately, the House adjourned before its Members were able to take action on our bill, but a similar measure was approved by the House in the 102d Congress.

The legislation we are introducing today will provide authority for New Mexico's Pueblo of Isleta to file an aboriginal land claim in the United States Court of Federal Claims under the Indian Claims Act. The bill does not pass judgment on the claim or give the Pueblo priority on the court's docket. If, however, the Pueblo of Isleta proves to the court that it does indeed have a valid claim of aboriginal land use and occupancy, then appropriate monetary compensation would be determined by the court.

In April 1992, the House Judiciary Subcommittee on Administrative Law and Governmental Relations held a hearing on an early version of our bill. During that hearing, testimony made clear that the Pueblo of Isleta—like all the Pueblo Tribes in New Mexico—had standing to pursue land claims under the Indian Claims Act of 1946. Under the act, claims could be based either on title to the land or aboriginal use, but all claims must have been filed by 1951.

Unfortunately, due to incomplete or improper advice from counsel, the Pueblo of Isleta filed only a limited claim based on a Spanish land grant, to which there was a written record, before the 1951 deadline. According to tribal leaders, their fore-fathers were not informed by counsel that they could file a claim based on aboriginal land use. Significantly, the Pueblo's counsel was a Bureau of Indian Affairs official who was later found by the court to have given erroneous advice on a similar matter to the Pueblo of Zuni. Like many other tribes, the Pueblos of Zuni and Isleta were completely dependent on the Bureau of Indian Affairs for advice and assistance regarding land claims during the 1940's and 1950's.

Mr. President, this legislation would simply allow the Pueblo of Isleta to pursue a claim today, much like legislation Congress approved some years ago for the Pueblo of Zuni. Again, the bill does not give the Pueblo priority on the court's docket, and it does not pass judgement on the claim itself.

The people of the Pueblo of Isleta are entitled to their day in court. This bill assures them of that right. I urge my colleagues to support its swift passage.

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. 614

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. JURISDICTION.

(a) IN GENERAL.—Notwithstanding sections 2401 and 2501 of title 28, United States Code, and section 12 of the Act of August 13, 1946 (60 Stat. 1052, chapter 959), or any other law that would interpose or support a defense of untimeliness, jurisdiction is hereby conferred upon the United States Court of Federal Claims to hear, determine, and render judgment on any claim by the Pueblo of Isleta Indian Tribe of New Mexico against the United States with respect to any lands or interests therein in the State of New Mexico or any adjoining State that were held by aboriginal title or otherwise and that were acquired from the tribe without payment of adequate compensation by the United States.

(b) INTEREST.—As a matter of adequate compensation, the United States Court of Federal Claims may award interest at a rate of 5 percent per year to accrue from the date on which such lands or interests therein were acquired from the tribe by the United States.

(c) LIMITATIONS.—Such jurisdiction is conferred only with respect to claims accruing on or before August 13, 1946. All such claims must be filed not later than 3 years after the date of enactment of this Act.

(d) JURISDICTION IS NOT DEPENDENT ON EXHAUSTION.—Such jurisdiction is conferred notwithstanding any failure of the tribe to exhaust any available administrative remedy.

SEC. 2. CERTAIN DEFENSES NOT APPLICABLE.

Any award made to any Indian tribe other than the Pueblo of Isleta Indian Tribe of New Mexico before, on, or after the date of the enactment of this Act, under any judgment of the Indian Claims Commission or any other authority, with respect to any lands that are the subject of a claim submitted by the tribe under section 1 shall not be considered a defense, estoppel, or set-off to such claim, and shall not otherwise affect the entitlement to, or amount of, any relief with respect to such claim.

By Mr. AKAKA (for himself and Mr. CRAIG):

S. 615. A bill to amend title 38, United States Code, to require the Secretary of Veterans Affairs to furnish outpatient medical services for any disability of a former prisoner of war; to the Committee on Veterans' Affairs.

VETERANS OUTPATIENT HEALTH CARE ACT

Mr. AKAKA. Mr. President, today I am introducing legislation that would ensure that all former prisoners of war [POW's] receive outpatient care provided by the Department of Veterans Affairs [VA]. Under current law, POW's with service-connected disabilities are entitled to outpatient medical services. However, POW's with less than 30 percent disability may be provided outpatient services at the discretion of VA. This distinction is unfair to many POW's and fails to recognize the trauma and brutality of imprisonment endured by all former POW's. I am pleased to have Senators CRAIG, ROCKEFELLER, and CAMPBELL join me as original cosponsors of this measure.

Mr. President, the need for this legislation is clear. All of America's POW's deserve to be treated equally. Americans would agree that those who served in defense of our Nation and were imprisoned by the enemy deserve special consideration.

Some may feel this legislation is unnecessary because VA has been providing outpatient services to POW's. But, when times get tough and funding becomes tight, POW's without service-connected disabilities, or with a lower disability rating, may be denied outpatient care. This is exactly what happened in 1990. Due to budgetary reasons, two midwestern VA medical centers began denying outpatient services to former POW's. Fortunately, through congressional intervention, this policy was reversed and POW's continued to receive ambulatory care. Although we are facing a lean fiscal climate, accountants should not determine whether our POW's receive outpatient care.

This bill only seeks to ensure that VA will continue to provide outpatient services at all times to POW's. As of January 1, 1995, there were only 62,676 former U.S. POW's, 94 percent of whom served in World War II. As we observe the 50th anniversary of the conclusion of World War II, this bill provides a fitting tribute to the sacrifices made by POW's on behalf of our country.

Mr. President, I ask unanimous consent that the text of the bill and additional material be printed in the RECORD.

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

S. 615

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ELIGIBILITY OF FORMER PRISONERS OF WAR TO RECEIVE OUTPATIENT MEDICAL SERVICES FROM THE DEPARTMENT OF VETERANS AFFAIRS.

Section 1712(a)(1) of title 38, United States Code, is amended—

(1) by striking out "and" at the end of subparagraph (C);

(2) by striking out the period at the end of subparagraph (D) and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new subparagraph:

"(E) to any former prisoner of war for any disability.".

AMERICAN EX-PRISONERS OF WAR,
NATIONAL CAPITAL OFFICE,
Washington, DC, March 22, 1995.

Hon. DANIEL K. AKAKA,
U.S. Senate,
Washington, DC.

DEAR SENATOR AKAKA: On behalf of our 33,000 members, I want to thank you very warmly for introducing the bill to guarantee outpatient care for ex-POWs.

This bill, which was passed in 1992 by the Senate, means a great deal to our members. Several years ago two VA Medical Centers discontinued outpatient care to ex-POWs to save money. Although outpatient care was restored to those Centers, we never know when this may occur again.

Senator Akaka, we consider you a good friend of the former prisoners of war, and we are looking forward to working with your colleagues to assure enactment by Congress.

Again our sincere gratitude to you for introducing this bill for us.

Sincerely,

CHARLES S. PRIGMORE,
National Commander.

• Mr. CRAIG. Mr. President, I am pleased to be joining my colleague from Hawaii, Senator AKAKA, in introducing legislation that will clarify veterans health services for ex-prisoners of war [ex-POW].

This bill will amend title 38 of the United States Code, ensuring access to outpatient medical services for any disability of a former prisoner of war. Mr. President, these services are currently being provided in accordance with a directive from the Secretary of the Veterans Administration. This bill is necessary in order to secure, by law, access to these services by our veterans who have suffered as prisoners of war.

The law currently covers inpatient medical services for ex-POWs. However, as medical care continues to convert into more outpatient care, we need to ensure that those who are in need of care can obtain it in the most cost-effective manner. In the long-term this should ensure that we continue to provide care in the most cost effective manner as more ailments are treated on an outpatient basis. In short, we will be better able to control costs and provide better delivery of care to those veterans who suffered at the hands of our enemies as prisoners of war.

Mr. President, I would like to point out that bills similar to this one have previously passed the Senate. However, they have never completed the process leading to enactment. I hope that my colleagues will see the merit in this legislation and support it so that we can see it signed into law during this Congress.•

By Mr. BINGAMAN:

S. 616. A bill to amend the Tariff Act of 1930 to provide parity between the United States and certain free-trade agreement countries with respect to the exemption for personal and household effects purchased abroad by returning residents, and for other purposes; to the Committee on Finance.

BORDER TARIFFS ACT

Mr. BINGAMAN. Mr. President, I rise today to offer a bill to correct an inequity that has developed along our border with Mexico with respect to tariffs on goods crossing the border.

The United States currently permits duty-free entry of $400 of retail goods for personal consumption each month. There is a 10-percent duty on the next 1,000 dollars' worth of purchases brought into the United States. Mexico, by contrast, limits the amount of goods that can be imported for personal consumption to $50 per day. Goods above that amount have a duty of approximately 33 percent.

Mr. President, this difference in policy obviously hampers trade along our borders. It is yet another burden on our border businesses, which are also currently struggling with the adverse effects of the peso crisis on the ability of Mexican citizens to purchase goods in the United States.

Before introducing this legislation in the 103d Congress, I had hoped that this problem could be corrected administratively. I wrote to the Secretary of State about this issue. With my fellow border Senators, I also contacted the Commissioner of Customs in our country and President Salinas in Mexico. All, ultimately, to no avail.

I still believe that there are two tracks we can take to persuade the Government of Mexico to increase its duty-free limit, and I believe that we should pursue both of them. The first is to get our Government to negotiate with the Government of Mexico to equalize the duties. My good friend and colleague from Arizona, Senator DeConcini, who retired at the end of the 103d Congress, inserted language in the fiscal year 1995 Commerce, State, Justice appropriations report that would direct the U.S. Trade Representative to make doing so a priority. It is my understanding that USTR officials have raised the issue in trade talks, but that the issue has yet to be resolved. Until it is resolved, I believe that we should pursue a second track, that of changing the exemption provided for in our tariff laws to match that of Mexico's. Together, these two actions can help ensure that retail businesses on both sides of the border are on the same footing.

So, today, I rise to again offer legislation that would equalize the amount of personal retail goods that can cross the border duty-free in either direction. This legislation simply says that our duty will not be lower than Mexico's.

By Mr. COATS (for himself and Mr. LIEBERMAN):

S. 618. A bill to provide a low-income school choice demonstration program; to the Committee on Labor and Human Resources.

SCHOOL CHOICE DEMONSTRATION ACT

Mr. COATS. Mr. President, I rise today, with my colleague from Connecticut, to introduce the School Choice Demonstration Act. This bill will establish 10 to 20 demonstration projects to study the effects of providing low-income parents and their children with financial assistance to enable them to select the public or private school of their choice.

This is a very simple and straightforward bill—we want to enable low-income parents to choose the school their children attend. They can select a public or a private school, but the point is that they will be able to make a choice. Up until now, only those families who can afford to send their children to private schools have had that option. Senator LIEBERMAN and I believe that all families should have the opportunity to choose where their children will be educated. For too long, we have asked everyone to pay for a particular type of education without ensuring that people have a say in what they receive for their money.

American education has reached a critical point. Time has taught us that we cannot simply throw more and more money at the public schools, and rely on that to improve education. As many of you know, annual per pupil spending has tripled in the last 30 years, while student achievement has dropped dramatically, evidenced by a decrease in average SAT scores of almost 90 points. Clearly, more money is not the solution.

We have to do something soon. In inner cities across America, almost half of all high school students fail to graduate. This is a chilling statistic. We should take it as a wake up call. Obviously, something is seriously wrong with our educational system. This bill proposes an option for some students who are not succeeding in the public education system.

Our bill is simple. It says, let us allot a small amount of funds, so that 10 to 20 demonstration grants can be awarded to local districts around the country who are interested in offering increased educational opportunities to their students. The funds granted by this bill will provide assistance to children from the lowest-income homes. The children eligible under this program are those children who qualify for reduced or free school lunches. These funds will only go to low-income families. And they are to be used to pay for education costs at public or private schools. The parents choose which school their child will attend.

We have incorporated a very strict civil rights and desegregation protection clause to make sure that participating schools can in no way discriminate on the basis of race. We also stipulate that demonstration projects cannot continue if they interfere with these desegregation plans.

The cost of this program will be $30 million and there will be no more than 20 projects. School districts would voluntarily apply for the grants through the secretary of education, and we have established some criteria for the secretary to make the determination as to which districts would be included.

This bill also requires that a nationwide evaluation of the demonstration program be conducted. Up until now, discussion concerning the actual effects of school choice policies has been limited by a lack of conclusive data. This bill addresses that need for objective data. An evaluation will give us a baseline from which to conduct our discussion at the Federal level.

Many localities are already experimenting with some type of school choice. My home State of Indiana, for example, has several existing choice initiatives under way. One program, originated by Golden Rule Insurance, helps low-income children in Indianapolis attend the private school of their choice by awarding them scholarships to cover up to half of the tuition costs. There are currently 1,100 students being sponsored, and 650 kids are on the waiting list. Our public schools are also experimenting with choice. Indianapolis public schools, for example, has initiated the select schools program, by which parents can choose which IPS school their child will attend. Eighty-six percent of IPS parents participated in this program this year.

I have spoken with educators in a district in Indiana who have already expressed an interest in the program. Some public school educators have met with private and parochial school educators and there is a real interest in testing the concept to see how it works, to work out the bugs, and to see if it would actually make a difference.

None of you should have any reason to oppose this bill. It is not a mandate. It is a purely voluntary program for those local education associations who are interested in broadening the educational opportunities offered in their community. This bill provides a basis by which we in Congress can evaluate the validity of this particular concept. If it results in substantially new opportunities for low-income children, then shouldn't such data be offered to school districts and education agencies across this country? Why would we not want to have this information available so we can make intelligent choices? After all, we are not here to protect a particular system. Our bottom line is to provide the best education opportunities to American children. For far too long, we have denied low-income families the educational choice that many others have.

It is important to understand what this bill does not do. It does not force choice on anyone. This bill presents a purely voluntary program. It will not upset the American public education system. Ten to twenty voluntary choice programs throughout the country will not upset public education.

Furthermore, Federal resources will not be drained from any public school or education system. The Secretary cannot reduce or deny funds that a public school would otherwise be eligible for, even though students in that school or school system opted out or numbers decreased. This bill does not violate civil rights protections. It does not destroy public education. In fact, I think it enhances public education.

My home is Fort Wayne, IN. For decades our education system has thrived on competition. We have a vigorous Catholic school education system in Fort Wayne, IN. We have a Lutheran school system because of our heavy concentration of people of Lutheran belief. They have established their own system.

These two systems exist, along with other private education opportunities, side by side with the public education system in Fort Wayne and they are all thriving. They are thriving because the parents and students of Fort Wayne have a choice. The competition between those three systems has caused each system to better their education program to compete with each other for the students, and they work hand in hand. Parents in Fort Wayne have opportunities which parents in many States and areas do not have.

This bill says that it is time for low-income families to have the same choice concerning their child's school that those who can afford to send their kids to private schools already have. Let's try this limited demonstration project and see if it improves the education of some of America's neediest children.

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. 618

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 "Low-Income School Choice Demonstration Act of 1995".

SEC. 2. PURPOSE.

The purpose of this Act is to determine the effects on students and schools of providing financial assistance to low-income parents to enable such parents to select the public or private schools their children will attend.

SEC. 3. DEFINITIONS.

As used in this Act—

(1) the term "choice school" means any public or private school, including a private sectarian school or a public charter school, that is involved in a demonstration project assisted under this Act;

(2) the term "eligible child" means a child in grades 1 through 12 who is eligible for free or reduced price lunches under the National School Lunch Act;

(3) the term "eligible entity" means a public agency, institution, or organization, such as a State, a State or local educational agency, a consortium of public agencies, or a consortium of public and private nonprofit organizations, that can demonstrate, to the satisfaction of the Secretary, its ability to—

(A) receive, disburse, and account for Federal funds; and

(B) carry out the activities described in its application under this Act;

(4) the term "evaluating agency" means any academic institution, consortium of professionals, or private or nonprofit organization, with demonstrated experience in conducting evaluations, that is not an agency or instrumentality of the Federal Government;

(5) the term "local educational agency" has the same meaning given such term in section 14101 of the Elementary and Secondary Education Act of 1965;

(6) the term "parent" includes a legal guardian or other individual acting in loco parentis;

(7) the term "school" means a school that provides elementary education or secondary education (through grade 12), as determined under State law; and

(8) the term "Secretary" means the Secretary of Education.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $30,000,000 for fiscal year 1996, and such sums as may be necessary for each of the fiscal years 1997 and 1998, to carry out this Act.

SEC. 5. PROGRAM AUTHORIZED.

(a) RESERVATION.—From the amount appropriated pursuant to the authority of section 4 in any fiscal year, the Secretary shall reserve and make available to the Comptroller General of the United States 5 percent for evaluation of programs assisted under this Act in accordance with section 11.

(b) GRANTS.—

(1) IN GENERAL.—From the amount appropriated pursuant to the authority of section 4 and not reserved under subsection (a) for any fiscal year, the Secretary shall award grants to eligible entities to enable such entities to carry out at least 10, but not more than 20, demonstration projects under which low-income parents receive education certificates for the costs of enrolling their eligible children in a choice school.

(2) AMOUNT.—The Secretary shall award grants under paragraph (1) for fiscal year 1996 so that—

(A) not more than 2 grants are awarded in amounts of $5,000,000 or less; and

(B) grants not described in subparagraph (A) are awarded in amounts of $3,000,000 or less.

(3) CONTINUING ELIGIBILITY.—The Secretary shall continue a demonstration project under this Act by awarding a grant under paragraph (1) to an eligible entity that received such a grant for a fiscal year preceding the fiscal year for which the determination is made, if the Secretary determines that such eligible entity was in compliance with this Act for such preceding fiscal year.

(c) USE OF GRANTS.—Grants awarded under subsection (b) shall be used to pay the costs of—

(1) providing education certificates to low-income parents to enable such parents to pay the tuition, the fees, the allowable costs of

transportation, if any, and the costs of complying with section 9(a)(1), if any, for their eligible children to attend a choice school; and

(2) administration of the demonstration project, which shall not exceed 15 percent of the amount received in the first fiscal year for which the eligible entity provides education certificates under this Act or 10 percent in any subsequent year, including—

(A) seeking the involvement of choice schools in the demonstration project;

(B) providing information about the demonstration project, and the schools involved in the demonstration project, to parents of eligible children;

(C) making determinations of eligibility for participation in the demonstration project for eligible children;

(D) selecting students to participate in the demonstration project;

(E) determining the amount of, and issuing, education certificates;

(F) compiling and maintaining such financial and programmatic records as the Secretary may prescribe; and

(G) collecting such information about the effects of the demonstration project as the evaluating agency may need to conduct the evaluation described in section 11.

(d) SPECIAL RULE.—Any school participating in the demonstration program under this Act shall comply with title VI of the Civil Rights Act of 1964 and not discriminate on the basis of race, color, or national origin.

SEC. 6. AUTHORIZED PROJECTS; PRIORITY.

(a) AUTHORIZED PROJECTS.—The Secretary may award a grant under this Act only for a demonstration project that—

(1) involves at least one local educational agency that—

(A) receives funds under section 1124A of the Elementary and Secondary Education Act of 1965; and

(B) is among the 20 percent of local educational agencies receiving funds under section 1124A of such Act in the State and having the highest number of children described in section 1124(c) of such Act; and

(2) includes the involvement of a sufficient number of public and private choice schools, in the judgment of the Secretary, to allow for a valid demonstration project.

(b) PRIORITY.—In awarding grants under this Act, the Secretary shall give priority to demonstration projects—

(1) in which choice schools offer an enrollment opportunity to the broadest range of eligible children;

(2) that involve diverse types of choice schools; and

(3) that will contribute to the geographic diversity of demonstration projects assisted under this Act, including awarding grants for demonstration projects in States that are primarily rural and awarding grants for demonstration projects in States that are primarily urban.

SEC. 7. APPLICATIONS.

(a) IN GENERAL.—Any eligible entity that wishes to receive a grant under this Act shall submit an application to the Secretary at such time and in such manner as the Secretary may prescribe.

(b) CONTENTS.—Each application described in subsection (a) shall contain—

(1) information demonstrating the eligibility for participation in the demonstration program of the eligible entity;

(2) with respect to choice schools—

(A) a description of the standards used by the eligible entity to determine which public and private schools are within a reasonable commuting distance of eligible children and present a reasonable commuting cost for such eligible children;

(B) a description of the types of potential choice schools that will be involved in the demonstration project;

(C)(i) a description of the procedures used to encourage public and private schools to be involved in the demonstration project; and

(ii) a description of how the eligible entity will annually determine the number of spaces available for eligible children in each choice school;

(D) an assurance that each choice school will not impose higher standards for admission or participation in its programs and activities for eligible children provided education certificates under this Act than the choice school does for other children;

(E) an assurance that each choice school operated, for at least 1 year prior to accepting education certificates under this Act, an educational program similar to the educational program for which such choice school will accept such education certificates;

(F) an assurance that the eligible entity will terminate the involvement of any choice school that fails to comply with the conditions of its involvement in the demonstration project; and

(G) a description of the extent to which choice schools will accept education certificates under this Act as full or partial payment for tuition and fees;

(3) with respect to the participation in the demonstration project of eligible children—

(A) a description of the procedures to be used to make a determination of eligibility for participation in the demonstration project for an eligible child, which shall include—

(i) the procedures used to determine eligibility for free or reduced price lunches under the National School Lunch Act; or

(ii) any other procedure, subject to the Secretary's approval, that accurately establishes the eligibility for such participation for an eligible child;

(B) a description of the procedures to be used to ensure that, in selecting eligible children to participate in the demonstration project, the eligible entity will—

(i) apply the same criteria to both public and private school eligible children; and

(ii) give priority to eligible children from the lowest income families;

(C) a description of the procedures to be used to ensure maximum choice of schools for participating eligible children, including procedures to be used when—

(i) the number of parents provided education certificates under this Act who desire to enroll their eligible children in a particular choice school exceeds the number of eligible children that the choice school will accept; and

(ii) grant funds and funds from local sources are insufficient to support the total cost of choices made by parents with education certificates under this Act; and

(D) a description of the procedures to be used to ensure compliance with section 9(a)(1), which may include—

(i) the direct provision of services by a local educational agency; and

(ii) arrangements made by a local educational agency with other service providers;

(4) with respect to the operation of the demonstration project—

(A) a description of the geographic area to be served;

(B) a timetable for carrying out the demonstration project;

(C) a description of the procedures to be used for the issuance and redemption of education certificates under this Act;

(D) a description of the procedures by which a choice school will make a pro rata refund of the education certificate under this Act for any participating eligible child who withdraws from the school for any reason, before completing 75 percent of the school attendance period for which the education certificate was issued;

(E) a description of the procedures to be used to provide the parental notification described in section 10;

(F) an assurance that the eligible entity will place all funds received under this Act into a separate account, and that no other funds will be placed in such account;

(G) an assurance that the eligible entity will provide the Secretary periodic reports on the status of such funds;

(H) an assurance that the eligible entity will cooperate with the Comptroller General of the United States and the evaluating agency in carrying out the evaluations described in section 11; and

(I) an assurance that the eligible entity will—

(i) maintain such records as the Secretary may require; and

(ii) comply with reasonable requests from the Secretary for information; and

(5) such other assurances and information as the Secretary may require.

SEC. 8. EDUCATION CERTIFICATES.

(a) EDUCATION CERTIFICATES.—

(1) AMOUNT.—The amount of an eligible child's education certificate under this Act shall be determined by the eligible entity, but shall be an amount that provides to the recipient of the education certificate the maximum degree of choice in selecting the choice school the eligible child will attend.

(2) CONSIDERATIONS.—

(A) IN GENERAL.—Subject to such regulations as the Secretary shall prescribe, in determining the amount of an education certificate under this Act an eligible entity shall consider—

(i) the additional reasonable costs of transportation directly attributable to the eligible child's participation in the demonstration project; and

(ii) the cost of complying with section 9(a)(1).

(B) SCHOOLS CHARGING TUITION.—If an eligible child participating in a demonstration project under this Act was attending a public or private school that charged tuition for the year preceding the first year of such participation, then in determining the amount of an education certificate for such eligible child under this Act the eligible entity shall consider—

(i) the tuition charged by such school for such eligible child in such preceding year; and

(ii) the amount of the education certificates under this Act that are provided to other eligible children.

(3) SPECIAL RULE.—An eligible entity may provide an education certificate under this Act to the parent of an eligible child who chooses to attend a school that does not charge tuition or fees, to pay the additional reasonable costs of transportation directly attributable to the eligible child's participation in the demonstration project or the cost of complying with section 9(a)(1).

(b) ADJUSTMENT.—The amount of the education certificate for a fiscal year may be adjusted in the second and third years of an eligible child's participation in a demonstration project under this Act to reflect any increase or decrease in the tuition, fees, or

transportation costs directly attributable to that eligible child's continued attendance at a choice school, but shall not be increased for this purpose by more than 10 percent of the amount of the education certificate for the fiscal year preceding the fiscal year for which the determination is made. The amount of the education certificate may also be adjusted in any fiscal year to comply with section 9(a)(1).

(c) MAXIMUM AMOUNT.—Notwithstanding any other provision of this section, the amount of an eligible child's education certificate shall not exceed the per pupil expenditure for elementary or secondary education, as appropriate, by the local educational agency in which the public school to which the eligible child would normally be assigned is located for the fiscal year preceding the fiscal year for which the determination is made.

(d) INCOME.—An education certificate under this Act, and funds provided under the education certificate, shall not be treated as income of the parents for purposes of Federal tax laws or for determining eligibility for any other Federal program.

SEC. 9. EFFECT ON OTHER PROGRAMS; USE OF SCHOOL LUNCH DATA.

(a) EFFECT ON OTHER PROGRAMS.—

(1) IN GENERAL.—An eligible child participating in a demonstration project under this Act, who, in the absence of such a demonstration project, would have received services under part A of title I of the Elementary and Secondary Education Act of 1965 shall be provided such services.

(2) PART B OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT.—Nothing in this Act shall be construed to affect the requirements of part B of the Individuals with Disabilities Education Act.

(b) COUNTING OF ELIGIBLE CHILDREN.—Notwithstanding any other provision of law, any local educational agency participating in a demonstration project under this Act may count eligible children who, in the absence of such a demonstration project, would attend the schools of such agency, for purposes of receiving funds under any program administered by the Secretary.

(c) SPECIAL RULE.—Notwithstanding section 9 of the National School Lunch Act, an eligible entity receiving a grant under this Act may use information collected for the purpose of determining eligibility for free or reduced price lunches to determine an eligible child's eligibility to participate in a demonstration project under this Act and, if needed, to rank families by income, in accordance with section 7(b)(3)(B)(ii). All such information shall otherwise remain confidential, and information pertaining to income may be disclosed only to persons who need that information for the purposes of a demonstration project under this Act.

(d) CONSTRUCTION.—

(1) SECTARIAN INSTITUTIONS.—Nothing in this Act shall be construed to supersede or modify any provision of a State constitution or State law that prohibits the expenditure of public funds in or by sectarian institutions, except that no provision of a State constitution or State law shall be construed to prohibit the expenditure in or by sectarian institutions of any Federal funds provided under this Act.

(2) DESEGREGATION PLANS.—Nothing in this Act shall be construed to interfere with any desegregation plans that involve school attendance areas affected by this Act.

SEC. 10. PARENTAL NOTIFICATION.

Each eligible entity receiving a grant under this Act shall provide timely notice of the demonstration project to parents of eligible children residing in the area to be served by the demonstration project. At a minimum, such notice shall—

(1) describe the demonstration project;

(2) describe the eligibility requirements for participation in the demonstration project;

(3) describe the information needed to make a determination of eligibility for participation in the demonstration project for an eligible child;

(4) describe the selection procedures to be used if the number of eligible children seeking to participate in the demonstration project exceeds the number that can be accommodated in the demonstration project;

(5) provide information about each choice school, including information about any admission requirements or criteria for each choice school participating in the demonstration project; and

(6) include the schedule for parents to apply for their eligible children to participate in the demonstration project.

SEC. 11. EVALUATION.

(a) ANNUAL EVALUATION.—

(1) CONTRACT.—The Comptroller General of the United States shall enter into a contract, with an evaluating agency that has demonstrated experience in conducting evaluations, for the conduct of an ongoing rigorous evaluation of the demonstration program under this Act.

(2) ANNUAL EVALUATION REQUIREMENT.—The contract described in paragraph (1) shall require the evaluating agency entering into such contract to annually evaluate each demonstration project under this Act in accordance with the evaluation criteria described in subsection (b).

(3) TRANSMISSION.—The contract described in paragraph (1) shall require the evaluating agency entering into such contract to transmit to the Comptroller General of the United States—

(A) the findings of each annual evaluation under paragraph (1); and

(B) a copy of each report received pursuant to section 12(a) for the applicable year.

(b) EVALUATION CRITERIA.—The Comptroller General of the United States, in consultation with the Secretary, shall establish minimum criteria for evaluating the demonstration program under this Act. Such criteria shall provide for—

(A) a description of the implementation of each demonstration project under this Act and the demonstration project's effects on all participants, schools, and communities in the demonstration project area, with particular attention given to the effect of parent participation in the life of the school and the level of parental satisfaction with the demonstration program; and

(B) a comparison of the educational achievement of all students in the demonstration project area, including a comparison of—

(i) students receiving education certificates under this Act; and

(ii) students not receiving education certificates under this Act.

SEC. 12. REPORTS.

(a) REPORT BY GRANT RECIPIENT.—Each eligible entity receiving a grant under this Act shall submit to the evaluating agency entering into the contract under section 11(a)(1) an annual report regarding the demonstration project under this Act. Each such report shall be submitted at such time, in such manner, and accompanied by such information, as such evaluating agency may require.

(b) REPORTS BY COMPTROLLER GENERAL.—

(1) ANNUAL REPORTS.—The Comptroller General of the United States shall report annually to the Congress on the findings of the annual evaluation under section 11(a)(2) of each demonstration project under this Act. Each such report shall contain a copy of—

(A) the annual evaluation under section 11(a)(2) of each demonstration project under this Act; and

(B) each report received under subsection (a) for the applicable year.

(2) FINAL REPORT.—The Comptroller General shall submit a final report to the Congress within 9 months after the conclusion of the demonstration program under this Act that summarizes the findings of the annual evaluations conducted pursuant to section 11(a)(2).

Mr. LIEBERMAN. Mr. President, I am very pleased to join Senator COATS today to introduce the Low-Income School Choice Demonstration Act. I know Senator COATS shares my deep commitment to improving education. All of our children deserve and need the best possible academic instruction. Increasing school choice will help give more children the opportunity they deserve.

Our bill authorizes up to 20 demonstration projects to determine the effects on students and schools of providing education vouchers to low-income parents for their children. Parents would use the vouchers to choose the public or private school their child would attend. The demonstration programs will give participating children new opportunities, and will provide those of us seeking to strengthen education with a fair evaluation of private school choice programs.

Education in America is in need of change. We are failing too many of our children. The performance of our kids lags behind that of children living in those countries we compete with in the global marketplace. While we have many fine schools, we have too many that do not give our children what they need to succeed.

I have visited many excellent public schools in Connecticut, and have met countless dedicated and effective teachers and administrators. I commend them for their work and am committed to supporting their efforts. At the same time, it is clear that the public schools are not working for all students, particularly in our poorest communities. We have a responsibility to seek more effective ways to address the needs of these children.

School choice programs expand opportunity for low-income children. They provide low-income children with the same options other kids have. For some that may mean another public school, for others a private or parochial school.

Private school choice opens doors for children in our poorest neighborhoods, where religious schools—particularly Catholic schools—often have had better results than public schools. I have long believed what some research has shown—that the success of parochial schools is in part due to their students' and teachers' shared beliefs and strong

moral values. Lower-income parents who want their kids to learn in a religious environment should have that chance, just as wealthier parents do.

Some fear that school choice programs will hurt our public schools, but I think choice will help revitalize public education. A national panel of experts, the Panel on the Economics of Educational Reform, recently concluded that public schools have few incentives for innovation. Good, effective teachers are often not rewarded by greater pay. Programs are rarely evaluated systematically to see if they are working.

Choice programs and charter school programs hold schools accountable for results. Voucher programs let parents and students reward good schools—public or private schools—with their business. That increased competition may help those students who stay put as well as those who choose to attend a new school.

As a U.S. Senator I have worked to promote public and private school choice. Last year Congress passed legislation, which I had coauthored, to promote the establishment of charter schools—public schools that are freed from burdensome regulatory requirements and are instead held accountable for improving the performance of their students. I am pleased that Congress made a commitment to public school choice, and will work to ensure the new program the rapidly growing interest in charter schools.

This year Senator COATS and I are introducing legislation that establishes demonstration programs that provide parents with the ability to choose private or public schools, including public charter schools and private parochial schools. The demonstrations will allow low-income children to attend the public or private school of their choice. The bill will also fund evaluations so that we can learn more about how voucher programs affect public and private schools, and how they affect our children's ability to learn.

Improving public education is and must be our country's top priority. What we are trying to do is find new ways to accomplish that goal. School choice programs should be tested. They create competition for failing bureaucracies and failing schools. They reward public and private schools that work. And, most important, they give our poorest students the chance for a better education and a better life.

Mr. President, I thank Senator COATS for his leadership on this bill, and I look forward to continuing to work with him to ensure our children have the education and opportunity they deserve.

By Mr. SMITH (for himself, Mr. LAUTENBERG, Mr. FAIRCLOTH, Mr. MCCONNELL, Mr. SIMON, Mr. MACK, Mr. BOND, Mr. GRAHAM, Mr. LIEBERMAN, Mr. WARNER, and Mr. REID):

S. 619. A bill to phase out the use of mercury in batteries and provide for the efficient and cost-effective collection and recycling or proper disposal of used nickel-cadmium batteries, small sealed lead-acid batteries, and certain other batteries, and for other purposes; to the Committee on Environment and Public Works.

THE MERCURY-CONTAINING AND RECHARGEABLE BATTERY MANAGEMENT ACT

Mr. SMITH. Mr. President, today I am introducing the Mercury-Containing and Rechargeable Battery Management Act. I am pleased to be joined by Senators LAUTENBERG, FAIRCLOTH, MCCONNELL, LIEBERMAN, SIMON, MACK, BOND, GRAHAM, WARNER, and REID. This legislation is urgently needed to remove Federal barriers detrimental to much-needed State and local recycling programs for batteries commonly found in cordless products such as portable telephones, laptop computers, tools, and toys.

Since 1992, Federal battery legislation has been approved in various congressional forums, including passage by the Senate in 1994, but it did not become law because the legislation to which it was attached did not move forward. Our bill, which is virtually identical to the Senate-passed provisions last year, would—

First, facilitate the efficient and cost-effective collection and recycling or proper disposal of used nickel-cadmium [Ni-Cd] and certain other batteries by: establishing a coherent national system of labeling for batteries and products; streamlining the regulatory requirements for battery collection programs for regulated batteries; and encouraging voluntary industry programs by eliminating barriers to funding the collection and recycling or proper disposal of used rechargeable batteries; and

Second, phase out the use of mercury in batteries.

Without this legislation, States and industry face Federal barriers to implementing State battery recycling programs across the country. Thirteen States, including New Hampshire, have enacted legislation requiring that Ni-Cd and small-sealed lead-acid batteries be labeled and are easily removable from consumer products. Of these 13 States, 9 have enacted legislation calling for the collection of Ni-Cd and small-sealed lead-acid batteries.

Mr. President, although industry has developed a national collection program to comply with these laws, without enactment of a Federal bill, EPA's current regulatory requirements preclude industry from fully implementing this program and from complying with the State collection requirements. Regulatory changes currently under consideration, even if promulgated, will not provide the necessary solution. Additional lengthy rulemaking procedures would also be necessary to make the regulation operational on a national basis. Further, we would still lack a coherent national system of labeling, which is necessary to facilitate nationwide marketing of batteries and products while advancing a national battery collection program. Federal legislation is the only real solution to removing the barriers to complying with State battery recycling laws, and to achieving a comprehensive recycling program.

The prompt passage of this legislation will achieve a number of important goals. First, by establishing uniform national standards to promote the recycling and reuse of rechargeable batteries, this legislation provides a cost effective means to promote the reuse of our Nation's resources. Second, our bill will further strengthen efforts to remove these potentially toxic heavy metals from our Nation's landfills and incinerators. Not only will this lower the threat of groundwater contamination and toxic air emissions, but it will also significantly reduce the threat that these materials pose to the environment. Third, this legislation represents an environmentally friendly policy choice that was developed as the result of a strong cooperative effort between the States, environmental groups and the affected industries. Our bill is strongly supported by the Electronic Industries Association [EIA], the Portable Rechargeable Battery Association [PRBA], and the National Electrical Manufacturers Association [NEMA]. For all of the reasons cited above, I believe that this legislation provides a substantial win-win from both an environmental as well as an economic standpoint.

Mr. President, I urge my colleagues to cosponsor this important legislation, and ask unanimous consent that a copy of the bill, a section-by-section outline of the bill be printed in the RECORD.

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

S. 619

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 "Mercury-Containing and Rechargeable Battery Management Act".

SEC. 2. FINDINGS.

Congress finds that—

(1) it is in the public interest to—

(A) phase out the use of mercury in batteries and provide for the efficient and cost-effective collection and recycling or proper disposal of used nickel cadmium batteries, small sealed lead-acid batteries, and other regulated batteries; and

(B) educate the public concerning the collection, recycling, and proper disposal of such batteries;

(2) uniform national labeling requirements for regulated batteries, rechargeable consumer products, and product packaging will significantly benefit programs for regulated battery collection and recycling or proper disposal; and

(3) it is in the public interest to encourage persons who use rechargeable batteries to participate in collection for recycling of used nickel-cadmium, small sealed lead-acid, and other regulated batteries.

SEC. 3. DEFINITIONS.

In this Act:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) BUTTON CELL.—The term "button cell" means a button- or coin-shaped battery.

(3) EASILY REMOVABLE.—The term "easily removable", with respect to a battery, means detachable or removable at the end of the life of the battery—

(A) from a consumer product by a consumer with the use of common household tools; or

(B) by a retailer of replacements for a battery used as the principal electrical power source for a vehicle.

(4) MERCURIC-OXIDE BATTERY.—The term "mercuric-oxide battery" means a battery that uses a mercuric-oxide electrode.

(5) RECHARGEABLE BATTERY.—The term "rechargeable battery"—

(A) means 1 or more voltaic or galvanic cells, electrically connected to produce electric energy, that is designed to be recharged for repeated uses; and

(B) includes any type of enclosed device or sealed container consisting of 1 or more such cells, including what is commonly called a battery pack (and in the case of a battery pack, for the purposes of the requirements of easy removability and labeling under section 103, means the battery pack as a whole rather than each component individually); but

(C) does not include—

(i) a lead-acid battery used to start an internal combustion engine or as the principal electrical power source for a vehicle, such as an automobile, a truck, construction equipment, a motorcycle, a garden tractor, a golf cart, a wheelchair, or a boat;

(ii) a lead-acid battery used for load leveling or for storage of electricity generated by an alternative energy source, such as a solar cell or wind-driven generator;

(iii) a battery used as a backup power source for memory or program instruction storage, timekeeping, or any similar purpose that requires uninterrupted electrical power in order to function if the primary energy supply fails or fluctuates momentarily; or

(iv) a rechargeable alkaline battery.

(6) RECHARGEABLE CONSUMER PRODUCT.—The term "rechargeable consumer product"—

(A) means a product that, when sold at retail, includes a regulated battery as a primary energy supply, and that is primarily intended for personal or household use; but

(B) does not include a product that only uses a battery solely as a source of backup power for memory or program instruction storage, timekeeping, or any similar purpose that requires uninterrupted electrical power in order to function if the primary energy supply fails or fluctuates momentarily.

(7) REGULATED BATTERY.—The term "regulated battery" means a rechargeable battery that—

(A) contains a cadmium or a lead electrode or any combination of cadmium and lead electrodes; or

(B) contains other electrode chemistries and is the subject of a determination by the Administrator under section 103(d).

(8) REMANUFACTURED PRODUCT.—The term "remanufactured product" means a rechargeable consumer product that has been altered by the replacement of parts, repackaged, or repaired after initial sale by the original manufacturer.

SEC. 4. INFORMATION DISSEMINATION.

The Administrator shall, in consultation with representatives of rechargeable battery manufacturers, rechargeable consumer product manufacturers, and retailers, establish a program to provide information to the public concerning the proper handling and disposal of used regulated batteries and rechargeable consumer products with nonremovable batteries.

SEC. 5. ENFORCEMENT.

(a) CIVIL PENALTY.—When on the basis of any information the Administrator determines that a person has violated or is in violation of any requirement of this Act, the Administrator—

(1) in the case of a willful violation, may issue an order assessing a civil penalty of not more than $10,000 for each violation and requiring compliance immediately or within a reasonable specified time period, or both; or

(2) in the case of any violation, may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(b) CONTENTS OF ORDER.—An order under subsection (a)(1) shall state with reasonable specificity the nature of the violation.

(c) CONSIDERATIONS.—In assessing a civil penalty under subsection (a)(1), the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(d) FINALITY OF ORDER; REQUEST FOR HEARING.—An order under subsection (a)(1) shall become final unless, not later than 30 days after the order is served, a person named in the order requests a hearing on the record.

(e) HEARING.—On receiving a request under subsection (d), the Administrator shall promptly conduct a hearing on the record.

(f) SUBPOENA POWER.—In connection with any hearing on the record under this section, the Administrator may issue subpoenas for the attendance and testimony of witnesses and for the production of relevant papers, books, and documents.

(g) CONTINUED VIOLATION AFTER EXPIRATION OF PERIOD FOR COMPLIANCE.—If a violator fails to take corrective action within the time specified in an order under subsection (a)(1), the Administrator may assess a civil penalty of not more than $10,000 for the continued noncompliance with the order.

SEC. 6. INFORMATION GATHERING AND ACCESS.

(a) RECORDS AND REPORTS.—A person who is required to carry out the objectives of this Act, including—

(1) a regulated battery manufacturer;

(2) a rechargeable consumer product manufacturer;

(3) a mercury-containing battery manufacturer; and

(4) an authorized agent of a person described in subparagraph (A), (B), or (C),

shall establish and maintain such records and report such information as the Administrator may by regulation reasonably require to carry out the objectives of this Act.

(b) ACCESS AND COPYING.—The Administrator or the Administrator's authorized representative, on presentation of credentials of the Administrator, may at reasonable times have access to and copy any records required to be maintained under subsection (a).

(c) CONFIDENTIALITY.—The Administrator shall maintain the confidentiality of documents and records that contain proprietary information.

SEC. 7. STATE AUTHORITY.

Except as provided in sections 103(e) and 104, nothing in this Act shall be construed to prohibit a State from enacting and enforcing a standard or requirement that is more stringent than a standard or requirement established or promulgated under this Act.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

TITLE I—RECHARGEABLE BATTERY RECYCLING ACT

SEC. 101. SHORT TITLE.

This title may be cited as the "Rechargeable Battery Recycling Act".

SEC. 102. PURPOSE.

The purpose of this title is to facilitate the efficient recycling or proper disposal of used nickel-cadmium rechargeable batteries, used small sealed lead-acid rechargeable batteries, other regulated batteries, and such rechargeable batteries in used consumer products, by—

(1) providing for uniform labeling requirements and streamlined regulatory requirements for regulated battery collection programs; and

(2) encouraging voluntary industry programs by eliminating barriers to funding the collection and recycling or proper disposal of used rechargeable batteries.

SEC. 103. RECHARGEABLE CONSUMER PRODUCTS AND LABELING.

(a) PROHIBITION.—

(1) IN GENERAL.—No person shall sell for use in the United States a regulated battery that is ready for retail sale or a rechargeable consumer product that is ready for retail sale, which was manufactured on or after the date that is 12 months after the date of enactment of this Act, unless—

(A) in the case of a regulated battery, the regulated battery—

(i) is easily removable from the rechargeable consumer product; or

(ii) is sold separately; and

(B) in the case of a regulated battery or rechargeable consumer product, the labeling requirements of subsection (b) are met.

(2) APPLICATION.—Paragraph (1) does not apply to a sale of—

(A) a remanufactured product unit unless paragraph (1) applied to the sale of the unit when originally manufactured; or

(B) a product unit intended for export purposes only.

(b) LABELING.—Each regulated battery or rechargeable consumer product without an easily removable battery manufactured on or after the date that is 1 year after the date of enactment of this Act, whether produced domestically or imported, shall be labeled with—

(1)(A) 3 chasing arrows or a comparable recycling symbol;

(B)(i) on each nickel-cadmium battery, the chemical name or the abbreviation "Ni-Cd"; and

(ii) on each lead-acid battery, "Pb" or the words "LEAD", "RETURN", and "RECYCLE";

(C) on each nickel-cadmium regulated battery, the phrase "BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY."; and

(D) on each sealed lead acid regulated battery, the phrase "BATTERY MUST BE RECYCLED.";

(2) on each rechargeable consumer product containing a regulated battery that is not easily removable, the phrase "CONTAINS NICKEL-CADMIUM BATTERY. BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY." or "CONTAINS SEALED LEAD BATTERY. BATTERY MUST BE RECYCLED.", as applicable; and

(3) on the packaging of each rechargeable consumer product, and the packaging of each regulated battery sold separately from such a product, unless the required label is clearly visible through the packaging, the phrase "CONTAINS NICKEL-CADMIUM BATTERY. BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY." or "CONTAINS SEALED LEAD BATTERY. BATTERY MUST BE RECYCLED.", as applicable.

(c) EXISTING OR ALTERNATIVE LABELING.—

(1) INITIAL PERIOD.—For a period of 2 years after the date of enactment of this Act, regulated batteries, rechargeable consumer products containing regulated batteries, and rechargeable consumer product packages that are labeled in substantial compliance with subsection (b) shall be deemed to comply with the labeling requirements of subsection (b).

(2) CERTIFICATION.—

(A) IN GENERAL.—On application by persons subject to the labeling requirements of subsection (b) or the labeling requirements promulgated by the Administrator under subsection (d), the Administrator shall certify that a different label meets the requirements of subsection (b) or (d), respectively, if the different label—

(i) conveys the same information as the label required under subsection (b) or (d), respectively; or

(ii) conforms with a recognized international standard that is consistent with the overall purposes of this title.

(B) CONSTRUCTIVE CERTIFICATION.—Failure of the Administrator to object to an application under subparagraph (A) on the ground that a different label does not meet either of the conditions described in subparagraph (A)(i) or (ii) within 120 days after the date on which the application is made shall constitute certification for the purposes of this Act.

(d) RULEMAKING AUTHORITY OF THE ADMINISTRATOR.—

(1) IN GENERAL.—If the Administrator determines that other rechargeable batteries having electrode chemistries different from regulated batteries are toxic and may cause substantial harm to human health and the environment if discarded into the solid waste stream for land disposal or incineration, the Administrator may, with the advice and counsel of State regulatory authorities and manufacturers of rechargeable batteries and rechargeable consumer products, and after public comment—

(A) promulgate labeling requirements for the batteries with different electrode chemistries, rechargeable consumer products containing such batteries that are not easily removable batteries, and packaging for the batteries and products; and

(B) promulgate requirements for easy removability of regulated batteries from rechargeable consumer products designed to contain such batteries.

(2) SUBSTANTIAL SIMILARITY.—The regulations promulgated under paragraph (1) shall be substantially similar to the requirements set forth in subsections (a) and (b).

(e) UNIFORMITY.—After the effective dates of a requirement set forth in subsection (a), (b), or (c) or a regulation promulgated by the Administrator under subsection (d), no Federal agency, State, or political subdivision of a State may enforce any easy removability or environmental labeling requirement for a rechargeable battery or rechargeable consumer product that is not identical to the requirement or regulation.

(f) EXEMPTIONS.—

(1) IN GENERAL.—With respect to any rechargeable consumer product, any person may submit an application to the Administrator for an exemption from the requirements of subsection (a) in accordance with the procedures under paragraph (2). The application shall include the following information:

(A) A statement of the specific basis for the request for the exemption.

(B) The name, business address, and telephone number of the applicant.

(2) GRANTING OF EXEMPTION.—Not later than 60 days after receipt of an application under paragraph (1), the Administrator shall approve or deny the application. On approval of the application the Administrator shall grant an exemption to the applicant. The exemption shall be issued for a period of time that the Administrator determines to be appropriate, except that the period shall not exceed 2 years. The Administrator shall grant an exemption on the basis of evidence supplied to the Administrator that the manufacturer has been unable to commence manufacturing the rechargeable consumer product in compliance with the requirements of this section and with an equivalent level of product performance without the product—

(A) posing a threat to human health, safety, or the environment; or

(B) violating requirements for approvals from governmental agencies or widely recognized private standard-setting organizations (including Underwriters Laboratories).

(3) RENEWAL OF EXEMPTION.—A person granted an exemption under paragraph (2) may apply for a renewal of the exemption in accordance with the requirements and procedures described in paragraphs (1) and (2). The Administrator may grant a renewal of such an exemption for a period of not more than 2 years after the date of the granting of the renewal.

SEC. 104. REQUIREMENTS.

For the purposes of carrying out the collection, storage, transportation, and recycling or proper disposal of used rechargeable batteries, batteries described in section 3(3)(C) or in title II, and used rechargeable consumer products containing rechargeable batteries that are not easily removable rechargeable batteries, persons involved in collecting, storing, or transporting such batteries or products to a facility for recycling or proper disposal shall, notwithstanding any other law, be regulated in the same manner and with the same limitations as if the persons were collecting, storing, or transporting batteries subject to subpart G of part 266 of title 40, Code of Federal Regulations, as in effect on January 1, 1993, except that sections 264.76, 265.76, and 268.7 of that title shall not apply.

SEC. 105. COOPERATIVE EFFORTS.

Notwithstanding any other law, if 2 or more persons who participate in projects or programs to collect and properly manage used rechargeable batteries or products powered by rechargeable batteries advise the Administrator of their intent, the persons may agree to develop jointly, or to share in the costs of participating in, such a project or program and to examine and rely on such cost information as is collected during the project or program.

TITLE II—MERCURY-CONTAINING BATTERY MANAGEMENT ACT

SEC. 201. SHORT TITLE.

This title may be cited as the "Mercury-Containing Battery Management Act".

SEC. 202. PURPOSE.

The purpose of this title is to phase out the use of batteries containing mercury.

SEC. 203. LIMITATIONS ON THE SALE OF ALKALINE-MANGANESE BATTERIES CONTAINING MERCURY.

No person shall sell, offer for sale, or offer for promotional purposes any alkaline-manganese battery manufactured on or after January 1, 1996, with a mercury content that was intentionally introduced (as distinguished from mercury that may be incidentally present in other materials), except that the limitation on mercury content in alkaline-manganese button cells shall be 25 milligrams of mercury per button cell.

SEC. 204. LIMITATIONS ON THE SALE OF ZINC-CARBON BATTERIES CONTAINING MERCURY.

No person shall sell, offer for sale, or offer for promotional purposes any zinc-carbon battery manufactured on or after January 1, 1996, that contains mercury that was intentionally introduced as described in section 203.

SEC. 205. LIMITATIONS ON THE SALE OF BUTTON CELL MERCURIC-OXIDE BATTERIES.

No person shall sell, offer for sale, or offer for promotional purposes any button cell mercuric-oxide battery for use in the United States on or after January 1, 1996.

SEC. 206. LIMITATIONS ON THE SALE OF OTHER MERCURIC-OXIDE BATTERIES.

(a) PROHIBITION.—On or after January 1, 1996, no person shall sell, offer for sale, or offer for promotional purposes a mercuric oxide battery for use in the United States unless the battery manufacturer—

(1) identifies a collection site that has all required Federal, State, and local government approvals, to which persons may send used mercuric-oxide batteries for recycling or proper disposal;

(2) informs each of its purchasers of mercuric-oxide batteries of the collection site identified under paragraph (1); and

(3) informs each of its purchasers of mercuric-oxide batteries of a telephone number that the purchaser may call to get information about sending mercuric-oxide batteries for recycling or proper disposal.

(b) APPLICATION OF SECTION.—This section does not apply to a sale or offer of a mercuric oxide button cell battery.

SEC. 207. NEW PRODUCT OR USE.

On petition of a person that proposes a new use for a battery technology described in this title or the use of a battery described in this title in a new product, the Administrator may exempt from this title the new use of the technology or use of battery in the new product on the condition, if appropriate, that there exist reasonable safeguards to ensure that the resulting battery or product without an easily removable battery will not be disposed of in an incinerator, composting facility, or landfill (other than a facility regulated under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6291 et seq.).

THE MERCURY-CONTAINING AND RECHARGEABLE BATTERY MANAGEMENT ACT—BILL SUMMARY (SECTION BY SECTION)

Sec. 1. Short Title

The "Mercury-Containing and Rechargeable Battery Management Act."

Sec. 2. Congressional Findings

This section finds that it is in the public interest to phase out the use of mercury in

batteries and provide for efficient and cost effective collection and recycling or proper disposal of certain batteries; that uniform national labeling of certain batteries will significantly benefit recycling programs; and that battery recycling programs are to be encouraged.

Sec. 3. Definitions

Provides standard definitions for battery-related terms such as easily removable battery, rechargeable battery, rechargeable consumer product, regulated battery, and remanufactured product.

Sec. 4. Information Dissemination

Requires the Administrator to provide information to the public on proper handling and disposal of used batteries.

Sec. 5. Enforcement

Gives the Administrator the enforcement authority found in RCRA, and provides for fines not to exceed $10,000 for willful violations.

Sec. 6. Information Gathering and Access

Provides recordkeeping requirements for those subject to the Act, and gives the Administrator information gathering authority on battery collection and recycling.

Sec. 7. State Authority

Preserves State authority to enact and enforce standards or requirements more stringent than a standard or requirement established or promulgated under this Act, except as provided in sections 103(e) and 104.

Sec. 8. Authorization

Funds necessary to implement the requirements of this Act are authorized to be appropriated.

TITLE I. RECHARGEABLE BATTERY RECYCLING ACT

Sec. 101. Short Title

This Title may be cited as the "Rechargeable Battery Recycling Act."

Sec. 102. Purpose

The purpose of this Title is to facilitate the efficient recycling of used nickel-cadmium rechargeable batteries, used small sealed lead-acid rechargeable batteries, and such rechargeable batteries in used consumer products, through uniform labeling requirements, streamlined regulatory requirements for regulated battery collection programs, and voluntary industry programs by eliminating barriers to funding the collection and recycling or proper disposal of used rechargeable batteries.

Sec. 103. Rechargeable Consumer Products and Labeling

Twelve months after enactment of this Act, batteries and battery packs containing nickel-cadmium or small sealed lead-acid batteries must be easily removable from rechargeable consumer products, and must have specific labeling. The EPA Administrator may promulgate similar regulations for batteries with other electrode chemistries, and shall modify the required labeling to conform with recognized international standards (e.g., labeling standards adopted under NAFTA, GATT, or international standards organizations). These labeling standards would be imposed on batteries nationwide. Upon petition the EPA Administrator can grant a 2-year exemption from the easy removability requirements.

Sec. 104. Requirements

Batteries collected for recycling or proper disposal under the Act will be subject to the same requirements as lead-acid batteries are at present.

Sec. 105. Cooperative Efforts

Two or more persons who participate in projects or programs under this Act may inform the EPA Administrator of their intent to develop jointly or share in the costs of such a program, and may examine and rely upon cost information collected by the program.

TITLE II. MERCURY CONTAINING BATTERY MANAGEMENT ACT

Sec. 201. Short Title

This Title may be cited as the "Mercury-Containing Battery Management Act."

Sec. 202. Purpose

The purpose of this Title is to phase out the use of batteries containing mercury.

Sec. 203. Limitations on the Sale of Alkaline-Manganese Batteries Containing Mercury

No person shall sell, offer for sale, or offer for promotional purposes any alkaline-manganese battery manufactured on or after January 1, 1996, with a mercury content that was intentionally introduced (as distinguished from mercury which may be incidentally present in other materials), except that the limitation on mercury content in alkaline-manganese button cells shall be 25 milligrams of mercury per button cell.

Sec. 204. Limitations on the Sale of Zinc Carbon Batteries Containing Mercury

No person shall sell, offer for sale, or offer for promotional purposes any zinc carbon battery manufactured on or after January 1, 1996, that contains any mercury that was intentionally introduced.

Sec. 205. Limitations on the Sale of Button Cell Mercuric-Oxide Batteries

No person shall sell, offer for sale, or offer for promotional purposes in the United States any button cell mercuric-oxide battery on or after January 1, 1996.

Sec. 206. Limitations on the Sale of Other Mercuric-Oxide Batteries

On or after January 1, 1996, no person shall sell, offer for sale, or offer for promotional purposes, non-button cell mercuric-oxide batteries for use in the United States unless the battery manufacturer 1) identifies a collection site that has all required government approvals, to which persons may send used mercuric-oxide batteries for recycling or proper disposal; and, 2) informs each of its purchasers of such batteries of such identified collection site; and 3) informs each of its purchasers of such batteries of a telephone number that the purchaser may call to get information about sending mercuric-oxide batteries for recycling or proper disposal. This section does not apply to mercuric-oxide button cell batteries.

Sec. 207. New Product or Use

Allows persons proposing a new use for battery technology covered by this title or the use of any such battery in a new product to petition the Administrator for an exemption from this title. The Administrator may grant such an exemption, and, if appropriate, require that reasonable safeguards exist to assure that such batteries will not be disposed of in incinerators, composting facilities, or landfills (other than a RCRA-regulated facility).

By Mr. CRAIG (for himself and Mr. DOMENICI):

S. 620. A bill to direct the Secretary of the Interior to convey, upon request, certain property in Federal reclamation projects to beneficiaries of the projects and to set forth a distribution scheme for revenues from reclamation project lands; to the Committee on Energy and Natural Resources.

RECLAMATION FACILITIES TRANSFER ACT

Mr. CRAIG. Mr. President, I am today introducing legislation that would direct the Secretary of the Interior to transfer the Federal interest in certain Bureau of Reclamation projects to the project beneficiaries. This legislation has already been introduced in the other body by Congressman SKEEN.

I am introducing the identical legislative language in order to frame what I believe will be an interesting debate. The reclamation program was intended to assist in the settlement of the West, and it has been extraordinarily successful in that endeavour. There are many instances, throughout the West, where the objectives of individual projects have been fully accomplished. The project works have been constructed and the allocable repayment obligations have been satisfied. Operation and maintenance of the projects have been turned over to the project beneficiaries and the Federal Government simply holds bare legal title with little or no involvement with the project.

Those seem to me to be classic examples of the type of projects that should be fully turned over to the beneficiaries. The Federal Government incurs annual costs and is exposed to out-year liabilities for no other reason than it holds title to certain works. Given the downsizing of the Bureau of Reclamation, it seems all the more sensible that the Bureau conserve its personnel and resources. Just to have one person available for a project on which the Federal Government does nothing probably costs over $100,000. Given the needs elsewhere within the Department, each of those personnel could be better used.

I do not want anyone to think that this legislation is a final product, but it does serve to frame the debate. Many of our reclamation projects are multiple purpose, and we will need to be careful to ensure that we do not lose sight of those other objectives. Many projects provide important flood control and navigation benefits that are of national interest. That does not argue against a transfer of title, but it is a concern that we should be aware of. A very important consideration, at least to this Senator, will be the issue of the transfer of the water rights associated with the project. Luckily, we do not have to face the issue of Federal reserved water rights since under reclamation law, the Bureau has obtained water rights from the States in conformity with State water law for all its projects. We will, however, need to be careful to make certain that title to those rights is transferred to the appropriate entities or individuals and that the transfer is in conformity with State water law.

There are many other considerations as well, and I do not intend to be exhaustive in this statement but one item deserves mention. We dealt with some of those issues when we considered the transfer of the Solano project several years ago, and our inability to fully resolve all those issues, including the recreational responsibilities of the Bureau at Lake Berryessa, was the reason why we were unable to enact legislation. As drafted, this legislation only applies to fully paid-out projects. In particular instances, I think a case could be made to permit prepayment of the outstanding indebtedness much as we have done for other reclamation loans. That is another issue we will have to closely examine.

I want to congratulate Congressman SKEEN and his cosponsors for raising this issue. All of us in the West, and some from outside the West, have questioned from time to time, the future of the Bureau of Reclamation. Congressman SKEEN has proposed one answer for many projects. I fully expect that we may even find agreement within the Department of the Interior that on some projects there simply is no further role for the Federal Government. I do not expect that we will have a complete transfer of all projects, but that should not stop us from looking at the question. A fully paid out single purpose project located solely within one State will be the easy transfer. I hope we do not limit our vision that narrowly.

By Mr. BENNETT (for himself, Mr. CAMPBELL, Mr. BROWN, Mr. JEFFORDS, Mr. STEVENS, and Mr. HATCH):

S. 621. A bill to amend the National Trails System Act to designate the Great Western Trail for potential addition to the National Trails System, and for other purposes.

GREAT WESTERN TRAIL STUDY ACT

Mr. BENNETT. Mr. President, today I am introducing a bill which would direct the U.S. Forest Service, in consultation with the Department of the Interior, to study the Great Western Trail to determine if it should be included in the National Scenic Trails System.

The Great Western Trail takes in some of the greatest outdoor and natural opportunities the West has to offer. The trail will be a continuous, multiple-use route that reaches from Mexico to Canada. It encompasses a series of existing trails, mostly on public lands, running through a corridor which extends through five States. The trail itself extends from the panhandle of Idaho to the southern tip of Arizona. Along the 2,400 mile length of the trail are numerous recreational opportunities for all interests, from cross-country skiers to backpackers, hikers, and off-road enthusiasts. The trail passes through areas rich in western heritage as well as some of the most spectacular scenery in the world.

Prior to designating the Great Western Trail as part of the National Trails System, a study must be conducted to determine its feasibility. This bill take the first step by instructing the Secretary of Agriculture, in consultation with the Secretary of Interior, to conduct a study of the current land ownership and use along the designated trail route. The study would include cost estimates of any necessary land acquisition as well as reporting on the appropriateness of including motorized activity along the trail route. Since the proposed trail route follows roads and trails already in existence, very little right-of-way acquisition would be required and minimal construction would be necessary.

This study will play an important role by determining land and resource capability, public safety needs, and the administrative requirements necessary to designate the trail as part of the National Trails System. It is also important to note that the trail takes advantage of and will rely heavily upon volunteer construction, maintenance, and management of the trail system.

Communities throughout the West will benefit tremendously from the Great Western Trail. The recreational opportunities and rural economic development that travel and tourism will bring to the region will not only provide an economic boost to the local economies, but will help those who travel the Great Western Trail to gain a greater appreciation for our Nation's heritage. The Great Western Trail will provide a positive experience for those who use it. It will become a significant and vital addition to America's system of national trails.

By Mr. LEVIN (for himself and Mr. ABRAHAM):

S. 622. A bill to amend the Clean Air Act to provide that a State containing an ozone nonattainment area that does not significantly contribute to ozone nonattainment in its own area or any other area shall be treated as satisfying certain requirements if the State makes certain submissions, and for other purposes; to the Committee on Environment and Public Works.

CLEAN AIR ACT OZONE TRANSPORT PROVISIONS AMENDMENT ACT

Mr. LEVIN. Mr. President, the bill that Senator ABRAHAM and I are introducing today is intended to help correct a significant flaw in the Clean Air Act. This flaw plagues communities in west Michigan, and affects many other areas of the country that are downwind from significant sources of ozone-causing emissions.

As it is written, the act is unfair. It does not equitably distribute the burden of reducing ozone emissions. Some areas, like west Michigan, could be required to undertake vehicle inspection and maintenance testing programs, although these programs will not be effective in reducing the local concentrations of ozone because their ozone is being transported by wind and weather from other States and parts of the country.

Let me explain the west Michigan situation, the outlook for which has changed significantly in recent weeks. Three west Michigan counties are currently designated as two separate moderate ozone nonattainment areas by the EPA pursuant to the Clean Air Act; Kent and Ottawa Counties are one, and Muskegon County is the other. Because of their classification as moderate ozone nonattainment areas, the State of Michigan was required by law to pass legislation imposing mandatory vehicle inspection and maintenance testing in these two areas starting in January 1995. This requirement would have made sense were these three counties the cause of either their own nonattainment or the nonattainment of other areas. But they aren't. Governor Engler recognized this inequity and halted the I/M program in late December 1994.

EPA has acknowledged that the three counties "are essentially overwhelmed by emissions coming from Chicago and northern Indiana." In a June 20, 1994, letter to the Michigan department of natural resources, EPA Administrator Carol Browner said, ". . . the USEPA recognizes that ozone transport may make it very difficult, if not impossible, for Muskegon and Grand Rapids, themselves, to achieve the NAAQS (National Ambient Air Quality Standards) for ozone by deadlines prescribed by the CAA (Clean Air Act)."

In a hearing held on Monday, July 25, 1994, before my Subcommittee on Oversight of Government Management, EPA acknowledged "that Muskegon County would be in attainment but for ozone transport." EPA also confirmed that Muskegon and Grand Rapids "are not the cause of Chicago and northern Indiana being in nonattainment . . ." In fact, EPA has not shown that any area is in nonattainment due to west Michigan's emissions. The Lake Michigan ozone study director states, ". . . that no matter what reductions are made in Michigan, the air quality will not be affected."

In short, these three counties are not the cause of their own or any other area's ozone problem and no matter what these counties do for themselves, it is unlikely that they will be able to achieve and stay in attainment. Because of ozone blown their way and their resultant classification as moderate nonattainment areas, they could be forced to implement a burdensome vehicle inspection program that would not make a significant difference. As

stated succinctly in the Senate Environment Committee's report to accompany S. 1630, the Clean Air Act Amendments of 1989, "Because ozone is not a local phenomenon but is formed and transported over hundreds of miles and several days, localized control strategies will not be effective in reducing ozone levels." Unfortunately, this sentiment did not translate into the act's requirements and implementation. The inflexibility and inequity of the localized mandate undermines public support for the Clean Air Act and environmental laws—in an area of the country that is generally supportive of both.

Fortunately, the last 3 years of ozone monitoring data in the west Michigan area show no violations of the Federal ozone standard for the area, according to an expedited review that I requested of EPA. This means that Michigan can apply for redesignation to attainment, and Administrator Browner has indicated that that process is very "doable." But, once attainment has been achieved, it is possible that only one violation could force west Michigan to return to the I/M requirements. Though EPA has stated that the Agency would seek to avoid this outcome and would carefully examine the violation to determine whether it was caused by local or transported ozone before returning to those requirements, I believe that it would be best to correct the law before such circumstances arise. This bill is a step toward fixing it.

At the hearing mentioned previously, I asked Mary Nichols, Assistant Administrator for Air, if these three counties were treated in the same way rural areas are treated, would they qualify for an exemption from the Clean Air Act requirements. Ms. Nichols replied, "I believe that is correct." She is right. That is at the heart of the unfairness of the Clean Air Act. The legislation we are offering specifically addresses that unfairness. Whether such an area is rural or nonrural should not make any difference, if the area is not a significant cause of its own or any other area's nonattainment. It is the emissions from an area and not the number of people that live in an area that should matter.

This bill applies that principle and eliminates the illogical disparate treatment between rural and nonrural areas. EPA would be required to treat any ozone nonattainment area as a marginal ozone nonattainment area, if the State demonstrates to EPA that sources of ozone-causing emissions in that area do not make a significant contribution to ozone nonattainment measured in the area or in other areas. So, rather than arbitrarily denying the regulatory relief to a metropolitan statistical area, or an adjacent area, which is currently available to a rural transport area, the act's standards would apply equally to rural and nonrural areas. As a result, the burden would be placed more squarely on the shoulders of the "significant contributors," rather than the victims of transport. This is only fair.

Clearly, we may need to refine this legislation further or make the legislative history clear so that the definition of "significant contribution" is not subject to excessively narrow interpretation by an EPA Administrator and so that we can ensure protection for the west Michigan area from the unfair burdens associated with transported pollution. But, we also want to make sure that other areas who need to be reducing their emissions because they are transporting pollution elsewhere don't get off the hook. I know that the State of Michigan has the data to prove that west Michigan deserves relief under this bill, but we will work with the State, EPA, and the relevant congressional committees to insure that this legislative effort does not have unintended consequences.

After repeated urgings by myself and others, the EPA has issued a new ozone transport policy. Under the previous policy the west Michigan nonattainment areas would have been required by 1996 to meet clean air standards which they could not meet because of pollution carried by the winds from outside areas such as Chicago, areas with severe air pollution problems. The old policy was particularly unfair, since, under the law, these other more polluted areas do not need to meet the requirements themselves until the year 2007.

The EPA has informed me that the states will be permitted to present an analysis demonstrating the problem and that EPA will consider granting an extension of the 1996 deadline, possibly until 2007. This new policy should avoid further unfairness, as additional requirements could have been placed, in 1996, on the west Michigan area, triggered by pollution which is not generated in the local area.

While I appreciate EPA's efforts in providing this extension, the new policy was, according to Administrator Browner, to have held "areas responsible only for that portion of the ozone problem which they cause." However, this new policy only corrects one inequity in the act, to wit, the fact that downwind areas suffering from significant ozone and other pollution transported from more severely polluted areas have less time to achieve attainment. The change in attainment deadlines does not address the problem of areas inappropriately designated in the first place.

Mr. President, there appear to be a number of other States that contain victim of transport areas in situations similar to west Michigan. I am sure that my colleagues in New England, for instance, have been noticing a significant increase in public attention to the vehicle testing requirements. It will be argued that we should not reopen the Clean Air Act. But, we cannot permit an unfair regulatory burden to fall upon our constituents to correct a problem which they did not cause and which the regulatory requirements cannot cure. We should right that wrong.

Mr. President, I support the goals of the Clean Air Act. But, it needs to be applied with common sense, if it is to retain the support of the American people. Without that support, it cannot succeed.

By Mr. SPECTER (for himself and Mr. HATCH):

S. 623. A bill to reform habeas corpus procedures, and for other purposes; to the Committee on the Judiciary.

THE FEDERAL HABEAS CORPUS REFORM ACT

Mr. SPECTER. Mr. President, the American people want government to do something about violent crime. Unfortunately, the crime bill that passed last year in the 103d Congress did nothing about one of the most serious aspects of the crime problem: the interminable appeals process that has made the death penalty more a hollow threat than an effective deterrent.

The crime bill abandoned key provisions which would have limited appeals in the Federal courts by State death row inmates. These appeals currently average more than 9 years and last as long as 17 years. Of all people sentenced to death since 1976, 266 have been executed, while over 2,900 sit in death row cells. Is it any wonder that in 1963, when the imposition of the death penalty was a real possibility that criminals had to worry about, there were 8,500 homicides in America, a rate of 4.5 homicides per 100,000 people; while in 1993 there were 23,760 homicides, and a more than doubled homicide rate of 9.3 per 100,000. The legal system has turned the death penalty into a toothless saw.

National polls continue to show fear of crime to be the No. 1 concern of most Americans. One survey conducted right after President Clinton's State of the Union Address last year found 71 percent thought more murders should be punishable by the death penalty. My own 12 years of experience in the Philadelphia District Attorney's office, first as an assistant district attorney and chief of the appeals division and later as district attorney, convinces me they are right.

The great writ of habeas corpus has been the procedure used to guarantee defendants in State criminal trials their rights under the U.S. Constitution. It is an indispensable safeguard because of the documented history of State criminal-court abuses such as the Scottsboro case. Unfortunately, it has been applied in a crazy-quilt manner with virtually endless appeals that deny justice to victims and defendants

alike, making a mockery of the judicial system.

The best way to stop this mockery is to impose strict time limits on appeals. The bill I am introducing today, along with my distinguished colleague and the Chairman of the Judiciary Committee, Senator HATCH, will do just that.

Criminal justice experts agree that for any penalty to be effective as a deterrent, the penalty must be swift and certain. When years pass between the time a crime is committed and a sentence is carried out, the vital link between crime and punishment is stretched so thin that the deterrent message is lost.

Delays leave inmates, as well as victims, in a difficult state of suspended animation. In a 1989 case, the British Government declined to extradite a defendant to Virginia on murder charges until the local prosecutor promised not to seek the death penalty because the European Court of Human Rights had ruled that confinement in a Virginia prison for 6 to 8 years awaiting execution would violate the European Convention on Human Rights.

Similarly, for survivors of murder victims, there is an inability to reach a sense of resolution about their loved one's death until the criminal case has been resolved. The families do not understand the complexities of the legal process and suffer feelings of isolation, anger, and loss of control over the lengthy court proceedings. The unconscionable delays deny justice to all—society, victims, and defendants.

Since upholding the constitutionality of the death penalty in 1976, the U.S. Supreme Court has required more clearly defined death penalty laws. Thirty-eight States have responded to voters' expressions of public outrage by enacting capital punishment statutes that meet the requirements of the Constitution.

My 12 years experience in the Philadelphia District Attorney's office convinced me that the death penalty deters crime. I saw many cases where professional burglars and robbers refused to carry weapons for fear that a killing would occur and they would be charged with first-degree murder, carrying the death penalty.

One such case involved three hoodlums who planned to rob a Philadelphia pharmacist. Cater, 19, and Rivers, 18, saw that their partner Williams, 20, was carrying a revolver. The two younger men said they would not participate if Williams took the revolver along, so Williams placed the gun in a drawer and slammed it shut.

Right as the three men were leaving the room, Williams sneaked the revolver back into his pocket. In the course of the robbery, Williams shot and killed pharmacist Jacob Viner. The details of the crime emerged from the confessions of the three defendants and corroborating evidence. All three men were sentenced to death because, under the law, Cater and Rivers were equally responsible for Williams's act of murder.

Ultimately, Williams was executed and the death sentences for Cater and Rivers were changed to life imprisonment because of extenuating circumstances, because they did not know their co-conspirator was carrying a weapon. There are many similar cases where robbers and burglars avoid carrying weapons for fear a gun or knife will be used in a murder, subjecting them to the death penalty.

The use of the death penalty has gradually been limited by the courts and legislatures to apply only to the most outrageous cases. In 1925, the Pennsylvania Legislature repealed the mandatory death penalty for first-degree murder, leaving it to the discretion of the jury or trial court. More recently, in 1972, the Supreme Court struck down all State and Federal death penalty laws and prohibited capital punishment for all inmates on death row, or future executions, unless thereafter they contained detailed procedures for considering aggravating and mitigating circumstances.

Prosecutors customarily refrain from asking for the death penalty for all but the most heinous crimes. I did that when I was a district attorney, personally reviewing the cases where capital punishment was requested.

While the changes required by the Supreme Court help insure justice to defendants, there is a sense that capital punishment can be retained only if applied to outrageous cases. I agree with advocates who insist on the greatest degree of care in the use of capital punishment. I have voted for limitations to exclude the death penalty for the mentally impaired and the very young. However, I oppose those who search for every possible excuse to avoid the death penalty because they oppose it on the grounds of conscientious scruples.

While I understand and respect that moral opposition, our system of government says the people of the 38 States that have capital punishment are entitled to have those sentences carried out where they have been constitutionally imposed. In those jurisdictions, the debate is over until the statutes are repealed or the Constitution reinterpreted.

Many Federal habeas corpus appeals degenerate into virtually endless delays, where judges bounce capital cases like tennis balls from one court to another, exacerbated by repetitive petitions. Here is an example, Mr. President: After being convicted in California for a double murder in 1980, Robert Alton Harris filed 10 petitions for habeas corpus review in the State courts, 5 similar petitions in the Federal courts, and 11 applications to the U.S. Supreme Court. Many of those applications to invalidate the death penalty overlapped.

Habeas corpus reform is not a new issue in the Senate. In 1984, the Senate first passed a habeas corpus reform measure, but the House failed to consider it. In 1990, during the 101st Congress, I offered my first legislation to speed up and simplify Federal habeas corpus procedures in capital cases. That year, the Senate adopted the amendment that Senator THURMOND and I wrote to the omnibus anticrime bill that would have reformed habeas corpus procedures in death penalty cases. Unfortunately, at the insistence of the House conferees, our provision was dropped from the conference report.

Habeas corpus reform was revisited in the 102d Congress. Portions of my proposal, S. 19, were incorporated into the Republican habeas corpus reform package, which again became part of the Senate's omnibus anticrime legislation. This time, the conference committee on the Senate and House anticrime bills kept a habeas corpus reform provision in the conference report, but it was the House version. As reported by the conference committee, that version would have exacerbated the delay, not eased it. Despite late efforts at a compromise, habeas reform died with that crime bill.

Again in the 103d Congress, I introduced habeas corpus reform legislation. In 1993, when the new omnibus anticrime bill was being debated in the Senate, all habeas corpus reform provisions were stripped from the bill. I was dismayed. Even as the Senate was voting to establish a broad Federal death penalty, it was refusing to address the compelling need to expedite review of the death sentences once imposed.

When I demanded that the issue of habeas corpus reform be addressed by the Senate, I was given the opportunity to bring my bill to the floor for debate. Unfortunately, the legislation I introduced to eliminate the delays in carrying out death sentences was tabled by a vote of 65 to 34.

Which brings us to today, Mr. President. My new proposal, the Federal Habeas Corpus Reform Act of 1995, sets strict time limits on the filing of habeas corpus petitions and severely restricts the filing of any successive petition. It requires that the appropriate Federal court of appeals approve the filing of any successive petition. It ensures adequate counsel in habeas corpus proceedings. It imposes time limits on Federal judges to decide habeas corpus petitions in capital cases. And it does this so that imposition of the death penalty in State cases will become more certain and swift, making the death penalty again a meaningful sanction and deterrent.

This bill builds on some innovative strategies that I first proposed in 1990.

Already, much of that approach has become widely accepted as the basic building blocks of habeas corpus reform, namely establishing time limits on filing habeas corpus petitions and on Federal court consideration of capital habeas corpus petitions, and requiring that the filing of any successive petition be approved by the appropriate court of appeals under stringent standards.

Under this bill, a single Federal court review will resolve most death penalty cases in under 2 years. First, a Federal habeas corpus petition in a capital case must be filed within 6 months from the final action in State court proceedings. A final decision must be made by the Federal district court within 180 days from the filing of the habeas corpus petition. And a final decision must be made by the Federal court of appeals within 120 days from the filing of the final brief. No successive Federal court habeas corpus petition could be considered unless specific leave was granted by the appropriate court of appeals, and then only for very limited reasons.

In addition, the proposed expedited treatment of habeas corpus petitions in capital cases would apply only to States which agree to provide free, competent legal counsel for defendants during their State court appeals. The bill provides that the Federal government will provide free legal counsel during their Federal habeas corpus proceedings.

The compressed time frame is both just and practical. It would eliminate the lengthy delays and establish habeas corpus proceedings in death penalty cases as the highest priority in the Federal judicial system.

Unless there are unusually complicating factors, which must be detailed in the district court's opinion, I know that such cases can be heard within a few weeks, with no more than a week or two being required to write an opinion. Some district courts have sat on such cases for as long as 12 years. Even in States with the most prisoners on death row, such as Florida, Texas, and California, each district court judge would have such a case only every 1 to 3 years. Judges would not be overburdened.

Decisions on appeal to the court of appeals should be made within 120 days of briefing. That is manageable with priority attention to these relatively few capital cases. The authority of Congress to establish such time limits was exercised in the Speedy Trial Act of 1974, which calls for criminal trials to begin within 70 days unless delayed by specified causes. The key factor in this timetable is the requirement that competent, free counsel be provided to defendants in capital cases during their State and Federal habeas corpus proceedings.

I must stress, however, that the abbreviated timetable does not take effect until State court review of a sentence of death is completed. No time limit is placed by this legislation on the length of trial or on periods for consideration of post-trial motions and the State court appeals. During that period, most, if not all, of the complex factual and legal issues will be organized, analyzed and resolved by the State courts, so that these issues will not be novel when the case goes to Federal court.

Requiring prisoners on death row to file petitions within 6 months of final State court action is not only reasonable, but is necessary to end the abuse in which petitioners and their attorneys now engage. A perfect example of the abuse can be seen in a recent case from my own State of Pennsylvania.

Steven Duffey was convicted of a 1984 murder. His conviction and sentence were unanimously upheld by the Pennsylvania Supreme Court in 1988. From then on, he did nothing until after his death warrant had been signed in September 1994. Then, on the eve of his execution, Duffey's attorneys filed a habeas corpus petition and sought a stay of execution.

The Federal district judge thought himself bound to enter the stay so that the petition could be entertained. But the judge castigated the game-playing of Duffey and his lawyer. In his opinion, Judge Thomas Vanaskie of the Middle District of Pennsylvania hit on a central problem with the current system when he noted that "[t]here is an overwhelming incentive on the part of a death row inmate to ignore until the eleventh hour collateral challenges to his or her conviction." He then quoted the 1994 decision of the U.S. Court of Appeals for the Sixth Circuit in Steffen versus Tate, which had likewise found that "it is almost always in the interest of a death sentenced prisoner to delay filing a [habeas corpus] petition as long as possible."

Mr. President, this bill goes a long way toward restoring the death penalty as an effective deterrent. But to get the rest of the way there we need to address the endless delays caused by requiring defendants to exhaust all of their claims in State court before they are allowed to file Federal habeas corpus petitions.

The absurdity of this exhaustion requirement is illustrated by the series of decisions involving a Philadelphia criminal, Michael Peoples. Peoples was convicted in the State trial court in 1981 of setting his victim on fire during a robbery. Following this legal trail is not easy, but it illustrates the farcical procedures. After the Pennsylvania intermediate appellate court affirmed Peoples' conviction in 1983, the Pennsylvania Supreme Court denied review in a decision that was unclear as to whether it was based on the merits or on the Court's procedural discretion that there was no special reason to consider the substantive issues.

Peoples then filed a petition in 1986 for habeas corpus in the U.S. district court. That petition was denied for failure to exhaust State remedies, meaning the State court did not consider all his claims. The case was then appealed to the next higher court level, the Third Circuit Court of Appeals, which reversed the district court on the ground that the exhaustion rule was satisfied when the State Supreme Court had the opportunity to correct alleged violations of the prisoner's constitutional rights. Next, Peoples asked the U.S. Supreme Court to review his case.

Even though the Supreme Court was too busy to hear 4,550 cases in 1988, the Peoples case was one of 147 petitions it granted. After the nine justices reviewed the briefs, heard oral argument and deliberated, Justice Scalia wrote an opinion reversing the Court of Appeals for the Third Circuit.

The Third Circuit then undertook the extensive process of briefs and argument before three judges. It issued a complicated opinion concluding that the original petition for a writ of habeas corpus contained both exhausted and unexhausted claims. That ruling sent the case back to the district court for reconsideration.

Had the district court simply considered Peoples' constitutional claims on the substantive merits in the first instance, all those briefs, arguments and opinions would have been avoided. These complications arise from a Federal statute that requires a defendant to exhaust his or her remedies in the State court before coming to the federal court. The original purpose of giving the State a chance to correct any error and to limit the work of the Federal courts was sound. In practice, however, that rule has created a hopeless maze, illustrated by thousands of cases like those of Peoples and Harris.

The elimination of the statutory exhaustion requirement would mean that Congress, which has authority to establish Federal court jurisdiction, would direct U.S. district courts to decide petitions for writs of habeas corpus after direct appeals to the Supreme Court had upheld the death penalty. From my own experience, I have seen State trial court judges sit on such habeas corpus cases for months or years and then dismiss them in the most perfunctory way because the issues had already been decided by the State Supreme Court in its earlier decision.

Obviously, Mr. President, Federal habeas corpus is a complex and arcane subject. Its difficult and restrictive rules simply delay imposition of the death penalty and render it useless as a deterrent. The purposes of tough law enforcement are best served by full and prompt hearings instead of a procedural morass that defeats the substantive benefits of capital punishment.

In 1990, Chief Justice William H. Rehnquist said the current system for handling death penalty habeas corpus cases in the Federal courts "verges on the chaotic." He was charitable. If justice delayed is justice denied, there's little justice left in the Federal judicial treatment of death sentences.

My proposal for habeas corpus reform will bring practical reinstatement of the death penalty, so that meaningless procedures do not remain the enemy of substantive justice.

Mr. President, I ask unanimous consent that the full text of my bill be printed in the RECORD.

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

S. 623

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 "Habeas Corpus Reform Act of 1995".

SEC. 2. FILING DEADLINES.

Section 2244 of title 28, United States Code, is amended by adding at the end the following new subsection:

"(d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—

"(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

"(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

"(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and is made retroactively applicable; or

"(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

"(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim shall not be counted toward any period of limitation under this subsection.

SEC. 3. APPEAL.

Section 2253 of title 28, United States Code, is amended to read as follows:

"§ 2253. Appeal

"(a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

"(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.

"(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

"(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

"(B) the final order in a proceeding under section 2255.

"(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

"(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).".

SEC. 4. AMENDMENT OF FEDERAL RULES OF APPELLATE PROCEDURE.

Rule 22 of the Federal Rules of Appellate Procedure is amended to read as follows:

"Rule 22. Habeas corpus and section 2255 proceedings

"(a) APPLICATION FOR THE ORIGINAL WRIT.—An application for a writ of habeas corpus shall be made to the appropriate district court. If application is made to a circuit judge, the application shall be transferred to the appropriate district court. If an application is made to or transferred to the district court and denied, renewal of the application before a circuit judge shall not be permitted. The applicant may, pursuant to section 2253 of title 28, United States Code, appeal to the appropriate court of appeals from the order of the district court denying the writ.

"(b) CERTIFICATE OF APPEALABILITY.—In a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court, an appeal by the applicant for the writ may not proceed unless a district or a circuit judge issues a certificate of appealability pursuant to section 2253(c) of title 28, United States Code. If an appeal is taken by the applicant, the district judge who rendered the judgment shall either issue a certificate of appealability or state the reasons why such a certificate should not issue. The certificate or the statement shall be forwarded to the court of appeals with the notice of appeal and the file of the proceedings in the district court. If the district judge has denied the certificate, the applicant for the writ may then request issuance of the certificate by a circuit judge. If such a request is addressed to the court of appeals, it shall be deemed addressed to the judges thereof and shall be considered by a circuit judge or judges as the court deems appropriate. If no express request for a certificate is filed, the notice of appeal shall be deemed to constitute a request addressed to the judges of the court of appeals. If an appeal is taken by a State or its representative, a certificate of appealability is not required.".

SEC. 5. SECTION 2254 AMENDMENTS.

Section 2254 of title 28, United States Code, is amended—

(1) by amending subsection (b) to read as follows:

"(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—

"(A) the applicant has exhausted the remedies available in the courts of the State; or

"(B)(i) there is an absence of available State corrective process; or

"(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

"(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

"(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.";

(2) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively;

(3) by inserting after subsection (c) the following new subsection:

"(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

"(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

"(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.";

(4) by amending subsection (e), as redesignated by paragraph (2), to read as follows:

"(e)(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

"(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—

"(A) the claim relies on—

"(i) a new rule of constitutional law, made retroactive by the Supreme Court, that was previously unavailable; or

"(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

"(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense."; and

(5) by adding at the end the following new subsections:

"(h) Notwithstanding any other provision of law, in all proceedings brought under this section, and any subsequent proceedings on review, appointment of counsel for an applicant who is or becomes financially unable to afford counsel shall be in the discretion of the court, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

"(i) The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.".

SEC. 6. SECTION 2255 AMENDMENTS.

Section 2255 of title 28, United States Code, is amended—

(1) by striking the second and fifth paragraphs; and

(2) by adding at the end the following new paragraphs:

"A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

"(1) the date on which the judgment of conviction becomes final;

"(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

"(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and is made retroactively applicable; or

"(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

"In all proceedings brought under this section, and any subsequent proceedings on review, appointment of counsel for a movant who is or becomes financially unable to afford counsel shall be in the discretion of the court, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

"A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—

"(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

"(2) a new rule of constitutional law, made retroactive by the Supreme Court, that was previously unavailable.".

SEC. 7. LIMITS ON SECOND OR SUCCESSIVE APPLICATIONS.

(a) CONFORMING AMENDMENT TO SECTION 2244(a).—Section 2244(a) of title 28, United States Code, is amended by striking "and the petition" and all that follows through "by such inquiry." and inserting ", except as provided in section 2255.".

(b) LIMITS ON SECOND OR SUCCESSIVE APPLICATIONS.—Section 2244(b) of title 28, United States Code, is amended to read as follows:

"(b)(1) A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.

"(2) A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless—

"(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive by the Supreme Court, that was previously unavailable; or

"(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

"(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

"(3)(A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

"(B) A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three-judge panel of the court of appeals.

"(C) The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection.

"(D) The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.

"(E) The grant or denial of an authorization by a court of appeals to file a second or success application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.

"(4) A district court shall dismiss any claim presented in a second or successive application that the court of appeals has authorized to be filed unless the applicant shows that the claim satisfies the requirements of this section.".

SEC. 8. DEATH PENALTY LITIGATION PROCEDURES.

(a) ADDITION OF CHAPTER TO TITLE 28, UNITED STATES CODE.—Title 28, United States Code, is amended by inserting after chapter 153 the following new chapter:

"CHAPTER 154—SPECIAL HABEAS CORPUS PROCEDURES IN CAPITAL CASES

"Sec.
"2261. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment.
"2262. Mandatory stay of execution; duration; limits on stays of execution; second or abusive petitions.
"2263. Filing of habeas corpus application; time requirements; tolling rules.
"2264. Scope of Federal review; district court adjudications.
"2265. Application to State unitary review procedure.
"2266. Limitation periods for determining applications and motions.

"§ 2261. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment

"(a) This chapter shall apply to cases arising under section 2254 brought by prisoners in State custody who are subject to a capital sentence. It shall apply only if the provisions of subsections (b) and (c) are satisfied.

"(b) This chapter is applicable if a State establishes by statute, rule of its court of last resort, or by another agency authorized by State law, a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in State post-conviction proceedings brought by indigent prisoners whose capital convictions and sentences have been upheld on direct appeal to the court of last resort in the State or have otherwise become final for State law purposes. The rule of court or statute must provide standards of competency for the appointment of such counsel.

"(c) Any mechanism for the appointment, compensation, and reimbursement of counsel as provided in subsection (b) must offer counsel to all State prisoners under capital sentence and must provide for the entry of an order by a court of record—

"(1) appointing one or more counsel to represent the prisoner upon a finding that the prisoner is indigent and accepted the offer or is unable competently to decide whether to accept or reject the offer;

"(2) finding, after a hearing if necessary, that the prisoner rejected the offer of counsel and made the decision with an understanding of its legal consequences; or

"(3) denying the appointment of counsel upon a finding that the prisoner is not indigent.

"(d) No counsel appointed pursuant to subsections (b) and (c) to represent a State prisoner under capital sentence shall have previously represented the prisoner at trial or on direct appeal in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.

"(e) The ineffectiveness or incompetence of counsel during State or Federal post-conviction proceedings in a capital case shall not be a ground for relief in a proceeding arising under section 2254. This limitation shall not preclude the appointment of different counsel, on the court's own motion or at the request of the prisoner, at any phase of State or Federal post-conviction proceedings on the basis of the ineffectiveness or incompetence of counsel in such proceedings.

"§ 2262. Mandatory stay of execution; duration; limits on stays of execution; successive petitions

"(a) Upon the entry in the appropriate State court of record of an order under section 2261(c), a warrant or order setting an execution date for a State prisoner shall be stayed upon application to any court that would have jurisdiction over any proceedings filed under section 2254. The application shall recite that the State has invoked the post-conviction review procedures of this chapter and that the scheduled execution is subject to stay.

"(b) A stay of execution granted pursuant to subsection (a) shall expire if—

"(1) a State prisoner fails to file a habeas corpus application under section 2254 within the time required in section 2263;

"(2) before a court of competent jurisdiction, in the presence of counsel, unless the prisoner has competently and knowingly waived such counsel, and after having been advised of the consequences, a State prisoner under capital sentence waives the right to pursue habeas corpus review under section 2254; or

"(3) a State prisoner files a habeas corpus petition under section 2254 within the time required by section 2263 and fails to make a substantial showing of the denial of a Federal right or is denied relief in the district court or at any subsequent stage of review.

"(c) If one of the conditions in subsection (b) has occurred, no Federal court thereafter shall have the authority to enter a stay of execution in the case, unless the court of appeals approves the filing of a second or successive application under section 2244(b).

"§ 2263. Filing of habeas corpus application; time requirements; tolling rules

"(a) Any application under this chapter for habeas corpus relief under section 2254 must be filed in the appropriate district court not later than 180 days after final State court affirmance of the conviction and sentence on direct review or the expiration of the time for seeking such review.

"(b) The time requirements established by subsection (a) shall be tolled—

"(1) from the date that a petition for certiorari is filed in the Supreme Court until the date of final disposition of the petition if a State prisoner files the petition to secure review by the Supreme Court of the affirmance of a capital sentence on direct review by the court of last resort of the State or other final State court decision on direct review;

"(2) from the date on which the first petition for post-conviction review or other collateral relief is filed until the final State court disposition of such petition; and

"(3) during an additional period not to exceed 30 days, if—

"(A) a motion for an extension of time is filed in the Federal district court that would have jurisdiction over the case upon the filing of a habeas corpus application under section 2254; and

"(B) a showing of good cause is made for the failure to file the habeas corpus application within the time period established by this section.

"§ 2264. Scope of Federal review; district court adjudications

"(a) Whenever a State prisoner under capital sentence files a petition for habeas corpus relief to which this chapter applies, the district court shall only consider a claim or claims that have been raised and decided on the merits in the State courts, unless the failure to raise the claim properly is—

"(1) the result of State action in violation of the Constitution or laws of the United States;

"(2) the result of the Supreme Court recognition of a new Federal right that is made retroactively applicable; or

"(3) based on a factual predicate that could not have been discovered through the exercise of due diligence in time to present the claim for State or Federal post-conviction review.

"(b) Following review subject to subsections (a), (d), and (e) of section 2254, the court shall rule on the claims properly before it.

"§ 2265. Application to State unitary review procedure

"(a) For purposes of this section, a 'unitary review' procedure means a State procedure that authorizes a person under sentence of death to raise, in the course of direct review of the judgment, such claims as could be raised on collateral attack. This chapter shall apply, as provided in this section, in relation to a State unitary review procedure if the State establishes by rule of its court of last resort or by statute a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in the unitary review proceedings, including expenses relating to the litigation of collateral claims in the proceedings. The rule of court or statute must provide standards of competency for the appointment of such counsel.

"(b) To qualify under this section, a unitary review procedure must include an offer of counsel following trial for the purpose of representation on unitary review, and entry of an order, as provided in section 2261(c), concerning appointment of counsel or waiver or denial of appointment of counsel for that purpose. No counsel appointed to represent the prisoner in the unitary review proceedings shall have previously represented the prisoner at trial in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.

"(c) Sections 2262, 2263, 2264, and 2266 shall apply in relation to cases involving a sentence of death from any State having a unitary review procedure that qualifies under this section. References to State 'post-conviction review' and 'direct review' in such sections shall be understood as referring to unitary review under the State procedure. The reference in section 2262(a) to 'an order under section 2261(c)' shall be understood as referring to the post-trial order under subsection (b) concerning representation in the unitary review proceedings, but if a transcript of the trial proceedings is unavailable at the time of the filing of such an order in the appropriate State court, then the start of the 180-day limitation period under section 2263 shall be deferred until a transcript is made available to the prisoner or counsel of the prisoner.

"§ 2266. Limitation periods for determining applications and motions

"(a) The adjudication of any application under section 2254 that is subject to this chapter, and the adjudication of any motion under section 2255 by a person under sentence of death, shall be given priority by the district court and by the court of appeals over all noncapital matters.

"(b)(1)(A) A district court shall render a final determination and enter a final judgment on any application for a writ of habeas corpus brought under this chapter in a capital case not later than 180 days after the date on which the application is filed.

"(B) A district court shall afford the parties at least 120 days in which to complete all actions, including the preparation of all pleadings and briefs, and if necessary, a hearing, prior to the submission of the case for decision.

"(C)(i) A district court may delay for not more than one additional 30-day period beyond the period specified in subparagraph (A), the rendering of a determination of an application for a writ of habeas corpus if the court issues a written order making a finding, and stating the reasons for the finding, that the ends of justice that would be served by allowing the delay outweigh the best interests of the public and the applicant in a speedy disposition of the application.

"(ii) The factors, among others, that a court shall consider in determining whether a delay in the disposition of an application is warranted are as follows:

"(I) Whether the failure to allow the delay would be likely to result in a miscarriage of justice.

"(II) Whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate briefing within the time limitations established by subparagraph (A).

"(III) Whether the failure to allow a delay in a case, that, taken as a whole, is not so unusual or so complex as described in subclause (II), but would otherwise deny the applicant reasonable time to obtain counsel, would unreasonably deny the applicant or the government continuity of counsel, or would deny counsel for the applicant or the government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

"(iii) No delay in disposition shall be permissible because of general congestion of the court's calendar.

"(iv) The court shall transmit a copy of any order issued under clause (i) to the Director of the Administrative Office of the United States Courts for inclusion in the report under paragraph (5).

"(2) The time limitations under paragraph (1) shall apply to—

"(A) an initial application for a writ of habeas corpus;

"(B) any second or successive application for a writ of habeas corpus; and

"(C) any redetermination of an application for a writ of habeas corpus following a remand by the court of appeals or the Supreme Court for further proceedings, in which case the limitation period shall run from the date the remand is ordered.

"(3)(A) The time limitations under this section shall not be construed to entitle an applicant to a stay of execution, to which the applicant would otherwise not be entitled, for the purpose of litigating any application or appeal.

"(B) No amendment to an application for a writ of habeas corpus under this chapter shall be permitted after the filing of the answer to the application, except on the grounds specified in section 2244(b).

"(4)(A) The failure of a court to meet or comply with a time limitation under this section shall not be a ground for granting relief from a judgment of conviction or sentence.

"(B) The State may enforce a time limitation under this section by petitioning for a writ of mandamus to the court of appeals. The court of appeals shall act on the petition for a writ or mandamus not later than 30 days after the filing of the petition.

"(5)(A) The Administrative Office of United States Courts shall submit to Congress an annual report on the compliance by the district courts with the time limitations under this section.

"(B) The report described in subparagraph (A) shall include copies of the orders submitted by the district courts under paragraph (1)(B)(iv).

"(c)(1)(A) A court of appeals shall hear and render a final determination of any appeal of an order granting or denying, in whole or in part, an application brought under this chapter in a capital case not later than 120 days after the date on which the reply brief is filed, or if no reply brief is filed, not later than 120 days after the date on which the answering brief is filed.

"(B)(i) A court of appeals shall decide whether to grant a petition for rehearing or other request for rehearing en banc not later than 30 days after the date on which the petition for rehearing is filed unless a responsive pleading is required, in which case the court shall decide whether to grant the petition not later than 30 days after the date on which the responsive pleading is filed.

"(ii) If a petition for rehearing or rehearing en banc is granted, the court of appeals shall hear and render a final determination of the appeal not later than 120 days after the date on which the order granting rehearing or rehearing en banc is entered.

"(2) The time limitations under paragraph (1) shall apply to—

"(A) an initial application for a writ of habeas corpus;

"(B) any second or successive application for a writ of habeas corpus; and

"(C) any redetermination of an application for a writ of habeas corpus or related appeal following a remand by the court of appeals en banc or the Supreme Court for further proceedings, in which case the limitation period shall run from the date the remand is ordered.

"(3) The time limitations under this section shall not be construed to entitle an applicant to a stay of execution, to which the applicant would otherwise not be entitled, for the purpose of litigating any application or appeal.

"(4)(A) The failure of a court to meet or comply with a time limitation under this section shall not be a ground for granting relief from a judgment of conviction or sentence.

"(B) The State may enforce a time limitation under this section by applying for a writ of mandamus to the Supreme Court.

"(5) The Administrative Office of United States Courts shall submit to Congress an annual report on the compliance by the courts of appeals with the time limitations under this section.".

(b) TECHNICAL AMENDMENT.—The part analysis for part IV of title 28, United States Code, is amended by adding after the item relating to chapter 153 the following new item:

"154. Special habeas corpus procedures in capital cases ..... 2261.".

SEC. 9. TECHNICAL AMENDMENT.

Section 408(q) of the Controlled Substances Act (21 U.S.C. 848(q)) is amended—

(1) in paragraph (4)(A), by striking "shall" and inserting "may";

(2) in paragraph (4)(B), by striking "shall" and inserting "may"; and

(3) by amending paragraph (9) to read as follows:

"(9) Upon a finding that investigative, expert, or other services are reasonably necessary for the representation of the defendant, whether in connection with issues relating to guilt or the sentence, the court may authorize the defendant's attorneys to obtain such services on behalf of the defendant and, if so authorized, shall order the payment of fees and expenses therefor under paragraph (10). No ex parte proceeding, communication, or request may be considered pursuant to this section unless a proper showing is made concerning the need for confidentiality. Any such proceeding, communication, or request shall be transcribed and made a part of the record available for appellate review.".

SEC. 10. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

Mr. HATCH. Mr. President, I thank my friend from Pennsylvania, my distinguished colleague on the Judiciary Committee, for his kind words. Senator SPECTER, a former prosecutor, is one of the most knowledgeable persons on the Judiciary Committee with respect to habeas corpus litigation. He has long been an advocate for habeas reform. Together, we have worked hard to craft a consensus bill that will enact meaningful reform of the Federal habeas corpus process. Today, we are introducing as legislation the product of those labors.

I am pleased to join with Senator SPECTER in introducing legislation to reform Federal habeas corpus procedures. This marks an important step in the process of ensuring that convicted criminals receive the punishment they justly deserve. A criminal justice system incapable of enforcing legally imposed sentences cannot be called just and must be reformed.

The statutory writ of habeas corpus is an important means of guaranteeing that innocent persons will not be illegally imprisoned. Indeed, the Constitution guarantees the writ against suspension. Unfortunately, this bulwark of liberty has been perverted by those who would seek to frustrate the demands of justice.

As of January 1, 1995, there were some 2,976 inmates on death row. Yet, only 38 prisoners were executed last year, and the States have executed only 263 criminals since 1973. In 1989, a committee chaired by then-retired Supreme Court Justice Lewis Powell found, among other things, extraordinary delays in the discharge of sentences and an abuse of the litigation process. The committee reported that Federal habeas corpus made up approximately 40 percent of the total delay from sentence to execution in a random sampling of cases. At that time, the shortest of these proceedings lasted for 2.5 years and the longest nearly 15 years.

The Powell committee concluded that the Federal collateral review process, with the long separation between sentence and effectuation of that sentence, "hamper[ed] justice without improving the quality of adjudication." [Powell Committee Report at 4.] This abuse of habeas corpus litigation, particularly in those cases involving lawfully imposed death sentences, has taken a dreadful toll on victims' families, seriously eroded the public's confidence in our criminal justice system, and drained State criminal justice resources. This was not the system envisioned by the Framers of our Constitution.

In my home State of Utah, for example, convicted murderer William Andrews delayed the imposition of a constitutionally imposed death sentence for over 18 years. The State had to put up millions of dollars in precious criminal justice resources to litigate his meritless claims. His guilt was never in question. He was not an innocent person seeking freedom from an illegal punishment. Rather, he simply wanted to frustrate the imposition of punishment his heinous crimes warranted.

Senator SPECTER and I have worked to draft a consensus habeas corpus reform measure that will respect the traditional roles of State and Federal courts, secure the legitimate constitutional rights of the defendant, and restore balance to the criminal justice system.

Habeas corpus reform must not discourage legitimate petitions that are clearly meritorious and deserve close scrutiny. Meaningful reform must, however, stop repeated assaults upon fair and valid State convictions through spurious petitions filed in Federal court.

As a consequence, the reform proposal Senator SPECTER and I have introduced sets time limits to eliminate unnecessary delay and to discourage those who would use the system to prevent the imposition of a just sentence. Manufactured delays breed contempt for the law and have a profound effect on the victims of violent crime.

Our proposed legislation limits second or successive Federal petitions to claims of factual innocence or in those instances in which the Supreme Court has created a new rule of constitutional law and applied that rule retroactively. Our bill also ensures that proper deference is given to the judgments of State courts, who have the primary obligation of trying criminal cases. After all, finality is a hallmark of a just system, and must be maintained in order to preserve the legitimacy of the criminal process.

Critics of meaningful habeas reform complain that the reformers are seeking to destroy the Constitution's guarantees of individual liberty. This specious argument is simply incorrect. It misstates the original understanding of the habeas process. The legislation Senator SPECTER and I have introduced will uphold the constitutional guarantees of freedom from illegal punishment, while at the same time ensuring that lawfully convicted criminals will not be able to twist the criminal justice system to their own advantage.

I believe that the bill we have introduced today will give the American people the crime control legislation they demand and deserve. I urge the support of my colleagues for this important legislation.

By Mr. HATFIELD:

S. 624. A bill to establish a Science and Mathematics Early Start Grant Program, and for other purposes; to the Committee on Labor and Human Resources.

SCIENCE AND MATH EARLY START GRANT PROGRAM ACT

Mr. HATFIELD. Mr. President, I regard the eight National Education Goals we codified in the Goals 2000 legislation as very important challenges; challenges we must make every effort to meet in order to ensure the future of the Nation. All of these goals are interconnected. We cannot afford to lag behind in any and expect to attain the rest. At this time, it appears that U.S. students continue to lag dangerously behind in mathematics and science achievement.

With the passage of Goals 2000 and the ESEA reauthorization, we hope to reduce that gap. Yet, there are still glaring holes in our math and science educational programs. The bill I am introducing today is designed to fill one of those holes. It is that, unfortunately, many currently funded Federal programs for children, especially preschool youngsters, such as Head Start do not usually include any special emphasis on math or science education. Even when math and science are included as part of the curriculum, they are often the weakest areas of emphasis.

Ask any parent to list the character traits of preschoolers and high on the list will be curiosity and a desire to

learn "why." These children are naturally curious and eager to understand the world around them. I believe that we, as a nation of educators, are missing a tremendous opportunity when we fail to build on this natural curiosity by failing to provide these rich experiences.

Federal programs intended to provide additional support for low income children such as Head Start and chapter I should include activities rich in early math and science investigations. It is the very nature of science to answer the question "why." Early exposure to age-appropriate, inquiry-based science and mathematics experiences will provide the foundation on which later understanding rests.

Why, with rare exception, are educational programs rich in math and science missing from preschool curriculum? I believe that the major reason is that most preschool teachers have little experience with simple science and mathematics activities, feel uncomfortable with teaching science and mathematics, and are not prepared to teach age-appropriate and inquiry-based science and mathematics. This is an area of greatest need. While I do not underestimate the importance of language development and social experiences that are a large part of preschool programs, I feel that we can no longer minimize the importance of early science and math investigations. This is particularly true of the target group of Head Start as preschoolers from low-income families often have very limited opportunities to be exposed to science activities.

It is possible to provide these experiences to preschoolers? The answer is provided by a program conducted at Marylhurst College in Portland, OR. This wonderful program, now in its third year, is training Head Start teachers to use exciting, age-appropriate math and science activities in their classes. Picture the effect these activities have on disadvantaged and minority youth. In all likelihood, this is the first chance these children have to relate math and science to their lives. The teacher training program has been conducted for the past three years, and the results have been phenomenal.

Consider what two teachers, Sherry Wright and Debi Coffey, from the Albina Head Start program in Oregon had to say. "After two years of using the knowledge we gained from the Marylhurst College instructors, we truly feel confident in using science everyday. Our children have learned how to predict and discover the possible results to a problem. Our children will take the science experience that they learned in Head Start with them throughout the rest of their lives."

Andrey Sylvia, who had no science classes at all prior to the Marylhurst College Head Start Summer Institute, expressed the result excitedly and succinctly. "Now I am a science whiz!"

My legislation provides for a competitive grant program to establish demonstration sites to acquaint preschool teachers with the stimulating processes involved in the inquiry approach. The teachers themselves must experience the excitement of hands-on activities in order to communicate that excitement to children. No more than 25 percent of the funds can be used for the purchase of supplies necessary to carry out the activities.

A second part of the legislation provides funds to enable Head Start teachers to participate in professional development programs in science and mathematics teaching methods.

We simply cannot afford to miss the opportunity to replicate this concept throughout the preschool and Head Start programs nationwide. These programs are a positive investment in the lives of these disadvantaged children and will create a lifelong interest in math and science. That interest is critical to the future of the children and equally critical to the future of the Nation.

Mr. President, I ask unanimous consent that these letters from the president of Marylhurst College and Sarah Greene, chief executive officer of National Head Start Association, be printed in the RECORD.

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

MARYLHURST COLLEGE,
Marylhurst, OR, March 20, 1995.

Hon. MARK O. HATFIELD,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR HATFIELD: As President of Marylhurst College, an accredited, private, liberal arts college dedicated to making innovative post-secondary education accessible to self-directed students of all ages, I am delighted to offer this letter of support for the Science and Math Early Start Grant Program Act.

Despite national concern and reform efforts, science and mathematics education for preschool children remains limited, and ample studies demonstrate an even greater lack of science and math skills among low income students. A longitudinal study of disadvantaged children at the Perry Preschool in Ypsilanti, Michigan, found that for every dollar invested, seven dollars were returned to society in terms of higher income and fewer costs related to welfare and crime. Widely recognized as a successful intervention, Head Start provides low income children with basic education, but it has been criticized for not providing discipline-based instruction—especially in science—due to the teachers' lack of educational preparation. In fact, the final Report of the Advisory Committee on Head Start Quality and Expansion (12/93) recommends strengthening staff training and building partnerships with the private sector.

Marylhurst designed its Summer Science Institute to address this problem by training Head Start teachers to teach science and encourage their students to develop an interest in science. The pilot Institute—an intensive, experiential, four-week, college credit course covering basic scientific principles—has been offered to 53 Albina Head Start and Portland Public School teachers since 1992. Seventy-five percent reported that the experience completely changed their attitudes about science and their abilities to learn and teach science.

According to an independent evaluation by Northwest Regional Educational Laboratory, the Institute made a major contribution to science teaching in the Albina program. NWREL concluded that it also had "a positive systemic influence on the level of teacher and student self-esteem, which in turn has increased the effectiveness of student learning across their curriculum." The Portland Public School evaluation is currently in process. Marylhurst plans to replicate the successful model through Head Start college partnerships.

Through the Science and Math Early Start Program Act of 1995, Congress can provide seed money to encourage efficient replication of similar programs, which can be maintained without ongoing government support with funding provided by foundations and corporations. This legislation not only ensures that low income children are included in national science and math education reform efforts, but also improves Head Start teacher preparation so that they can better prepare their students for a more technologically and scientifically complex future.

Sincerely,

NANCY WILGENBUSCH,
President.

NATIONAL HEAD START ASSOCIATION,
Alexandria, VA, January 9, 1995.

Hon. MARK O. HATFIELD,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR HATFIELD: The National Head Start Association supports efforts to expand the Summer Science Institute and make it an integral part of the education program for preschoolers. Dr. Nancy Wilgenbush, President, Marylhurst College, presented an overview of the Summer Science Institute to over 5,000 Head Start teachers, administrators, and parents during our annual conference in April 1993. She also conducted a workshop during the conference, it was packed. The presentation resulted in an overwhelming request for more information on project implementation. Our office, as well as Dr. Wilgenbush's, continue receiving such inquiries.

After receiving the absolutely positive results of the project conducted in Portland with Albina Head Start teachers, I am convinced of the need to implement the Summer Science Institute nationwide.

This early infusion of science for young low income children is essential if we are preparing them for the 21st Century.

Thank you for introducing a bill providing funds to implement this project.

Sincerely,

SARAH M. GREENE,
Chief Executive Officer.

ADDITIONAL COSPONSORS

S. 16

At the request of Mr. DOLE, the names of the Senator from Montana [Mr. BAUCUS], the Senator from Utah [Mr. BENNETT], the Senator from Colorado [Mr. BROWN], the Senator from Maine [Mr. COHEN], the Senator from Idaho [Mr. CRAIG], the Senator from New York [Mr. D'AMATO], the Senator

from New Mexico [Mr. DOMENICI], the Senator from Iowa [Mr. GRASSLEY], the Senator from Mississippi [Mr. LOTT], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Oklahoma [Mr. NICKLES], the Senator from South Dakota [Mr. PRESSLER], the Senator from Pennsylvania [Mr. SANTORUM], and the Senator from Illinois [Mr. SIMON] were added as cosponsors of S. 16, a bill to establish a commission to review the dispute settlement reports of the World Trade Organization, and for other purposes.

S. 240

At the request of Mr. DOMENICI, the names of the Senator from Idaho [Mr. KEMPTHORNE], the Senator from New Hampshire [Mr. SMITH], and the Senator from Tennessee [Mr. FRIST] were added as cosponsors 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. 388

At the request of Ms. SNOWE, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 388, a bill to amend title 23, United States Code, to eliminate the penalties for noncompliance by States with a program requiring the use of motorcycle helmets, and for other purposes.

S. 391

At the request of Mr. CRAIG, the names of the Senator from Wyoming [Mr. SIMPSON] and the Senator from Arizona [Mr. KYL] were added as cosponsors of S. 391, a bill to authorize and direct the Secretaries of the Interior and Agriculture to undertake activities to halt and reverse the decline in forest health on Federal lands, and for other purposes.

SENATE RESOLUTION 92—AMENDING RULE XXV OF THE STANDING RULES OF THE SENATE

Mr. DOLE submitted the following resolution; which was considered and agreed to:

S. RES. 92

Resolved, That Rule XXV, paragraph 2, of the Standing Rules of the Senate is amended as follows:

Strike the figure after "Agriculture, Nutrition, and Forestry" and insert in lieu thereof "18".

Strike the figure after "Energy and Natural Resources" and insert in lieu thereof "20".

SEC. 2. That Rule XXV, paragraph 3(c) of the Standing Rules of the Senate is amended as follows:

Strike the figure after "Indian Affairs" and insert in lieu thereof "16".

SENATE RESOLUTION 93—MAKING MAJORITY PARTY APPOINTMENTS TO SENATE COMMITTEES

Mr. DOLE submitted the following resolution; which was considered and agreed to:

S. RES. 93

Resolved, That the following shall constitute the majority party's membership on the following Senate committees for the 104th Congress, or until their successors are appointed:

Energy and Natural Resources: Mr. Murkowski (Chairman), Mr. Hatfield, Mr. Domenici, Mr. Nickles, Mr. Craig, Mr. Campbell, Mr. Thomas, Mr. Kyl, Mr. Grams, Mr. Jeffords, and Mr. Burns.

Veterans' Affairs: Mr. Simpson (Chairman), Mr. Murkowski, Mr. Specter, Mr. Thurmond, Mr. Jeffords, Mr. Campbell, and Mr. Craig.

Indian Affairs: Mr. McCain (Chairman), Mr. Murkowski, Mr. Gorton, Mr. Domenici, Mrs. Kassebaum, Mr. Nickles, Mr. Campbell, Mr. Thomas, and Mr. Hatch.

SENATE RESOLUTION 94—MAKING A MAJORITY PARTY APPOINTMENT

Mr. DOLE submitted the following resolution; which was considered and agreed to:

S. RES. 94

Resolved, That the Senator from Colorado (Mr. Campbell) is hereby appointed to the Committee on Agriculture, Nutrition and Forestry, and that the following be the majority membership on that committee for the 104th Congress, or until their successors are appointed:

Agriculture, Nutrition and Forestry: Mr. Lugar (Chairman), Mr. Dole, Mr. Helms, Mr. Cochran, Mr. McConnell, Mr. Craig, Mr. Coverdell, Mr. Santorum, Mr. Warner, and Mr. Campbell.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON THE CONSTITUTION

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the Subcommittee on the Constitution, Federalism, and Property Rights of the Senate Committee on the Judiciary, be authorized to meet during a session of the Senate on Friday, March 24, 1995, at 9 a.m., in Senate Dirksen Room 226, on "The 10th Amendment and the Conference of the States."

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

ADDITIONAL STATEMENTS

THE LINE-ITEM VETO

• Mr. SIMPSON. Mr. President, it was with the greatest of enthusiasm that I chose to support the line-item veto legislation.

In just a few weeks, all of us will be asked to cast our votes to raise the debt ceiling for this country to more than $5 trillion. It is difficult to comprehend the enormity of this figure. If you took those 5 trillion individual dollars and laid them end to end, they would span the vast icy distance between the Earth and Moon almost 2,000 times.

The line-item veto represents a small but most significant first step toward processes to ensure greater fiscal responsibility. I believe the measure that we recently passed is the best workable compromise between various approaches and will make this legislation very effective. I am particularly pleased by the inclusion of a "lockbox" provision to ensure that any spending that is "zeroed out" is earmarked for deficit reduction.

Our past experience with spending patterns here in Congress demonstrates why it was crucial to include this provision. I have seen a number of programs terminated on the Senate floor, after hours of spirited debate centered around the question—"can we afford it"? After concluding that we could not afford the program in question, we terminated the program, then failed to adjust the spending caps downward, meaning that we simply spent the money on something else. Such a "loophole" in this legislation would be a costly and destructive provision that would make a mockery of this measure. Without the lockbox provision the President could terminate a program with an eye toward seeing those funds reprogrammed in another direction. Or, Congress could simply retitle or reallocate the funding items which failed to pass muster. That would subvert the clear intention of this sharpened tool, which is to enable the President to assist in slowing down and reducing Government spending.

What pleases me the most about this legislation is that its modified form will permit the President to confront the problem of rising entitlement spending. This is, as we well know, the fastest growing category of Federal spending, and the single greatest cause of runaway debt. In the past, one overused tactic used to evade the discipline of discretionary spending caps has been to promote new programs in the form of mandatory entitlements. This designation has shielded them from annual scrutiny through the appropriations process and creates an ever expanding "black hole" into which our Federal dollars disappear. Giving the President a chance to ward off future trespasses in area will make this legislation much more effective in controlling spending.

Opponents of this measure have criticized the line-item veto on the basis of or experience with it at the State level. Sometimes they say that such authority is not easily applied at the Federal level, or worse yet, that it does not even work in the States. The latter contention is simply flat-out wrong.

The line-item veto does work effectively at the State level. We heard testimony to that effect in the Judiciary Committee, where we learned of countless instances in which governors have used the power to eliminate wasteful spending from appropriations bills. It is one reason why no State has a fiscal crisis on the order of compare to our Federal deficit.

I fully understand the sincerity of opponents of this measure when they voice fears that the line-item veto would give to much power to the President. The allegation has been made that the President could use this power to punish individual legislators, indeed to carry out a personal vendetta against a particular Congressman or Senator. I simply believe that due reflection on this matter will show that there is little to fear from such a situation occurring. First of all, these vetoes will not be made in secret. The press will eagerly report on the items rescinded, and they will be evaluated in their own right, quite apart from any personal issues surrounding them. Regardless of the President's personal feelings about any legislator, the final test of the issue will be whether or not the spending is appropriate. Both the President and the Congress will have to make the appropriate case as to whether or not the spending should occur.

I was extremely pleased when Bill Clinton, as a candidate for the Presidency, indicated his support for a line-item veto. We on our side of the aisle, have delivered such an option to him. It is a good time to do it—with a Republican Congress and Democratic President. It is a clear indication that this should not be a partisan issue. It should be an issue around which fiscally responsible legislators on both sides can rally.

Many of my colleagues are already very familiar with a process that I have seen too often in my 16 years of Senate service. We send a popular bill down to the other end of Pennsylvania Avenue only after we have loaded it up with a pile of pet pork projects, knowing full well that the President has to swallow everything in order to get the provisions that are so desired by him. There might be clearly wasteful spending in that package, but the President must nonetheless feel compelled to sign the bill simply because it is the only way to preserve "essential" spending or other legislative language.

This problem is compounded when the President is sent the appropriations bills at the 11th hour of the congressional session. The President must sign those, or else risk a temporary shutdown of vial Government functions.

The veto in its current form is a terribly crude blunt instrument, and it does not enable the President to deal effectively with these situations. Passage of the line-item veto will finely make it a more precise and agile tool, one which can be surgically wielded effectively on behalf of the U.S. taxpayer.●

CUBA: TIME TO CHANGE DIRECTION

● Mr. SIMON. Mr. President, my colleagues in the Senate know that I think that the policy of the United States toward Cuba does not make any sense at all.

I have introduced a bill which would permit Americans to travel to Cuba. To deny travel to any place, other than for security reasons, is an infringement of basic free speech.

We have to be able to learn as much as we can everywhere. To restrict travel is to restrict the thought and learning process.

The New York Times recently had an editorial titled "Cuba: Time to Change Direction."

It points out the ridiculousness of our present Cuban policy.

I ask that the New York Times editorial be printed in the RECORD.

The editorial follows:

[From the New York Times, Mar. 19, 1995]

CUBA: TIME TO CHANGE DIRECTION

The sight of Fidel Castro in a business suit being escorted about Paris this week as an honored guest deserves some consideration in Washington. With the Soviet Union gone and the cold war over, the only threat that the Cuban Communist poses to the United States lies in the imagination of ideological warriors like Senator Jesse Helms. While the time has not yet come to welcome Mr. Castro to Washington, a re-examination of Cuba policy is long overdue. The embargo of Cuba, begun when John Kennedy occupied the White House and Nikita Khrushchev was Soviet leader, has outlived its usefulness.

Conservatives still cling to the notion that isolating Cuba and creating misery for its people will eventually cause an uprising and sweep Mr. Castro from power. Now that he is without Soviet support and his economy is in tatters, they reason, sanctions should be tightened.

This scenario is unwise and inhumane. Cuba will survive because other nations are investing there and are not participating in the embargo. Last year when a resolution against the embargo came up at the U.N., it passed by 101 votes to 2. The kind of outright rebellion envisioned by Senator Helms and some Cuban-Americans, if it did occur, would bring bloodshed and more misery for many Cubans. At a time when Washington is trying hard to encourage peaceful transitions elsewhere in the region and world, it makes little sense to encourage bloodshed in Cuba.

An increasing number of younger, more moderate Cuban-Americans are fed up with the revenge fantasies of their elders, and would like to see more dialogue and commerce with Mr. Castro's regime. They feel that his repressive policies could not continue for long if the barriers were lifted and ordinary Cubans could have a taste of material success and a whiff of personal freedom from the north. Washington's anachronistic policy may even help Mr. Castro, by giving him a convenient scapegoat for all his failure at home.

Without the embargo, the excuses would be gone. Open communication with the United States, freedom for Cuban-Americans to invest in businesses back home, and access to North American goods could be first steps. More favorable trade conditions could be held out as incentives to further reforms. Mr. Castro's Paris visit illustrated the power of the friendly gesture. After his warm reception by President Mitterrand, Mr. Castro agreed to allow a French human rights group to visit.

There should be gradations in American policy toward repressive governments. When American national security is potentially threatened, as with Iran and its efforts to develop nuclear weapons, Washington is justified in banning commerce. In cases like China and Cuba, where internal policies are anathema to Americans but American security is not at risk, commerce can be encouraged but trade privileges should be withheld.

Scuttling the embargo would take some political courage. All the White House had to do last week to inspire Mr. Helms's wrath was to hint that it might consider lifting some additional sanctions imposed last year during the immigration crisis. But the political clout of the Cuban exile community has diminished in recent years as more Cuban-Americans have abandoned the traditional confrontational stance.

Long gone are the days when Soviet troops and bases in Cuba represented a real threat to the United States and Mr. Castro was exporting arms and revolution in the hemisphere. Cuba, absent the ghosts of the cold war, is an impoverished neighbor of the United States led by a dictator overtaken by history. American policy should reflect that reality rather than a world that no longer exists.●

NICKLES-REID SUBSTITUTE TO S. 219

● Mr. NICKLES. Mr. President, upon the consideration of S. 219, the Regulatory Transition Act, I will offer along with my colleagues, Senator HARRY REID, Senator KIT BOND, and Senator KAY BAILEY HUTCHISON, an amendment which provides for a 45-day congressional review of Federal regulations. During that time, Congress will be authorized to review and, potentially, reject regulations before they become final. This alternative provides an opportunity to move forward on the critical issue of regulatory reform in a bipartisan manner.

I ask that following my statement the text of the amendment be printed in the RECORD.

The proposed amendment follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Regulatory Transition Act of 1995".

SEC. 2. FINDING.

The Congress finds that effective steps for improving the efficiency and proper management of Government operations will be promoted if a moratorium on the effectiveness of certain significant final rules is imposed in order to provide Congress an opportunity for review.

SEC. 3. MORATORIUM ON REGULATIONS; CONGRESSIONAL REVIEW.

(a) REPORTING AND REVIEW OF REGULATIONS.—

(1) REPORTING TO CONGRESS.—

(A) Before a rule can take effect as a final rule, the Federal agency promulgating such rule shall submit to each House of the Congress a report containing—

(i) a copy of the rule;

(ii) a concise general statement relating to the rule;

(iii) the proposed effective date of the rule; and

(iv) a complete copy of the cost-benefit analysis of the rule, if any.

(B) Upon receipt, each House shall provide copies to the Chairman and Ranking Member of each committee with jurisdiction.

(2) EFFECTIVE DATE OF SIGNIFICANT RULES.—A significant rule relating to a report submitted under paragraph (1) shall take effect as a final rule, the latest of—

(A) the later of the date occurring 45 days after the date on which—

(i) the Congress receives the report submitted under paragraph (1); or

(ii) the rule is published in the Federal Register;

(B) if the Congress passes a joint resolution of disapproval described under section 4 relating to the rule, and the President signs a veto of such resolution, the earlier date—

(i) on which either House of Congress votes and fails to override the veto of the President; or

(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 4 is enacted).

(3) EFFECTIVE DATE FOR OTHER RULES.—Except for a significant rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1).

(b) TERMINATION OF DISAPPROVED RULEMAKING.—A rule shall not take effect (or continue) as a final rule, if the Congress passes a joint resolution of disapproval described under section 4.

(c) PRESIDENTIAL WAIVER AUTHORITY.—

(1) PRESIDENTIAL DETERMINATIONS.—Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of this Act may take effect, if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

(2) GROUNDS FOR DETERMINATIONS.—Paragraph (1) applies to a determination made by the President by Executive order that the rule should take effect because such rule is—

(A) necessary because of an imminent threat to health or safety or other emergency;

(B) necessary for the enforcement of criminal laws; or

(C) necessary for national security.

(3) WAIVER NOT TO AFFECT CONGRESSIONAL DISAPPROVALS.—An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 4 or the effect of a joint resolution of disapproval under this section. —

(d) TREATMENT OF RULES ISSUED AT END OF CONGRESS.—

(1) ADDITIONAL OPPORTUNITY FOR REVIEW.—In addition to the opportunity for review otherwise provided under this Act, in the case of any rule that is published in the Federal Register (as a rule that shall take effect as a final rule) during the period beginning on the date occurring 60 days before the date the Congress adjourns sine die through the date on which the succeeding Congress first convenes, section 4 shall apply to such rule in the succeeding Congress.

(2) TREATMENT UNDER SECTION 4.—

(A) In applying section 4 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though—

(i) such rule were published in the Federal Register (as a rule that shall take effect as a final rule) on the 15th session day after the succeeding Congress first convenes; and

(ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report must be submitted to Congress before a final rule can take effect.

(3) ACTUAL EFFECTIVE DATE NOT AFFECTED.—A rule described under paragraph (1) shall take effect as a final rule as otherwise provided by law (including other subsections of this section).

(e) TREATMENT OF RULES ISSUED BEFORE THIS ACT.—

(1) OPPORTUNITY FOR CONGRESSIONAL REVIEW.—The provisions of section 4 shall apply to any significant rule that is published in the Federal Register (as a rule that shall take effect as a final rule) during the period beginning on November 20, 1994, through the date on which this Act takes effect.

(2) TREATMENT UNDER SECTION 4.—In applying section 4 for purposes of Congressional review, a rule described under paragraph (1) shall be treated as though—

(A) such rule were published in the Federal Register (as a rule that shall take effect as a final rule) on the date of the enactment of this Act; and

(B) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

(3) ACTUAL EFFECTIVE DATE NOT AFFECTED.—The effectiveness of a rule described under paragraph (1) shall be as otherwise provided by law, unless the rule is made of no force or effect under section 4.

(f) NULLIFICATION OF RULES DISAPPROVED BY CONGRESS.—Any rule that takes effect and later is made of no force or effect by the enactment of a joint resolution under section 4 shall be treated as though such rule had never taken effect.

(g) NO INFERENCE TO BE DRAWN WHERE RULES NOT DISAPPROVED.—If the Congress does not enact a joint resolution of disapproval under section 4, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval.

SEC. 4. CONGRESSIONAL DISAPPROVAL PROCEDURE.

(a) JOINT RESOLUTION DEFINED.—For purposes of this section, the term "joint resolution" means only a joint resolution introduced after the date on which the report referred to in section 3(a) is received by Congress the matter after the resolving clause of which is as follows: "That Congress disapproves the rule submitted by the ___ relating to ___, and such rule shall have no force or effect." (The blank spaces being appropriately filled in.)

(b) REFERRAL.—

(1) IN GENERAL.—A resolution described in paragraph (1) shall be referred to the committees in each House of Congress with jurisdiction. Such a resolution may not be reported before the eighth day after its submission or publication date.

(2) SUBMISSION DATE.—For purposes of this subsection the term "submission or publication date" means the later of the date on which—

(A) the Congress receives the report submitted under section 3(a)(1); or

(B) the rule is published in the Federal Register.

(c) DISCHARGE.—If the committee to which is referred a resolution described in subsection (a) has not reported such resolution (or an identical resolution) at the end of 20 calendar days after the submission or publication date defined under subsection (b)(2), such committee may be discharged by the Majority Leader of the Senate or the Majority Leader of the House of Representatives, as the case may be, from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

(d) FLOOR CONSIDERATION.—

(1) IN GENERAL.—When the committee to which a resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of, a resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the resolution, and all points of order against the resolution (and against consideration of resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. 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 until disposed of.

(2) DEBATE.—Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order.

(3) FINAL PASSAGE.—Immediately following the conclusion of the debate on a resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(4) APPEALS.—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 described in subsection (a) shall be decided without debate.

(e) TREATMENT IF OTHER HOUSE HAS ACTED.—If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

(1) NONREFERRAL.—The resolution of the other House shall not be referred to a committee.

(2) FINAL PASSAGE.—With respect to a resolution described in subsection (a) of the House receiving the resolution—

(A) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(B) the vote on final passage shall be on the resolution of the other House.

(f) CONSTITUTIONAL AUTHORITY.—This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SEC. 5. SPECIAL RULE ON STATUTORY, REGULATORY AND JUDICIAL DEADLINES.

(a) IN GENERAL.—In the case of any deadline for, relating to, or involving any significant rule which does not take effect (or the effectiveness of which is terminated) because of the enactment of a joint resolution under section 4, that deadline is extended until the date 12 months after the date of the joint resolution. Nothing in this subsection shall be construed to affect a deadline merely by reason of the postponement of a rule's effective date under section 3(a).

(b) DEADLINE DEFINED.—The term "deadline" means any date certain for fulfilling any obligation or exercising any authority established by or under any Federal statute or regulation, or by or under any court order implementing any Federal statute or regulation.

SEC. 6. DEFINITIONS.

For purposes of this Act—

(1) FEDERAL AGENCY.—The term "Federal agency" means any "agency" as that term is defined in section 551(1) of title 5, United States Code (relating to administrative procedure).

(2) SIGNIFICANT RULE.—The term "significant rule" means any final rule, issued after November 9, 1994, that the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget finds—

(A) has an annual effect on the economy of $100,000,000 or more or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(B) creates a serious inconsistency or otherwise interferes with an action taken or planned by another agency;

(C) materially alters the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(D) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

(4) FINAL RULE.—The term "final rule" means any final rule or interim final rule. As used in this paragraph, "rule" has the meaning given such term by section 551 of title 5, United States Code.

SEC. 7. CIVIL ACTION.

An Executive order issued by the President under section 3(c), and any determination under section 3(a)(2), shall not be subject to judicial review by a court of the United States.

SEC. 8. APPLICABILITY; SEVERABILITY.

(a) APPLICABILITY.—This Act shall apply notwithstanding any other provision of law.

(b) SEVERABILITY.—If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act, shall not be affected thereby.

SEC. 9. EFFECTIVE DATE.

This Act shall take effect on the date of the enactment of this Act and shall apply to any significant rule that takes effect as a final rule on or after such effective date.●

LINE-ITEM VETO

● Mr. ROBB. Mr. President, I take this opportunity to speak briefly about yesterday's approval by the Senate of line-item veto legislation, which I supported. By giving the President and the Congress separate enrollment of appropriated items, new tax expenditures and new entitlements, we are better able to maximize our limited resources, make the wisest investments in our people and our Nation, and move more responsibly toward a balanced Federal budget.

Will a line-item veto solve all our fiscal problems? No, of course not. But I reject the notion that we should not use all available means to force the President and the Congress to prioritize Federal spending. Our inability, or unwillingness, to make these difficult choices has led to a nearly $5 trillion national debt.

Was the measure perfect? No, and I understand the legitimate concerns many Members of this body had about a line-item veto. I think most would agree, however, that changes need to be made in our budget process. Our $5 trillion debt is a testament to that fact. The differences lie in identifying the most desirable means to achieve responsible reform.

As I see it, the current problem lies in the fact that the Congress can ignore the rescissions proposed by the President. While the President can veto an entire appropriations bill, doing so forces the President to disapprove items which he supports as well. Thus, unless appropriations bills contain a particularly egregious item or items, Presidents now generally sign them, thereby permitting spending he considers unnecessary to continue in order to avoid striking down other items which he does approve.

The separate enrollment of each item will allow the President to reach only those items he disapproves, and Congress will have to accept those rescissions unless they are reinstated by a two-thirds vote in both the House of Representatives and the Senate.

Does this cede power to the President? Certainly. But, I am willing to give the Chief Executive a strong check on spending.

I am willing to give our President the tools to make some tough fiscal decisions because a chief executive has, in my judgment, a singular ability to envision national priorities and reconcile intense competition between disparate interests. It is infinitely easier for one individual to prioritize spending than it is for 535 individuals with varied and specific interests.

Not only will the measure passed last night allow the President to strike items in appropriations bills, but it will also allow the President to strike authorizations of new tax expenditures and new direct spending. These other types of spending contribute to our deficit even more than appropriated items, and should be included. To responsibly control spending, we have to put all options on the table.

I would, however, have preferred that the language covering tax expenditures been made more clear in the legislation. While I believe that the language included meets the same objectives as the Bradley amendment, of which I was a cosponsor, I believe we should have made it clear and free of all ambiguity that tax breaks are on the table. Nonetheless, I believe the language of similarly situated taxpayers will be interpreted broadly which will subject a wide range of tax breaks to a Presidential veto.

Mr. President, this body acted responsibly yesterday in approving line-item veto legislation. As a former Governor who had line-item veto authority, I understand its importance in imposing a measure of fiscal discipline on the budget process. We urgently need this discipline at the Federal level.●

THE DOLLAR'S DECLINE AS DOUBLE-EDGED SWORD

● Mr. SIMON. Mr. President, we are receiving regular reminders obliquely of the need for a balanced budget amendment.

In Sunday's Washington Post Jane Bryant Quinn's column ends with the words: "Big cuts in the Federal deficit would improve confidence abroad. But Congress and the voters aren't there yet."

And in a column by Stan Hinden there is reference to Donald P. Gould, a California money manager of a mutual fund.

In the Hinden column, among other things, he says: "Gould noted that the global strength of the dollar has been slipping for 25 years—except for an upward blip in the early 1980s."

It is not sheer coincidence that for 26 years in a row we have been operating with a budget deficit.

Hinden also notes in his column: "Since 1970, the dollar has lost more than 60 percent of its value in relation to the German mark and has dropped almost 75 percent in relation to the Japanese yen. In 1970, it took 3.65 German marks to buy one U.S. dollar. As of last week, you could buy a dollar with only 1.40 marks."

I served in Germany in the Army after World War II, and I remember it took a little more than 4 marks to buy a dollar.

The Washington Post writer also notes: "Gould, who is president and founder of the Franklin Templeton Global Trust—which used to be called the Huntington Funds—is not optimistic about the dollar's future. He sees little chance that the United States will be able to solve the fiscal and economic problems that have helped the dollar depreciate."

We are getting that message from people all over the world.

I cannot understand why we do not listen

Finally, Donald Gould is quoted as saying: "For the first time I am aware of, during a global flight to quality, that quality has been defined as marks and yen and not dollars."

I hope we start paying attention to this kind of information.●

ORDERS FOR MONDAY, MARCH 27, 1995

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in adjournment until the hour of 10:30 a.m., on Monday, March 27, 1995, that following the prayer, the Journal of proceedings be deemed approved to date, no resolutions come over under the rule, the call of the calendar be dispensed with, the morning hour be deemed to have expired, and the time for the two leaders be reserved for their use later in the day, and that there then be a period for routine morning business until 11:30 a.m., with Senators permitted to speak for up to 5 minutes each, with the following exceptions: Mr. DOMENICI for 10 minutes, Mr. THOMAS for 10 minutes, and Mr. GRASSLEY for 10 minutes.

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

PROGRAM

Mr. DOLE. Mr. President, at 11:30 a.m. Monday, under a previous order, there will be 6 hours of debate on S. 219, the moratorium bill.

For the information of all Senators, no votes will occur during Monday's session of the Senate.

JIM EXON

Mr. DOLE. Mr. President, the States of Kansas and Nebraska share a common border. And the citizens of those two States also share common characteristics of hard work, honesty, and personal responsibility.

For the past 16 years, those characteristics could be seen here in the Senate, in the work of our colleague, JIM EXON.

As my colleagues know, Senator EXON announced on Friday that he will retire from the Senate in 1996, and I rise today to pay tribute to his distinguished public service career.

His service to Nebraska and to America began in 1942, when he enlisted in the U.S. Army, and served for 2 years in the Pacific theater.

After returning to Nebraska, Senator Exon would eventually serve for nearly 18 years as president of his own office equipment company.

In 1970, he brought his business experience to the Governor's office, where he served for 8 years, and earned a reputation as a guardian of tax dollars.

Since first coming to the Senate in 1979, Senator EXON has made a difference on a wide number of issues, including agriculture, trade, transportation, the budget, and national security.

I know I speak for all Members of the Senate and saying that we look forward to working with Senator EXON for the remainder of this Congress, and in wishing he and Pat many more years of health and happiness.

ADJOURNMENT UNTIL 10:30 A.M., MONDAY, MARCH 27, 1995

Mr. DOLE. Mr. President, if there be no further business to come before the Senate I move we stand in adjournment under the previous order.

The motion was agreed to, and the Senate, at 3:30 p.m., adjourned until Monday, March 27, 1995, at 10:30 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate March 24, 1995:

DEPARTMENT OF STATE

RAY L. CALDWELL, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS DEPUTY ASSISTANT SECRETARY OF STATE FOR BURDENSHARING.

PHILIP C. WILCOX, JR., OF MARYLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS COORDINATOR FOR COUNTER TERRORISM.

UNITED STATES INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

JOHN CHRYSTAL, OF IOWA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION FOR A TERM EXPIRING DECEMBER 17, 1997.

GEORGE J. KOURPIAS, OF MARYLAND, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION FOR A TERM EXPIRING DECEMBER 17, 1997.

GLORIA ROSE OTT, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION FOR A TERM EXPIRING DECEMBER 17, 1996.

HARVEY SIGELBAUM, OF NEW YORK, TO BE A MEMBER OF THE BOARD OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION FOR A TERM EXPIRING DECEMBER 17, 1996.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

THE JUDICIARY

KAREN NELSON MOORE, OF OHIO, TO BE U.S. DISTRICT JUDGE FOR THE SIXTH CIRCUIT.

JANET BOND ARTERTON, OF CONNECTICUT, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF CONNECTICUT.

WILLIS B. HUNT, JR., OF GEORGIA, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA.

CHARLES B. KORNMANN, OF SOUTH DAKOTA, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF SOUTH DAKOTA.

DEPARTMENT OF JUSTICE

J. DON FOSTER, OF ALABAMA, TO BE U.S. ATTORNEY FOR THE SOUTHERN DISTRICT OF ALABAMA FOR THE TERM OF 4 YEARS.

MARTIN JAMES BURKE, OF NEW YORK, TO BE U.S. MARSHAL FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE TERM OF 4 YEARS.

IN THE COAST GUARD

COAST GUARD NOMINATIONS BEGINNING DANIEL V. RILEY, JR., AND ENDING HEATHER L. MORRISON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JANUARY 6, 1995.

COAST GUARD NOMINATIONS BEGINNING RALPH R. HOGAN, AND ENDING JOHN W. KOLSTAD, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JANUARY 6, 1995.

COAST GUARD NOMINATIONS BEGINNING GENELLE T. VACHON, AND ENDING GREGORY A. HOWARD, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON FEBRUARY 3, 1995.

COAST GUARD NOMINATIONS BEGINNING JAMES M. BEGIS, AND ENDING JON W. MINOR, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON FEBRUARY 16, 1995.

COAST GUARD NOMINATION OF LOUISE A. STEWART, WHICH WAS RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF FEBRUARY 16, 1995.

FOREIGN SERVICE

FOREIGN SERVICE NOMINATIONS BEGINNING CHRISTOPHER E. GOLDTHWAIT, AND ENDING WILLIAM L. BRANT II, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JANUARY 10, 1995.

FOREIGN SERVICE NOMINATIONS BEGINNING JOHN THOMAS BURNS, AND ENDING VAN S. WUNDER III, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JANUARY 10, 1995.

FOREIGN SERVICE NOMINATIONS BEGINNING LUIS E. ARREAGA RODAS, AND ENDING JEFFREY A. WUCHENICH, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JANUARY 10, 1995.