SENATE—*Wednesday, May 1, 1996*

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

PRAYER

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

Gracious God, whose dwelling place is the heart that longs for Your presence and the mind that humbly seeks Your truth, we eagerly ask for Your guidance for the work of this day. We confess anything that would hinder the flow of Your spirit in and through us. In our personal lives, heal any broken or strained relationships that would drain off creative energies. Lift our burdens and resolve our worries. Then give us a fresh experience of Your amazing grace that will set us free to live with freedom and joy.

Now, Lord, we are ready to work with great confidence fortified by the steady supply of Your strength. Give us the courage to do what we already know of Your will, so that we may know more of it for the specific challenges of this day. Our dominate desire is for Your best in the contemporary unfolding of the American dream. Lead on, O King Eternal, Sovereign of this land. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader, Senator LOTT of Mississippi, is recognized.

SCHEDULE

Mr. LOTT. Mr. President, today there will be a period for morning business. Senator LUGAR of Indiana has 45 minutes under his control. Following his remarks, the Senate will resume consideration of S. 1664, the immigration bill. Senators can expect rollcall votes on amendments throughout the day. A cloture vote is expected on the bill following the disposition of the Simpson amendment. It is the hope of the majority leader to complete action on the immigration bill during today's session.

I believe that Senator LUGAR is prepared to proceed. I thank the Chair and I yield the floor, Mr. President.

MORNING BUSINESS

The PRESIDING OFFICER (Mr. KYL). There will now be a period for morning business.

Mr. LUGAR addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana, Senator LUGAR, is recognized.

Mr. LUGAR. I thank the Chair.

INDIANA SENATE HISTORY

Mr. LUGAR. Mr. President, during my campaign for reelection in 1994, a number of Indiana papers published articles describing the fourth-term jinx that had afflicted Indiana Senators and speculating whether I would be fortunate enough to overcome that jinx. Although five of my predecessors had each won three Senate elections, all of them had been defeated in their fourth race. Some of the most prominent and accomplished names in Indiana politics, including James Watson, Homer Capehart, Vance Hartke, and Birch Bayh had fallen victim to the fourth-term jinx.

The independent-minded voters of Indiana have never been shy about expressing their dissatisfaction with an incumbent. In fact, the average length of service among all Indiana Senators is just a little more than 8 years. Five Hoosier Senators held office less than a year. The shortest Senate service was that of Charles William Cathcart, who served less than 2 months of an unexpired term. Only 10 of the 43 Hoosier Senators served more than 2 terms.

One reporter—Mary Dieter, who covers Indiana politics for the Louisville Courier-Journal—added a twist to the fourth-term jinx story. She noted that even if I broke the jinx, I would not become the longest serving Indiana Senator upon being sworn in. That distinction would still belong to Daniel Wolsey Voorhees, who had served more than a year of an unexpired term before winning three of his own. He served in this body from November 1877 until March 1897.

As a consequence of Voorhees' long tenure, not until today has this Senator passed the previous record for length of service by a Senator from Indiana. This day marks my 7,059th in office, passing the 7,058-day record set by Voorhees.

I am enormously grateful to the people of Indiana for granting me the opportunity to serve them; to my family for supporting my endeavors in public service; and to all my past and present colleagues in the Senate who have made my service here so rewarding and enjoyable.

I would like to commemorate this occasion by paying homage to the important record of Hoosier service to the U.S. Senate. I regret that legislative history is a topic that rarely receives adequate attention, either in our schools or during deliberations in this body. So often our work in the Senate would improve with a greater understanding of the history that lies behind us and of our role as stewards of an institution that will survive long after all of us are gone.

I have attempted in a small way to resist the erosion of Hoosier Senate history by asking my summer interns during the last few years to research Indiana Senators. Invariably my interns are surprised and bemused by the parallels between our present legislative labors and the actions of long forgotten Senators. One wrote after researching the life of the venerable Oliver P. Morton: "One of the greatest Hoosiers of all time has been forgotten. Let us recall him and learn from his experiences."

FRONTIER YEARS

Mr. President, although few Hoosiers have had long Senate careers, many of my predecessors made indelible contributions to the Nation. Curiously, only 16 of the 43 Indiana Senators—37 percent—were born within the State: 10 were born in neighboring Ohio; 4 were born in New York; 2 each were born in Pennsylvania and Virginia; 2 were born in foreign lands; and the remaining 8 came from assorted Eastern States.

No Indiana Senator has ever been born west of the Mississippi River. For my Indiana Senate predecessors, the trek westward stopped at the Wabash River. In Indiana they found land that brought abundance, the confluence of great waterways, and a brand of frontier politics that proved irresistible to many young lawyers, farmers, and businessmen seeking to make names for themselves.

JAMES NOBLE

Ironically, one of Indiana's original Senators, James Noble, might have set an insurmountable record of service had he not died at the young age of 45. Elected by the Indiana Legislature in 1816 as a Democratic-Republican, he took office 5 days before his 31st birthday. He died during his third term on February 26, 1831. Noble's 14 years of service in the Senate would stand as a Hoosier record for three decades.

Noble was a prominent lawyer who had played a central role in Indiana's constitutional convention and was a natural choice for appointment to the Senate by the Indiana Legislature. In the Senate he was a leading advocate for using Federal funds to improve the Nation's roads and waterways, and he was instrumental in securing appropriations to extend the Cumberland Road westward from the town of Wheeling, in Virginia at that time. He argued against the view held by some of his contemporaries that Federal

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

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spending on infrastructure improvements was unconstitutional. For Noble, building roads and waterways to bind the States together was a vital activity of the Federal Government.

Noble and other early Hoosier Senators had been settlers of the Indiana Territory and had weathered the rigors of frontier life. Befitting a frontier Senator, Noble always insisted on traveling to and from Washington on horseback, rather than by stagecoach.

Several Hoosier Senators participated in military campaigns against Tecumsah's Shawnees and other Indian tribes. Noble served as a colonel in the Indiana militia. Senator Waller Taylor, who was Indiana's other original Senator, served as Gen. William Henry Harrison's aide-de-camp during the War of 1812. Senator Robert Hanna, who replaced Noble, was a general in the Indiana militia.

JOHN TIPTON

But the Hoosier Senator who epitomized the rugged life in a frontier State was John Tipton, an unschooled Tennessee native, who served in the Senate from 1832 to 1839. Tipton's father was killed by Indians when the boy was just 7 years old. By the time he crossed the Ohio River into Indiana at the age of 21, Tipton was already the breadwinner of his household. He settled his mother and siblings in Harrison County, where he earned a living as a gunsmith and farmhand.

Tipton served under General Harrison during the Tippecanoe campaign, rising to the rank of brigadier general. After his military service, Tipton would become a justice of the peace, sheriff of Harrison County, Indian agent, and State legislator. He helped select the site for a new State capital that would become Indianapolis. He also did an official survey of the Indiana border with Illinois. Tipton strenuously but unsuccessfully maintained that a port on Lake Michigan called Chicago rightfully belonged within Indiana's borders.

As Senator, Tipton continued to focus on frontier issues. He served on the Military Affairs and Indian Affairs Committees. Later in his term, he became chairman of the Committee on Roads and Canals, taking over from fellow-Hoosier William Hendricks. Like his predecessors in the Senate, Tipton fought for appropriations to build roads connecting Indiana with the East.

As these roads were built and the Ohio River and Great Lakes were developed, the frontier pushed westward. By the 1840's, Indiana had developed from a frontier State into a burgeoning crossroads of commerce and travel. With this transformation, the men representing Indiana in the Senate tended to be better educated and more motivated by national political ambitions than their pioneer predecessors.

EDWARD HANNEGAN

Senator Edward Hannegan, who served in this body from 1843 to 1849 provides a good example. He was a renowned orator who sought unsuccessfully the Democratic nomination for President in 1852. The legendary Daniel Webster said of him: "Had Hannegan entered Congress before I entered it I fear I never should have been known for my eloquence."

Hannegan's mix of rhetorical fire and elegance was demonstrated on one occasion when he took to the Senate floor to denounce President Polk for his offer to Great Britain to set the northern border of the Oregon Territory at the 49th parallel. Hannegan was a leading proponent of the expansionist view that was represented by the battlecry: "54, 40, or fight." Said Hannegan of Polk:

> So long as one human eye remains to linger on the page of history, the story of his abasement will be read, sending him and his name together to an infamy so profound, a damnation so deep, that the hand of resurrection will never drag him forth. . . . James K. Polk has spoken words of falsehood with the tongue of a serpent.

POLITICAL TURBULENCE

In any event, Mr. President, Indiana's position as a crossroads of the Nation was not limited to commerce and travel. Up to the present day it also has been a crossroads for American subcultures, economic forces, and political ideas. In his 1981 bestseller "The Nine Nations of North America", Joel Garreau conceptually divided the North American Continent into nine subregions according to their economic, social, and cultural identity. It is not surprising that Garreau placed Indianapolis at the very intersection of three of these regions: the industrial Midwest centered on the Great Lakes, the broad grain growing region of the plains, and the South.

As a result, through much of its history, the cauldron of Indiana politics has been characterized by its swirling unpredictability. Viewed from a broad historical perspective, political parties in Indiana have never been able to dominate the landscape for long before they were toppled by their rivals. For example, only one time since 1863 has the seat that I hold been passed between members of the same party. In the entire history of Indiana, the two Hoosier Senate seats have never been occupied by members of the same party for longer than 16 consecutive years.

The most turbulent time in Indiana politics was the Civil War era. In many counties, residents had considerable sympathy for the southern cause, while other Hoosiers were ardent abolitionists. Democrats who opposed the war and supported the South were known as "Copperheads." Another group of Democrats opposed abolition, but wished to hold the Union together. Before the war, these Constitutional-Union Democrats backed political concessions to the South in the hope of preserving the Union without war. When war began, however, many Constitutional-Union Democrats reluctantly supported the northern war effort.

JESSE BRIGHT

Throughout the era of the Civil War and Reconstruction, at least one of the two Hoosier seats was occupied by a Democratic Senator with sympathies for the southern point of view. In 1862, one of these Senators, Jesse Bright of Madison, became the only Senator from a nonslave State to be expelled by the Senate for supporting the rebellion. The expulsion was all the more notable because Bright had served as President pro tempore from 1854 to 1856 and again in 1860. The catalyst for the expulsion was a letter from Bright to his friend Jefferson Davis written on March 1, 1861—more than a month before the attack on Fort Sumter. The letter introduced another friend, Mr. Thomas Lincoln, formerly of Madison, IN, to Davis. It read:

> MY DEAR SIR: Allow me to introduce to your acquaintance my friend, Thomas B. Lincoln, of Texas. He visits your capital mainly to dispose of what he regards [as] a great improvement in fire-arms. I recommend him to your favorable consideration as a gentleman of the first respectability, and reliable in every respect.
>
> Very truly yours,
>
> JESSE BRIGHT.

The discovery of the letter late in 1861 provided an opening to Republican Senators seeking to expel Bright for his southern leanings. The Senator not only voted against many wartime provisions, he owned slaves and a plantation in Kentucky.

On December 16, 1861, Senator Morton Wilkinson of Minnesota introduced a resolution to expel Bright. Wilkinson contended that the letter and Bright's addressing of Davis as "His Excellency Jefferson Davis, President of the Confederation of States" amounted to a recognition of the legitimacy of the secession of Southern States. Bright responded that in the days before the war began, many leaders in the North continued friendly correspondence with acquaintances in the South and that his method of addressing Davis was nothing more than the polite use of a title.

Although the Judiciary Committee recommended against expulsion, the Senate debate ran strongly against Bright. He was harshly denounced by Indiana's Republican Senator Henry S. Lane and by future President, Andrew Johnson of Tennessee. On February 5, with the Senate Gallery filled with onlookers, the Senate expelled Bright by a vote of 32 to 14. His Senate career came to an end 1 month short of 17 years. Since the Indiana Legislature was under the control of the Democratic Party in 1862 when Bright would have been up for reelection, his expulsion denied him an almost certain fourth term.

OLIVER P. MORTON

During the Civil War, Indiana was administered by Gov. Oliver P. Morton, the spiritual leader of the Indiana Republican Party. Morton went on to become one of the most important Senators of the era of Reconstruction and a national spokesman for the Republican Party. His likeness can be viewed today a few hundred feet away in Statuary Hall.

Originally a Democrat, Morton broke with his party in 1854 over the Kansas-Nebraska Act. His views on the slavery question developed in much the same manner as those of Abraham Lincoln. Beginning in the late 1850's, he was an outspoken critic of slavery. In one 1860 speech he denounced it as "a moral, social, and political evil * * * a curse to any people, a foe to progress, the enemy of education and intelligence, and an element of social and political weakness." Like Lincoln, however, Morton carefully avoided advocating outright abolition, instead focusing on stopping the extension of slavery. But after the South seceded and the fighting began, Morton was a key ally of Lincoln in prosecuting the war and supporting the Emancipation Proclamation.

Within a week of Lincoln's call for troops on April 15, 1861, Morton had organized 12,000 Hoosier recruits—a number three times Indiana's quota. Over the course of the war, Governor Morton continued to be one of the most effective troop organizers for the Union. Indiana contributed more than 200,000 soldiers to the Union war effort; all but 17,000 of these were volunteers. Morton was revered by Hoosier troops because he used State funds to ensure that Indiana's soldiers were well clothed and equipped and to care for the widows and orphans of fallen Hoosiers. Like Lincoln, Morton was not timid about using the power at his disposal. He declared martial law in parts of southern Indiana to quell subversive activities by Copperhead groups. When the State ran low on funds, Morton bypassed the Democratic legislature, financing the war effort by borrowing from private bankers and soliciting contributions from citizens and businesses.

In 1867 Morton began 10 years of service in the Senate. In 1865 he had suffered an apparent stroke that left him partially paralyzed. Despite his infirmity, he was a vigorous debater and party organizer who reveled in the political combat of the Senate. He became chairman of the Manufactures Committee and the Privileges and Elections Committee. He also served on the Foreign Affairs and Military Affairs Committees.

But the central issue during Morton's time in the Senate was, of course, Reconstruction. Though he had supported Lincoln's magnanimous gestures toward the South immediately after the war, Morton gradually became convinced that an uncompromising and complete reconstruction of the South was necessary. He led the fight for passage and ratification of the 15th amendment which granted blacks the right to vote. To gain ratification by the necessary three-fourths of the States, he proposed a floor amendment requiring several Southern States to ratify the 15th amendment as a condition for reclaiming their seats in Congress. His hardball tactics ultimately prevailed, but they brought accusations that he was overly vindictive toward the South. To these charges, he replied: "I want peace in the South. I want it as earnestly as any man can, but I want peace in the South on correct principles. I am not willing to purchase peace by conceding that they were right and we were wrong."

Morton died in 1877 before the end of his second term. With his passing, his seat fell into Democratic hands for almost 20 years. For it was the long-serving Daniel Voorhees who was appointed by the Democratic-controlled legislature to replace Morton.

DANIEL VOORHEES

Voorhees, who was known as the Tall Sycamore of the Wabash was a prominent Terre Haute lawyer who shared Jesse Bright's sympathy for the South and Edward Hannegan's passionate speaking style. During the entirety of the Civil War, Voorhees served in the House of Representatives where he frequently criticized President Lincoln. As a fervent believer in States rights, he saw the North's prosecution of the war as unconstitutional. After Lincoln issued the Emancipation Proclamation Voorhees declared:

> Ten days before he issued it he said that he had not the power to promulgate such a document and that it would do no good if he did. In that he was right for once. But I suppose he gave way to pressure. Yes, pressure. He was pressed. By whom? By Horace Greeley, that political harlot, who appeared in a praying attitude in behalf of 20 millions of people.

Lincoln's reelection in 1864 was a great disappointment to Voorhees, who hoped that the President's defeat would allow for a compromise that would reestablish both the Union and the rights of States to make their own decisions on slavery. After the war, Voorhees adopted a softer view of Lincoln because of the President's intentions to implement a magnanimous reconstruction program.

As a Senator, Voorhees was a prominent forefather of the populist movement headed by William Jennings Bryan at the end of the century. Voorhees devoted much energy to defending the agrarian interests of the Midwest and South. He opposed protectionist tariffs designed to benefit eastern manufacturers, and he advocated a liberal monetary policy that would expand currency to benefit farmers. He denounced the U.S. financial system as "an organized crime against the laboring, tax-paying men and women of the United States."

In 1893, Voorhees became chairman of the powerful Finance Committee. That year, a major financial panic caused President Cleveland to call a special session of Congress to consider the repeal of the mildly inflationary Sherman Silver Purchase Act. To pass the repeal, he needed the support of Voorhees. The issue divided Democrats, many of whom, like Voorhees, strongly supported silver purchases. But Voorhees set aside his natural inclinations to help the President from his party respond to the financial panic. Voorhees considered passage of the repeal of the Silver Purchase Act his greatest legislative accomplishment, although the measure actually did little to remedy the country's financial crisis.

HOOSIERS IN NATIONAL OFFICE

Mr. President, Senator Vorhees had the distinction of defeating a future President—Benjamin Harrison—in his first Senate election and being unseated by a future Vice President—Charles Fairbanks—in his last. In fact, the late 18th and early 19th centuries saw Indiana become a frequent supplier of candidates for national office. Circumstances had positioned Indiana to play a leading role in national politics. Indiana had grown to become the seventh largest State in the Union by the 1870's, and it had become a swing State where party control changed from election to election. Both parties, therefore, had strong incentives to put Hoosiers on their national tickets.

Of the 20 individuals who served as either President or Vice President between 1870 and 1920, five were Hoosiers. Only New York, with six, placed more individuals in Executive Offices during this period. Each of these Hoosiers was connected to the Senate, either as a former Member or in performing their Vice Presidential duties as presiding officer.

SCHUYLER COLFAX

This succession of Hoosiers was begun by the unfortunate Schuyler Colfax, who was President Grant's first Vice President from 1869 to 1873. Colfax, whom Lincoln described as a "friendly rascal," never held a seat in the Senate. His political career was brought to a close by revelations that he had participated in a financial scandal that occurred during his earlier tenure as Speaker of the House. He avoided impeachment proceedings largely because the scandal was not revealed until his Vice Presidential term was about to expire.

THOMAS HENDRICKS

Thomas Hendricks, a Democrat and lawyer from Shelbyville, IN, became the second Hoosier Vice President, and the first to serve a previous term in the Senate. He was elected by the Indiana Legislature in 1863 to the term that

could have been the expelled Jesse Bright's fourth. In the Senate, Hendricks was a sharp critic of President Lincoln. He voted for appropriations to pay for troops, weapons, and supplies, but he opposed the Emancipation Proclamation, the draft, and the 13th, 14th, and 15th amendments. Hendricks lost his seat after just one term when the Indiana Legislature fell into GOP hands in 1869.

In 1876, after a term as Governor, Hendricks got his first shot at the Vice Presidency when he ran on the Democratic ticket with ill-fated Presidential candidate Samuel J. Tilden. In the most controversial Presidential election in American history, Tilden and Hendricks seemingly had won the election by a 203 to 166 count in the electoral college and by 260,000 popular votes. The Democrats were denied victory, however, when Republicans disputed the results of voting in several Southern States. An election commission that favored the Republicans ruled in favor of the GOP Presidential candidate Rutherford B. Hayes.

Hendricks again was the Democratic Vice Presidential nominee in 1884. This time he was successful, as the Democratic ticket headed by Grover Cleveland came out on top for the first time since before the Civil War. As Vice President, Hendricks would preside over only a 1-month session of the Senate before his death in November 1885.

Hendricks' untimely death left the country without a Vice President, President pro tempore, or Speaker of the House for the second time in the decade. Under the 1792 Succession Act, this was the line of succession in the event of the President's death. No other official was mentioned. Had Cleveland died before Congress convened later in the year, the country would have been left temporarily without a President.

Hendricks' death prompted Congress to pass a revision of the Succession Act in 1886. It removed the President pro tempore and the Speaker of the House from the line of succession and substituted the President's Cabinet officers in the order the departments were created beginning with the Secretary of State. In 1947 at President Truman's urging, Congress again revised the succession order, returning the Speaker and the President pro tempore to the line, but reversing their order so the Speaker ranked second behind the Vice President and the President pro tempore ranked third, followed by the Cabinet Secretaries.

BENJAMIN HARRISON

Indianapolis Republican Benjamin Harrison, who would become our 23d President, also had the good fortune to gain experience in the Senate. He served in this body from 1881 until 1887. During that time he chaired the Committee on Territories and was a strong advocate for protecting and expanding the pensions of Civil War veterans. Harrison was turned out of his Senate seat after only one term by a newly elected Democratic State legislature.

Nevertheless, Harrison retained his national prominence and defeated President Cleveland in the 1888 Presidential election, despite losing the popular vote. Harrison's narrow victory in New York brought him that State's 36 electoral votes and a 233 to 168 triumph in the electoral college.

As President, Harrison implemented much of his economic program, including a high tariff. He signed the Sherman Silver Purchase Act, while resisting the far more inflationary proposal for free coinage of silver that was supported by Daniel Voorhees. In a rematch of the 1888 election, Grover Cleveland easily defeated Harrison, who would return to his law practice in Indianapolis.

CHARLES FAIRBANKS

Another Indianapolis Republican, Charles Fairbanks, served in the Senate before attaining the vice presidency. A close friend and staunch ally of President McKinley, Fairbanks' Senate tenure ran from 1897 until 1905. Fairbanks was under consideration for the 1900 GOP Vice Presidential nomination, but he took his name out of contention. He planned to run for President in 1904 when McKinley's second term expired, and he believed that the Senate offered a better position from which to seek the GOP Presidential nomination. After all, no Vice President since Martin Van Buren had been elected to succeed his President.

This turned out to be a colossal miscalculation. In September 1901, Fairbanks was cut off from a possible Presidential run by the tragedy of President McKinley's assassination. Vice President Theodore Roosevelt was elevated to the Presidency, ensuring that he would be the Republican nominee in 1904. Fairbanks had to settle for the Republican Vice Presidential nomination on the ticket with Roosevelt. This time he did not pass up the opportunity, and he became Vice President in 1905 after the GOP ticket swept to victory.

Fairbanks attempted to gather support for the GOP Presidential nomination in 1908, but Roosevelt's endorsement of William Howard Taft again blocked the Hoosier's path to the White House. Once more in 1916, Fairbanks was a candidate for Vice President on the ticket with Charles Evans Hughes. But they were defeated by incumbents Woodrow Wilson and Hoosier Thomas Marshall.

THOMAS MARSHALL

Marshall never served in the Senate, but he presided over this body for 8 years as Vice President from 1913 until 1921. He was the first Vice President to serve two full terms since Daniel Tompkins had done so under James Monroe.

During his time of presiding over the Senate, Marshall gained a reputation for his dry Hoosier wit. After listening to a long speech by Senator Joseph Bristow of Kansas on the needs of the country, Marshall remarked in a voice audible to many in the Chamber: "What this country needs is a really good five-cent cigar." This line was widely reported in newspapers and became his most famous utterance. Marshall would frequently poke fun at his own role as Vice President. He told a story of two brothers: "One ran away to sea; the other was elected Vice President. And nothing was ever heard of either of them again."

Ironically, though Marshall was considered a good Vice President, his most notable action perhaps was something that he did not do. After President Wilson suffered a stroke in October 1919, many leaders advised him to assume the Presidency while Wilson was incapacitated. At the time, however, there was no provision in the Constitution governing this situation. Marshall refused to replace the President, fearing that it would divide the country and create a precedent that could be used mischievously against future presidents. With the ratification of the 25th amendment in 1967, which was sponsored by Senator Birch Bayh of Indiana, the Constitution provided a legal procedure for dealing with the difficult situation of an incapacitated President.

THE NEW CENTURY

Mr. President, just as Marshall's decision affected the future of the Vice Presidency, several Hoosier Senators deeply affected the operations and customs of the Senate during the early 20th century.

ALBERT BEVERIDGE

One such Senator was Albert J. Beveridge of Indianapolis. Beveridge began his service in March 1899 at the age of 36. He had never held a political office prior to his election to the Senate. He served two terms, gaining a reputation for his energy and intelligence, as well as his ambition.

Beveridge is the patron saint of freshman Senators seeking to resist the constraints of the Senate's seniority system. In his excellent collection of addresses on the history of the Senate, Senator ROBERT BYRD of West Virginia offers an enlightening account of Beveridge's vigorous, but largely unsuccessful efforts to secure desired committee assignments as a freshman.

Beveridge ventured across the sea for a 6-month trip to the Philippines, China, and Japan after his election by the Indiana Legislature in January 1899. Upon returning to Indiana in September of that year, he was praised in the press for investigating an important issue firsthand. Up to this point, Senators had rarely ventured overseas on factfinding trips. When he traveled to Washington, DC, later in the year

for the opening of the congressional session, he was summoned to the White House to brief President McKinley on his observations.

Believing that his experience in the Philippines had made him the preeminent expert on the newly acquired islands, Beveridge campaigned to be appointed chairman of the Senate Committee on the Philippines. He also sought a seat on Henry Cabot Lodge's powerful Foreign Relations Committee. Among other steps, Beveridge visited Gov. Theodore Roosevelt in New York, who recommended him to Lodge. But Beveridge would be granted neither the Philippines chairmanship nor a seat on Foreign Relations. Lodge wrote back to Roosevelt explaining: "Beveridge is a very bright fellow, well informed and sound in his views. I like him very much, but he arrived here with a very imperfect idea of the rights of seniority in the Senate, and with a large idea of what he ought to have." Beveridge had to settle for an ordinary seat on the Philippines Committee.

In March 1900, freshman Beveridge again scandalized the Senate by delivering his second major floor speech just 3 months into his first session. For many of his senior colleagues, Beveridge was flouting the unwritten Senate rules governing the behavior of new members. In response to this transgression against his elders, Beveridge was the recipient the next day of a subtle but stinging parody of his speech by Senator Edmund W. Pettus of Mississippi. According to a report in the New York Times the performance caused Senators to roar in laughter at the expense of Beveridge.

Beveridge survived and learned from his hazing. Though still boisterous and aggressive for a freshman, he focused his attention on committee work, eventually becoming chairman of the Committee on Territories and a member of the Foreign Relations Committee.

During his time in the Senate, Beveridge's political philosophy transformed from the standard conservatism of his party to progressivism. Beveridge became a leader of the nationwide progressive movement and worked to construct a foundation for progressive legislation such as the first National Child Labor Law, the Meat Inspection Act, and the Pure Food and Drug Act. This shift toward progressivism, however, weakened his support among Republicans and contributed to his defeat for re-election to a third term in 1910.

On April 8, 1913, the 17th amendment was ratified, forever transforming the nature of Senate elections. The amendment transferred the power to choose Senators from the State legislatures to popular elections.

BENJAMIN SHIVELY

In Indiana, Senator Benjamin Shively's election was at the heart of the debate over the amendment. In 1908 as Democrat State legislators met to choose their nominee, Shively was matched against John W. Kern. Kern was the favorite among the people of Indiana, but Shively prevailed by two votes in a secret ballot. Since the Democrats controlled the State legislature, Shively was elected Senator.

Given the closeness of the balloting, State legislators were asked by reporters and constituents to reveal their votes. When informal tallies of the legislators' announced votes had Kern winning by as many as eight votes, it was clear that many State legislators were lying about how they had voted. This fueled public cynicism in Indiana with the method of electing Senators and helped build support in the State for ratification of the 17th amendment.

In 1914, after the amendment had been ratified, Shively demonstrated that he did have popular support. He became the first Indiana Senator to be elected by popular vote, a distinction of which he was enormously proud. Shively also became chairman of the important Pensions Committee. Unfortunately, he did not survive his second term, dying in 1916 after serving only a year.

JOHN KERN

Shively's rival in 1908, John Kern, went on to place his own extraordinary mark on the Senate. He defeated Albert Beveridge in the 1910 Senate election, the last Senate race held before ratification of the 17th amendment. But it was the 1912 election that brought Kern to Senate prominence.

That election resulted in a sweeping victory for the Democratic Party. With Teddy Roosevelt's Bull Moose candidacy splitting Republicans, Woodrow Wilson rolled to victory. Democrats strengthened an already huge majority in the House, and seized control of the Senate for the first time in 18 years.

The majority party's prospects for enacting its legislative program rested, as they so often do, on the Senate. Democrats held just a 51 to 44 seat majority. Up to that time Senate party caucuses had chosen their leader largely on the basis of seniority. In 1913, however, Democrats broke with this practice in an effort to make the most of their legislative opportunities. They decided that their caucus leader should be the Senator who would be the most effective legislative leader.

The man they chose by unanimous vote was John Kern, who had been elected to the Senate 2 years before in 1910. Thus a freshman, with just 2 years of Senate experience, was entrusted with shepherding one of the most ambitious legislative plans in American history through the Senate. Kern was no political neophyte. He was a respected politician who had been the Democratic Vice Presidential nominee in 1908 on the ticket with William Jennings Bryan.

Historians often regard Kern as the first modern majority leader, although he did not formally have that title. Kern established numerous precedents during his 4 years as the head of the Democratic caucus. He conferred closely with the administration on its program, frequently visiting Wilson at the White House to discuss strategy. He demanded party unity and employed threats, compromises, and personal entreaties to achieve it. He established the post of Democratic whip to assist him in maintaining discipline. He also used the prerogative to grant committee assignments as an enforcement mechanism. In his 4 years as caucus leader, Kern's energy and organization failed only once to deliver Senate passage of a major Presidential legislative initiative. This was Wilson's ship purchase bill, that was blocked by a 1915 filibuster.

Despite Kern's power in the Senate and his close relationship with President Wilson, he was defeated by Republican Harry S. New in the 1916 election. New garnered 51 percent of the vote to Kern's 49 percent. Wilson won his reelection bid but lost Indiana by an even narrower margin to Charles Evans Hughes.

JAMES WATSON

In 1929, another Hoosier was chosen to be majority leader. That year Senate Republicans elected, James Eli Watson, who served as majority leader during the 4 years of Herbert Hoover's Presidency. Watson began his Senate career when he was elected to complete the unexpired term of Senator Benjamin Shively in 1916. He was reelected in 1920 and 1926.

Watson had been one of President Hoover's major rivals for the GOP Presidential nomination in 1928. As a result, they did not develop the close working relationship that had existed between Wilson and Kern. As Republican leader, Watson's primary tactic was to build majorities through careful compromises. Like Kern, Watson's status in the Senate did not insulate him from electoral defeat back home. He lost his quest for a fourth Senate election victory when he was turned out of office by the national Democratic landslide of 1932.

SHERMAN MINTON

Like John Kern, Sherman Minton played a prominent role in the Senate, despite serving only one term. Elected as a Democrat in 1934, Minton was an ardent New Dealer and loyal Senate ally of President Franklin Roosevelt. In January 1937 Majority Leader Joseph T. Robinson named Minton to the new position of assistant Democratic whip. Minton, who was an aggressive legislator, relished this responsibility. Two years later, Minton was promoted to majority whip.

Minton had the bad luck of running for reelection in 1940. That year his Republican opponent, Raymond Willis of

Angola, IN, got a big boost from the presence of Hoosier favorite son Wendell Willkie at the top of the ticket. Minton's support for the 1940 Selective Service Act and other defense preparations also cost him votes. Willis defeated Minton by a narrow 25,000-vote margin.

During his career in public service, Minton had the distinction of serving in all three branches of the Federal Government. After Minton's Senate defeat, Roosevelt brought him to the White House as an administrative assistant to the President. Roosevelt used him primarily as his liaison with Congress.

In May 1941, however, Roosevelt appointed Minton to the Seventh Circuit U.S. Court of Appeals. He served there until President Harry Truman appointed him to the Supreme Court in 1949. Minton spent 7 years on the High Court until illness forced his retirement in 1956. A number of former Senators have served on the Supreme Court during its history, including James Francis Byrnes and Hugo Black. Since Minton's appointment in 1949, however, no former Senator has been appointed to the High Court.

MODERN ERA

Since the end of World War II, seven individuals have been elected to the Senate by the people of Indiana. Several of my colleagues served in Congress with William Jenner and Homer Capehart, two Republicans whose careers significantly impacted my early political development in Indiana. And, of course, many of my colleagues had close and productive associations with the three distinguished former Hoosier Senators who often visit with us: Birch Bayh, Vance Hartke, and Dan Quayle.

Hopefully, those of us who have served Indiana in the Senate during recent years have upheld the tradition of achievement established by our Hoosier predecessors. It may be premature to make historical judgments on the most recent seven Hoosier Senators, and I will resist the temptation to do so.

Our Nation and our world have changed profoundly since James Noble and Waller Taylor came to the Senate in 1816. Noble's horseback journeys to Washington, DC, are said to have taken him about 17 days. Today we can travel to Indiana in less than 2 hours. Indiana's population has grown from about 150,000 in 1820 to almost 6 million people today.

As our world has become more complex, so has our job here in the Senate. We have more constituents, more Members, more issues, more bills, more staff, and more floor votes than our early predecessors could likely have imagined. The 7 most recent Hoosier Senators have cast more floor votes than the previous 36 Hoosier Senators combined. The second session of the 14th Congress—the 1st in which Indiana was represented —lasted just 92 days. Today the Senate is in session almost year round.

But even as this body has grown and developed, the fundamentals of being a good legislator have always remained the same. Down through history, this has been an institution that has depended on honesty, civility, hard work, thoughtfulness, an understanding of the people we represent, and a willingness to stand on conviction. When these elements have been present, the Senate has succeeded.

Mr. President, I would encourage each of my colleagues, if they have not done so, to explore the service of their Senatorial ancestors from their own States. Inevitably they will find both triumphs and tragedies; heroic acts and embarrassing mistakes. But as I have surveyed the unbroken line that stretches from Waller Taylor and James Noble to Senator DAN COATS and myself, I have gained an even stronger appreciation of the character of my State and the performance of the U.S. Senate.

Mr. President, I ask unanimous consent to have printed in the RECORD two tables relating to Indiana Senators.

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

INDIANA SENATORS: DATES OF SERVICE

James Noble—Dec. 11, 1816–Feb. 26, 1831.
Waller Taylor—Dec. 11, 1816–Mar. 3, 1825.
William Hendricks—Mar. 4, 1825–Mar. 3, 1837.
Robert Hanna—Aug. 19, 1831–Jan. 3, 1832.
John Tipton—Jan. 4, 1832–Mar. 3, 1839.
Oliver Smith—Mar. 4, 1837–Mar. 3, 1843.
Albert White—Mar. 4, 1839–Mar. 3, 1845.
Edward Hannegan—Mar. 4, 1843–Mar. 3, 1849.
Jesse Bright—Mar. 4, 1845–Feb. 5, 1862.
James Whitcomb—Mar. 4, 1849–Oct. 4, 1852.
Charles Cathcart—Nov. 23, 1852–Jan. 11, 1853.
John Pettit—Jan. 11, 1853–Mar. 3, 1855.
Graham Fitch—Feb. 4, 1857–Mar. 3, 1861.
Henry Lane—Mar. 4, 1861–Mar. 3, 1867.
Joseph Wright—Feb. 24, 1862–Jan. 14, 1863.
David Turpie—Jan. 14, 1863–Mar. 3, 1863.
Thomas Hendricks—Mar. 4, 1863–Mar. 3, 1869.
Oliver Morton—Mar. 4, 1867–Nov. 1, 1877.
Daniel Pratt—Mar. 4, 1869–Mar. 3, 1875.
Joseph McDonald—Mar. 4, 1875–Mar. 3, 1881.
Daniel Voorhees—Nov. 6, 1877–Mar. 3, 1897.
Benjamin Harrison—Mar. 4, 1881–Mar. 3, 1887.
David Turpie—Mar. 4, 1887–Mar. 3, 1899.
Charles Fairbanks—Mar. 4, 1897–Mar. 3, 1905.
Albert Beveridge—Mar. 4, 1899–Mar. 3, 1911.
James Hemenway—Mar. 4, 1905–Mar. 3, 1909.
Benjamin Shively—Mar. 4, 1909–Mar. 14, 1916.
John Kern—Mar. 4, 1911–Mar. 3, 1917.
Thomas Taggart—Mar. 20, 1916–Nov. 7, 1916.
James Watson—Nov. 8, 1916–Mar. 3, 1933.
Harry New—Mar. 4, 1917–Mar. 3, 1923.
Samuel Ralston—Mar. 4, 1923–Oct. 14, 1925.
Arthur Robinson—Oct. 20, 1925–Jan. 2, 1935.
Fredrick Van Nuys—Mar. 4, 1933–Jan. 25, 1944.
Sherman Minton—Jan. 3, 1935–Jan. 2, 1941.
Raymond Willis—Jan. 3, 1941–Jan. 2, 1947.
Samuel Jackson—Jan. 28, 1944–Nov. 13, 1944.
William Jenner—Nov. 14, 1944–Jan. 2, 1945.
Homer Capehart—Jan. 3, 1945–Jan. 2, 1963.
William Jenner—Jan. 3, 1947–Jan. 2, 1959.
Vance Hartke—Jan. 3, 1959–Jan. 2, 1977.
Birch Bayh—Jan. 3, 1963–Jan. 2, 1981.
Richard Lugar—Jan. 3, 1977–
Dan Quayle—Jan. 3, 1981–Jan. 2, 1989.
Daniel Coats—Jan. 3, 1989–

Indiana Senators: Length of Service

1. Richard Lugar—19 Years 4 Months—(1977–)
2. Daniel Voorhees—19 Years 4 Months—(1877–1897)
3–5. Homer Capehart—18 Years—(1945–1963)
3–5. Vance Hartke—18 Years—(1959–1977)
3–5. Birch Bayh—18 Years—(1963–1981)
6. Jesse Bright—16 Years 11 Months—(1845–1862)
7. James Watson—16 Years 4 Months—(1916–1933)
8. James Noble—14 Years 2 Months—(1816–1831)
9. William Jenner—12 Years 2 Months—(1944–45; 1947–59)
10. David Turpie—12 Years 2 Months—(1863; 1887–99)
11–12. William Hendricks—12 Years—(1825–1837)
11–12. Albert Beveridge—12 Years—(1899–1911)
13. Fredrick Van Nuys—10 Years 11 Months—(1933–1944)
14. Oliver Morton—10 Years 8 Months—(1867–1877)
15. Arthur Robinson—9 Years 2 Months—(1925–1935)
16. Waller Taylor—8 Years 3 Months—(1816–1825)
17–18. Charles Fairbanks—8 Years—(1897–1905)
17–18. Dan Quayle—8 Years—(1981–1989)
19. Daniel Coats—7 Years 4 Months—(1989–1997)
20. John Tipton—7 Years 2 Months—(1832–1839)
21. Benjamin Shively—7 Years—(1909–1916)
22–23. Oliver Smith—6 Years—(1837–1843)
22–33. Albert White—6 Years—(1839–1845)
22–33. Edward Hannegan—6 Years—(1843–1849)
22–33. Henry Lane—6 Years—(1861–1867)
22–33. Thomas Hendricks—6 Years—(1863–1869)
22–33. Daniel Pratt—6 Years—(1869–1875)
22–33. Joseph McDonald—6 Years—(1875–1881)
22–33. Benjamin Harrison—6 Years—(1881–1887)
22–33. John Kern—6 Years—(1911–1917)
22–33. Harry New—6 Years—(1917–1923)
22–33. Sherman Minton—6 Years—(1935–1941)
22–33. Raymond Willis—6 Years—(1941–1947)
34. Graham Fitch—4 Years 1 Month—(1857–1861)
35. James Hemenway—4 Years—(1905–1909)
36. James Whitcomb—3 Years 7 Months—(1849–1852)
37. Samuel Ralston—2 Years 7 Months—(1923–1925)
38. John Pettit—2 Years 2 Months—(1853–1855)
39. Joseph Wright—11 Months—(1862–1863)
40. Samuel Jackson—10 Months—(1944)
41. Thomas Taggart—7 Months—(1916)
42. Robert Hanna—4 Months—(1831–1832)
43. Charles Cathcart—2 Months—(1852–1853)

SENATOR RICHARD LUGAR—A MAN OF CHARACTER

Mr. DOLE. Mr. President, Henry Clay, one of the most eloquent men to

serve in the U.S. Senate, once said, "Of all the properties which belong to honorable men, not one is so highly prized as character."

I know I speak for my colleagues on both sides of the aisle in saying that Senator RICHARD LUGAR is truly a man of character. And I join today in saluting Senator LUGAR as he becomes the longest serving Senator in Indiana history.

Today marks Senator LUGAR's 7,059th day in this Chamber. They have been days spent making a difference in nearly every issue that has come before this body, including agriculture, trade, the budget, foreign policy, and nuclear security.

As chairman of the Foreign Relations Committee, Senator LUGAR played a key role in bringing freedom to the Philippines. And as chairman of the Agriculture Committee, he produced legislation which will bring freedom to America's farmers.

DICK LUGAR's service to his State and his country are not limited to the time he has served in the Senate.

It was Naval Officer LUGAR who prepared intelligence briefings for the Chief of Naval Operations and President Eisenhower.

It was Mayor LUGAR who led the city of Indianapolis for 8 years, earning a reputation as one of the Nation's most innovative and successful mayors.

And it is husband and father DICK LUGAR who stands as a role model for countless young Americans.

Mr. President, over the last few years, Senator LUGAR has asked summer interns in his Washington office to research an Indiana Senator of their choice.

I am confident that in decades yet to come, when young Indiana students research those who have served their State, they will conclude that not only did RICHARD LUGAR set a standard in terms of longevity, he also set a standard in terms of integrity.

COMMENDING SENATOR RICHARD LUGAR

Mr. COATS. Mr. President, I rise to congratulate my friend and colleague, Senator RICHARD LUGAR, on his remarkable achievement and extraordinary service to the people of Indiana. He has had the privilege of representing Hoosiers in the U.S. Senate longer than any other Senator in Indiana history. His tenure has been distinguished and well deserved.

In Indiana, we are proud of DICK LUGAR and his leadership. Both in the Senate and on the campaign trail, he has consistently raised issues our Nation cannot afford to ignore. His thoughtful and skillful approach to policy has made our Nation safer and America's influence in the world more secure.

We are proud of his long record of accomplishments: fighting for freedom in the Philippines, enhancing the world's nuclear security, working for American farmers.

But DICK LUGAR brings more to the Senate than his skills as a legislator. His politics are informed by character. DICK LUGAR understands that values count and that principle is worth defending. He represents the bet of Hoosier values—honesty, integrity, determination.

On behalf of the people of Indiana, I thank RICHARD LUGAR for his service to our State and to our Nation. It is my privilege to serve with them in the U.S. Senate.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

IMMIGRATION CONTROL AND FINANCIAL RESPONSIBILITY ACT OF 1996

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 1664, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1664) to amend the Immigration and Nationality Act to increase control over immigration to the United States by increasing border patrol and investigative personnel and detention facilities, improving the system used by employers to verify citizenship or work-authorized alien status, increasing penalties for alien smuggling and document fraud, and reforming asylum, exclusion, and deportation law and procedures; to reduce the use of welfare by aliens; and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Dole (for Simpson) amendment No. 3743, of a perfecting nature.

Simpson amendment No. 3853 (to amendment No. 3743), relating to pilot projects on systems to verify eligibility for employment in the United States and to verify immigration status for purposes of eligibility for public assistance or certain other government benefits.

Simpson amendment No. 3854 (to amendment No. 3743), to define "regional project" to mean a project conducted in an area which includes more than a single locality but which is smaller than an entire State.

Simon amendment No. 3810 (to amendment No. 3743), to exempt from deeming requirements immigrants who are disabled after entering the United States.

Feinstein/Boxer amendment No. 3777 (to amendment No. 3743, to provide funds for the construction and expansion of physical barriers and improvements to roads in the border area near San Diego, California.

Reid amendment No. 3865 (to amendment No. 3743), to authorize asylum or refugee status, or the withholding of deportation, for individuals who have been threatened with an act of female genital mutilation.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I thank my colleagues. I thank the ranking member, Senator KENNEDY. I think we are in a position, now, to perhaps conclude this measure, at least on the so-called Simpson amendment, today.

We had some 156 amendments proposed a day ago. We are down to about 30 today. Some are known in the trade as place holders—pot holders or whatever might be appropriate, some of them. Nevertheless we will proceed today. The debate will take its most important turn, and that is the issue of verification; that is the issue of the birth certificate and the driver's license, changes that were made yesterday and adopted unanimously by voice vote in this Chamber. We will deal with that issue.

But one thing has to be clearly said because I am absolutely startled at some of the misinformation that one hears in the well from the proponents and opponents of various aspects of immigration reform. It was said yesterday, by a colleague unnamed because I have the greatest respect for this person, that tomorrow to be prepared to be sure that we do not put any burden on employers by making employers ask an employee for documents.

That has been on the books since 1986. I could not believe my ears. Someone else was listening to it with great attention. I hope we at least are beyond that point. Today the American employer has to ask their employee, the person seeking a job, new hire, for documentation. There are 29 documents to establish either worker authorization or identification. And then, also, an I-9 form which has been required since that date, too. In other words, yes, you do have to furnish a document to an employer, a one-page form indicating that you are a citizen of the United States of America or authorized to work. That has been on the books, now, for nearly 10 years. If we cannot get any further in the debate than that, then someone is seriously distorting a national issue. Not only that, but someone is feeding them enough to see that it remains distorted.

So when we are going to hear the argument the employer should not be the watchdog of the world, what this bill does is take the heat off of the employer. Instead of digging around through 29 documents they are going to have to look at 6. If the pilot program works, and we find it is doing well, and is authentic and accurate, then the I-9 form is not going to be required. That is part of this.

Then yesterday you took the real burden off of the employer, and I think it was a very apt move. We said, now, that if the employers are in good faith in asking for documents and so on, and have no intention to discriminate, that they are not going to be heavily fined, or receive other penalties. That was a great advantage to the employer.

So I hope the staffs, if there are any watching this procedure, do not simply load the cannon for their principal, as we are called by our staff—and other things we are called by our staff—principals, that they load the cannon not to come over here and tell us what is going to happen to employers having to ask for identity, having to prove the person in front of them is a citizen or authorized to work, unless you want to get rid of employer sanctions and get rid of the I-9. Those things have been on the books for almost 10 years.

With that, I hope that is a starting point we take judicial notice thereof.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, my friend and colleague has stated absolutely accurately what the current state of the law is. For those who have questions about it, all they have to do is look at the Immigration and Nationality Act, section 274, that spells out the requirements of employment in the United States. I will not take the time to go through that at this particular moment, but for those who doubt or question any of the points the Senator has made, it is spelled out very clearly in section 274(a).

That is why we have the I-9 list, which is the list, A, B, and C. This is the part of the problem which we hope will be remedied with the Simpson proposal, and that is there will be just the six cards. You have list A, you can show one of these items, because under the law you have to have identity and employment eligibility. You can have one of the 10 items on A. Or you can have an item listed on B and an item listed on C, in order to conform with the current law. As has been pointed out both in the hearings as well as in the consideration and the presentation of this legislation, and the consideration of the Judiciary Committee, the result is that there is so much mischief that is created with the reproduction and counterfeit of these particular cards that they have become almost meaningless as a standard by which an employer is able to make a judgment as to the legitimacy of the applicant in order to ensure that Americans are going to get the jobs. Also it makes complex the problems of discrimination, which we talked about yesterday.

It is to address this issue that other provisions in the Simpson proposal—the six cards have been developed as have other procedures which have been outlined. But if there is any question in the minds of any of our colleagues, there is the requirement at the present time, specified in law, to show various documents as a condition of employment. That exists, as the Senator said, today. And any representation that we are somehow, or this bill somehow is altering that or changing that or doing anything else but improving that process in the system is really a distortion of what is in the bill and a distortion of what is intended by the proposal before the Senate. So I will welcome the opportunity to join with my colleague on this issue.

It has been mentioned, as we are awaiting our friend and colleague from Vermont, who is going to present an amendment, that what we have now is really the first important and significant effort to try to deal with these breeder documents, moving through the birth certificate, hopefully on tamper-proof paper. Hopefully that will begin a long process of helping and assisting develop a system that will move us as much as we possibly can toward a counterfeit-free system, not only in terms of the cards but also in terms of the information that is going to be put on those cards.

We hear many of our colleagues talk about: Let us just get the cards out there. But unless you are going to be serious about looking at the backup, you are not really going to be serious about developing a system. That is what this legislation does. It goes back to the roots, to try to develop the authoritative and definitive birth certificate and to ensure the paper and other possible opportunities for counterfeiting will be effectively eliminated, or reduced dramatically. Then the development of these tamperproof cards; then the other provisions which are included in here, and that is the pilot programs to try to find out how we can move toward greater truth in verification that the person who is presenting it is really the person it has been issued to, and other matters. But that is really the heart of this program.

Frankly, if we cut away at any of those, then I think we seriously undermine an important opportunity to make meaningful progress on the whole issue of limiting the illegal immigration flow. As we all know, the magnet is jobs. As long as that magnet is out there, there is going to be a very substantial flow, in spite of what I think are the beefed-up efforts of the border patrol and other steps which have been taken.

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

The PRESIDING OFFICER (Mr. DEWINE). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LEAHY. 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. LEAHY. Mr. President, I understand the distinguished Senator from Wisconsin has asked for time in morning business. I will yield for that purpose.

Mr. FEINGOLD. Mr. President, I ask unanimous consent to speak as in morning business for 5 minutes.

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

Mr. FEINGOLD. Thank you, Mr. President.

CAMPAIGN FINANCE REFORM

Mr. FEINGOLD. Mr. President, just briefly, before we go back on to the important business at hand, the immigration bill, I just want to call to the attention of the body an article today in the Washington Post entitled "Campaign Finance Proposal Drawing Opposition From Diverse Group." Mr. President, I ask unanimous consent that that article be printed in the RECORD.

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

[From the Washington Post, May 1, 1996]

CAMPAIGN FINANCE PROPOSAL DRAWING OPPOSITION FROM DIVERSE GROUP

(By Ruth Marcus)

An unusual alliance of unions, businesses, and liberal and conservative groups is trying to defeat campaign finance legislation that would abolish political action committees and impose other restrictions on election spending.

The informal coalition, which met for the second time yesterday, includes groups that usually find themselves on opposite sides of legislative and ideological battles: unions including the AFL-CIO, National Education Association and National Association of Letter Carriers, and the National Association of Business Political Action Committees (NABPAC), which represents 120 business and trade association PACs.

Also among the 30 organizations at the meeting were conservative groups such as the Cato Institute, Conservative Caucus and Americans for Tax Reform; liberal groups such as EMILY's List, the women's political action committee; and others, including U.S. Term Limits, the National Women's Political Caucus, the National Association of Broadcasters and the American Dental Association.

Yesterday's meeting, at AFL-CIO headquarters here, was organized by Curtis Gans of the Committee for the Study of the American Electorate, a nonpartisan organization that studies voter turnout. Gans opposes the campaign finance proposal pending in Congress.

"The unifying principle is essentially that the approaches that have been pushed by Common Cause and Public Citizen are wrong . . . and their answers to the problems are wrong," Gans said, referring to two of the leading groups pushing the campaign finance legislation.

He said the groups that met yesterday were "unanimous" about the need to do "public education" activities to counter a debate that Gans said "has essentially been dominated by the Common Cause position." But the diverse assemblage was unable even to agree to Gans's draft joint statement about the issue.

Common Cause president Ann McBride said the meeting showed "labor and business . . . coming together and agreeing on the one thing that they can agree on, which is maintaining the status quo and their ability to use money to buy outcomes on Capitol Hill."

The meeting reflects a stepped-up effort by foes of the proposal. NABPAC has launched a print and radio advertising campaign here and in districts of members who support the bill. The ads target individual lawmakers by name.

"Legislation sponsored by Rep. David Minge . . . will make it harder for average Americans to contribute to campaigns and to run for office," said a newspaper ad that ran in the Minnesota Democrat's district. "The next time you see Rep. David Minge ask him this simple question: Why do you want more millionaires in Congress?"

NABPAC also is encouraging its members to cut off contributions to lawmakers who support the bill, and last month sent a memorandum to members of Congress enclosing copies of its ads. "The plans are to aggressively market this in other appropriate areas of the country," NABPAC executive vice president Steven F. Stockmeyer said in the memo.

Three sponsors of the campaign finance bill in the House, Reps. Christopher Shays (R-Conn.), Martin T. Meehan (D-Mass.) and Linda A. Smith (R-Wash.), fired back at NABPAC in a letter to its members last week, calling the memorandum a "thinly veiled threat to keep members from co-sponsoring" the legislation.

"[I]ntimidating members into staying off of the bill by either subtly or blatantly threatening to withhold campaign contributions is disgraceful and justifies why our legislation is needed," they wrote. "Frankly, these efforts simply inspire us further to try to end the system of checkbook lobbying in Washington."

But Shays said yesterday that "some members are [scared] because they don't want to be the enemy of these groups." A Common Cause study released last week found that NABPAC members gave $106 million to current members of Congress from 1985 to 1995.

In addition to abolishing PACs, the campaign finance bill, sponsored in the Senate by Sens. John McCain (R-Ariz.), Russell Feingold (D-Wis.) and Fred D. Thompson (R-Tenn.), would set voluntary state-by-state spending limits and, for those who agree to the limits, require television stations to offer 30 minutes of free time in evening hours and cut rates for other advertising before primary and general elections.

Critics contend that abolishing PACs would diminish the ability of average citizens to join together to have their voices head and would increase the influence of wealthy citizens.

Mr. FEINGOLD. Mr. President, what this article is about is a reaction to the effort that Senator MCCAIN and I and others have been preparing to try to change our Nation's campaign financing system. There are those who have indicated that the effort will go nowhere because it is already too late in the 104th Congress, and that it is just going to go the way of all other campaign finance reform efforts in the past.

Frankly, Mr. President, this article gives me heart. It is eloquent testimony to the reason why we have got to have campaign finance reform in this country and why we need it now. What happened yesterday was, according to the article, an unusual alliance of unions, businesses, and liberal-conservative groups trying to defeat campaign finance legislation that would abolish political action committees and other restrictions on election spending, got together, all together, to try to kill the McCain-Feingold bill. It included groups such as the AFL–CIO, the NEA, National Association of Letter Carriers, the National Association of Business Political Action Committees, Cato Institute, Conservative Caucus, Americans for Tax Reform, EMILY's List—you name it—National Association of Broadcasters, the American Dental Association. This was a gathering of all the special interests in Washington, even before we have had the bill come up, saying, "Let's kill it before it has a chance to live."

The reason it gives me heart, Mr. President, really, there are two reasons. First of all, if this bill is not going anywhere, what are they worried about? Why are they coming together, as they so infrequently do, to kill a piece of legislation that is the first bipartisan effort in 10 years in this body to try to do something about the outrageous amount of money that is spent on campaigns and the outrageous influence that this community, Washington, has on the entire political process in this country?

I recall when I ran for the U.S. Senate, I might talk to somebody from the labor community or to an independent banker, and they would say, "Gee, we think you are a pretty good candidate, but first I have to check with Washington to see if I can support you." That is how the current system works. You have to check in with Washington first. I think that gives way too much power to this town and way too much power to these special interests that want to kill campaign finance reform in this Congress.

It gives me heart that there is concern. It also gives me heart that they are drawing attention to the fact. In fact, this article is eloquent testimony to what is really going on in this country. There is too much money in this town; there is too much money in these elections. What they are trying to do, Ann McBride of Common Cause pointed out, is to preserve the status quo, the meeting of labor and business coming together and agreeing on the one thing they can agree on, which is maintaining the status quo and their ability to use money to buy outcomes on Capitol Hill.

What our bipartisan effort is about is returning the power back to the people in their own home States, to let them have more influence over elections than the special interests that run this town. We will join this issue on the floor, and we will fight these special interests head on, regardless of their new coalitions.

Mr. President, I simply indicate we are prepared, as I did a couple of days ago along with other Senators, we are prepared to offer this as an amendment to a bill in the near future, or if the leadership sees it this way, to bring this up as separate legislation. The time is drawing near for campaign finance reform.

I thank the Chair. I yield the floor.

IMMIGRATION CONTROL AND FINANCIAL RESPONSIBILITY ACT OF 1996

The Senate continued with consideration of the bill.

AMENDMENT NO. 3780 TO AMENDMENT NO. 3743

(Purpose: To provide minimum safeguards in expedited exclusion procedure to prevent returning bona fide refugees to their persecutors)

Mr. LEAHY. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Vermont [Mr. LEAHY], for himself, Mr. DEWINE, Mr. HATFIELD, and Mr. KERRY, proposes an amendment numbered 3780 to amendment No. 3743.

Mr. LEAHY. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment is as follows:

Strike sections 131 and 132.

Strike section 141 and insert the following:

SEC. 141. SPECIAL EXCLUSION IN EXTRAORDINARY MIGRATION SITUATIONS.

(a) IN GENERAL.—The Immigration and Nationality Act is amended by adding after section 236 (8 U.S.C. 1226) the following new section:

"SPECIAL EXCLUSION IN EXTRAORDINARY MIGRATION SITUATIONS

"SEC. 236A. (a) IN GENERAL.—

"(1) Notwithstanding the provisions of sections 235(b) and 236, and subject to subsection (c), if the Attorney General determines that the numbers or circumstances of aliens en route to or arriving in the United States, by land, sea, or air, present an extraordinary migration situation, the Attorney General may, without referral to a special inquiry officer, order the exclusion and deportation of any alien who is found to be excludable under section 212(a) (6)(C) or (7).

"(2) As used in this section, the term 'extraordinary migration situation' means the arrival or imminent arrival in the United States or its territorial waters of aliens who by their numbers or circumstances substantially exceed the capacity of the inspection and examination of such aliens.

"(3) Subject to paragraph (4), the determination whether there exists an extraordinary migration situation within the meaning of paragraphs (1) and (2) is committed to the sole and exclusive discretion of the Attorney General.

"(4) The provisions of this subsection may be invoked under paragraph (1) for a period not to exceed 90 days, unless within such 90-day period or extension thereof, the Attorney General determines, after consultation with the Committees on the Judiciary of the Senate and the House of Representatives, that an extraordinary migration situation continues to warrant such procedures remaining in effect for an additional 90-day period.

"(5) No alien may be ordered specially excluded under paragraph (1) if—

"(A) such alien is eligible to seek asylum under section 208; and

"(B) the Attorney General determines, in the procedure described in subsection (b),

that such alien has a credible fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion in the country of such person's nationality, or in the case of a person having no nationality, the country in which such person last habitually resided.

"(6) A special exclusion order entered in accordance with the provisions of this section is not subject to administrative review other than as provided in this section, except that the Attorney General shall provide by regulation for a prompt administrative review of such an order against an applicant who claims under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, after having been warned of the penalties for falsely making such claim under such conditions, to have been, and appears to have been, lawfully admitted for permanent residence.

"(7) A special exclusion order entered in accordance with the provisions of this section shall have the same effect as if the alien had been ordered excluded and deported pursuant to section 236.

"(8) Nothing in this subsection shall be construed as requiring an inquiry before a special inquiry officer in the case of an alien crewman.

"(b) PROCEDURE FOR USING SPECIAL EXCLUSION.—(1) When the Attorney General has determined pursuant to this section that an extraordinary migration situation exists and an alien subject to special exclusion under such section has indicated a desire to apply for asylum or withholding of deportation under section 243(h) or has indicated a fear of persecution upon return, the immigration officer shall refer the matter to an asylum officer.

"(2) Such asylum officer shall interview the alien to determine whether the alien has a credible fear of persecution (or of return to persecution) in or from the country of such alien's nationality, or in the case of a person having no nationality, the country in which such alien last habitually resided.

"(3) The Attorney General shall provide information concerning the procedures described in this section to any alien who is subject to such provisions. The alien may consult with or be represented by a person or persons of the alien's choosing according to regulations prescribed by the Attorney General. Such consultation and representation shall be at no expense to the Government and shall not unreasonably delay the process.

"(4) The application for asylum or withholding of deportation of an alien who has been determined under the procedure described in paragraph (2) to have a credible fear of persecution shall be determined in due course by a special inquiry officer during a hearing on the exclusion of such alien.

"(5) If the officer determines that the alien does not have a credible fear of persecution in (or of return to persecution from) the country or countries referred to in paragraph (2), the alien may be specially excluded and deported in accordance with this section.

"(6) The Attorney General shall provide by regulation for a single level of administrative appellate review of a special exclusion order entered in accordance with the provisions of this section.

"(7) As used in this section, the term 'asylum officer' means an immigration officer who—

"(A) has had extensive professional training in country conditions, asylum law, and interview techniques;

"(B) has had at least one year of experience adjudicating affirmative asylum applications of aliens who are not in special exclusion proceedings; and

"(C) is supervised by an officer who meets the qualifications described in subparagraphs (A) and (B).

"(8) As used in this section, the term 'credible fear of persecution' means that, in light of statements and evidence produced by the alien in support of the alien's claim, and of such other facts as are known to the officer about country conditions, a claim by the alien that the alien is eligible for asylum under section 208 would not be manifestly unfounded.

"(c) ALIENS FLEEING ONGOING ARMED CONFLICT, TORTURE, SYSTEMATIC PERSECUTION, AND OTHER DEPRIVATIONS OF HUMAN RIGHTS.—Notwithstanding any other provision of this section, the Attorney General may, in the Attorney General's discretion, proceed in accordance with section 236 with regard to any alien fleeing from a country where—

"(1) the government (or a group within the country that the government is unable or unwilling to control) engages in—

"(A) torture or other cruel, inhuman, or degrading treatment or punishment;

"(B) prolonged arbitrary detention without charges or trial;

"(C) abduction, forced disappearance or clandestine detention; or

"(D) systematic persecution; or

"(2) an ongoing armed conflict or other extraordinary conditions would pose a serious threat to the alien's personal safety.".

(b) CONFORMING AMENDMENTS.—(1)(A) Section 235(b) of the Immigration and Nationality Act (8 U.S.C. 1225b) is amended to read as follows:

"(b) Every alien (other than an alien crewman), and except as otherwise provided in subsection (c) of this section and in section 273(d), who may not appear to the examining officer at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for further inquiry to be conducted by a special inquiry officer. The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien, whose privilege to land is so challenged, before a special inquiry officer.".

(B) Section 237(a) of the Immigration and Nationality Act (8 U.S.C. 1227a) is amended—

(i) in the second sentence of paragraph (1), by striking "Subject to section 235(b)(1), deportation" and inserting "Deportation"; and

(ii) in the first sentence of paragraph (2), by striking "Subject to section (b)(1), if" and inserting "If".

(2)(A) Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105a) is amended—

(i) by striking subsection (e); and

(ii) by amending the section heading to read as follows: "JUDICIAL REVIEW OF ORDERS OF DEPORTATION AND EXCLUSION".

(B) Section 235(d) (8 U.S.C. 1225d) is repealed.

(C) The item relating to section 106 in the table of contents of the Immigration and Nationality Act is amended to read as follows:

"106. Judicial review of orders of deportation and exclusion.".

(3) Section 241(d) (8 U.S.C. 1251d) is repealed.

In section 142, strike the new section 106(f) of the Immigration and Nationality Act (8 U.S.C. 1105f).

Strike section 193.

On page 178, line 8, strike "and subject to subsection (b),".

Strike section 198(b).

Mr. LEAHY. Mr. President, this amendment is offered on behalf of myself, the distinguished Presiding Officer, the distinguished senior Senator from Oregon [Mr. HATFIELD], and the distinguished Senator from Massachusetts [Mr. KERRY].

I offer this amendment to the provisions in the bill that I believe gut our asylum law. This is not just my opinion but is the opinion of at editorial boards from newspapers that normally do not agree with each other.

Let me first refer to the editorial in The Washington Times yesterday. It says:

In their rush to pass an anti-terrorism bill, lawmakers perhaps unwillingly and unnecessarily restricted the present rights of persons seeking asylum in this country to escape political or religious persecution in their own countries. Such persons used to get a hearing before an immigration judge. Now they can be sent home without a hearing or judicial review. Lawmakers should restore procedural protections for asylum-seekers.

Then the Washington Post, in another editorial today, speaks of the antiterrorism law being revisited and says, again, that this amendment should be supported.

I ask unanimous consent to have printed in the RECORD those two editorials.

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

[From the Washington Times, Apr. 30, 1996]

IMMIGRANTS AND OTHER ORDINARY PEOPLE

The story goes that Texas Sen. Phil Gramm was attending a National Republican Senatorial Committee meeting with political supporters a few years ago when a woman rose and asked an awkward question. "Sen. Gramm," she said, "why do all the people here talk funny?" As it happened, about 80 percent of those supporters were first-generation Americans—immigrants—and Mr. Gramm says you could hear the collective gulp from the room about 100 miles away. His answer? "Ma'am, 'cause this is America."

He elaborated on that answer in memorable remarks to the Senate last week. "If we ever get to the point where we do not have a few citizens who talk funny, if we ever get to the point where we do not have a new infusion of energy and a new spark to the American dream, then the American dream is going to start to die. It is not going to fade, and it is not going to die on my watch in the U.S. Senate."

No doubt in part because of his emotional speech, the Senate last week defeated legislation that would have effectively limited immigration. But the chamber is not done with this issue. If you want to see just how far some lawmakers would go to restrict people who, as Mr. Gramm puts it, talk funny, then consider some of the immigration legislation up for a vote as early as this week.

Perhaps the most controversial issue involves so-called demonstration projects intended to test the use of verification systems for workers in this country. The idea is that if the government could just figure out how to keep illegal immigrants from working then fewer would come here in the first place. Presto, no more illegal immigration.

This editorial page has said from the beginning of this debate that it sees nothing wrong with a person's coming here to work. As the quotable Mr. Gramm put the matter the other day, "We have room in America for people who come with their sleeves rolled up, ready to go to work. But we do not have room for people who come with their hand out." Exactly right.

Laying the groundwork for a national identification system, as the demonstration projects do, sets a terrible precedent. What has this country come to that it would require aspiring workers to get permission from the government before they can roll up their sleeves and get to work? Work is not an entitlement to be disbursed by the politically powerful for the benefit of the politically favored. Nor is it something to be trusted to some distant federal worker.

Even if one assumes the government can manage a national ID system, how is it going to match the ID with the worker? With fingerprints? With blood and tissue samples? That's the sort of treatment ordinarily reserved for criminals, not mere workers.

There's one other thing to keep in mind when senators take up immigration reform. In their rush to pass an anti-terrorism bill, lawmakers perhaps unwittingly and unnecessarily restricted the present rights of persons seeking asylum in this country to escape political or religious persecution in their own countries. Such persons used to get a hearing before an immigration judge. Now they can be sent home without a hearing or judicial review. Lawmakers should restore procedural protections for asylum-seekers.

There's room here for workers. There's room here for people who genuinely need asylum. "America is not a great and powerful country because the most brilliant and talented people in the world came to live here," said Mr. Gramm. "America is a great and powerful country because it was here that ordinary people like you and me have had more opportunity and more freedom than any other people who have ever lived on the face of the Earth. And with that opportunity and with that freedom, ordinary people like us have been able to do extraordinary things."

[From the Washington Post, May 1, 1996]

THE TERRORISM LAW REVISITED

Think back about 10 days to the celebratory pictures of the president signing the terrorism bill. That measure, deeply flawed by provisions restricting habeas corpus, allowing the use of secret evidence at deportation proceedings and providing for summary exclusion of asylum-seekers, was hailed as a vital bulwark protecting Americans against international terrorists. In the rush to pass that legislation by April 19, the first anniversary of the Oklahoma City bombing, scant attention was paid to Sen. Patrick Leahy, who pointed out some of these flaws. But this week, when the Vermont Democrat seeks to use the pending immigration bill to repeal one of them, the administration is on his side.

Every year, thousands of individuals arrive in this country seeking asylum from persecution. Until recently, this process was subject to a lot of abuse. Claimants were admitted, given a work permit and released with the understanding that they would show up some time in the distant future (there were terrible backlogs then) for a hearing. Most of them simply disappeared into the general population and were never heard from again. But the Immigration and Naturalization Service (INS) instituted reforms early in 1994—streamlining procedures, withholding work permits and keeping many claimants in custody until their hearings—which have reduced the problem substantially. The system now in place works well, and both the Justice Department and the INS say there is no need for change.

But in the rush "to combat terrorism" Congress passed, and the president signed, new restrictions that create a presumption that anyone seeking asylum who enters with false documents, or has traveled through other countries to get here, does not have a valid claim. In these cases, the claimant would have to make his case to an immigration officer on site, without any guarantee that he can be represented by a lawyer or even have an interpreter. If he does not persuade this official, he can be returned to his own country summarily without further hearing before an immigration judge or review by the Board of Immigration Appeals.

It is fair to suspect anyone who enters the country with a false passport, or who has left a place of safety in Western Europe, for example, to ask for asylum here. But suspicions need to be proved. It should surprise no one that persecuted people might not be able to apply for passports in their own countries, or might have to use a false name to get out. And a two-hour layover in Germany or France on a long flight to freedom shouldn't disqualify an applicant for asylum. Sen. Leahy's effort, which has the backing of the people charged with enforcing the immigration laws, should be supported.

Mr. LEAHY. Now, we should be clear what the provisions of the bill do and what they and our amendment do not concern. These are not provisions that cover alien terrorists. It is safe to say that there is not a single Member of this body who wants to allow alien terrorists into our midst. That is not a partisan issue; every single Member of this body is against terrorists. We can accept that as a point of fact.

There are a number of other provisions in the antiterrorism law that the President signed last week that cover the exclusion of those affiliated with foreign terrorist organizations. They forbid the grant of asylum to alien terrorists.

We are not seeking to defend alien smuggling or false documentation used for that purpose. That is already a crime. Senators DEWINE, HATFIELD, KERRY, and I totally agree on that.

But we know that there are some circumstances and there are some oppressive regimes in the world from which escape may well entail the use of false papers. We want to make sure that we do not create barriers to true refugees and those deserving asylum, and prevent them from making an application for asylum.

Let me give an example, using first a hypothetical and then go to some real examples. You are in a country with an oppressive regime. You are in a country where you are being persecuted for your religious beliefs or your political beliefs. In fact, you may even face death for your religious beliefs or your belief in democracy. You know that the arm of that government is out to get you. These are not cases of just paranoia; they may already have gone and killed members of your family for similar beliefs. You look at the one great beacon of freedom: the United States of America. You figure, "How do I get there?"

Now, you are facing the possibility of a death penalty for your religious beliefs. Do you think you could walk down to the government that is out to kill you for those religious beliefs and say, "Could I please have a passport? Here is my name and address. And, by the way, I want to book passage, I want a visa and I want to go directly to the United States."

We all know what would happen in a case like that. The realty of the situation is that people in those circumstances are probably going to get a forged or a false passport. They are not going to go on a flight that will go directly to the United States because that is something the government may be watching. They are going to go to another country—maybe a neighboring country, maybe two or three countries—and then make it to the United States.

Under the immigration law that is before us, once they got here, because they used false passports and went through other countries, they are probably going to be summarily sent back. Summarily being sent back is in an equal amount of time to the summary execution or imprisonment that they face when they arrive back in their home country.

Now, let us be realistic. The Justice Department does not want these provisions and has not requested them. They were not recommended by the Jordan Commission. The Department has told us that they want a type of standby authority in case of immigration emergency, similar to what I have proposed in this amendment.

Think of some of the history of this country. Fidel Castro's daughter came to this country and was granted asylum, for appropriate reasons, and, of course, with great political fanfare. But Fidel Castro's daughter did not fly directly to the United States with a passport bearing her name. She took a false passport, she went to Spain, and then came here. Under this new law, we would likely have said, "Sorry, you are out."

The most recent and famous example of why we must not adopt the summary exclusion provisions of this bill is, of course, the case of Fauziya Kasinga and her flight from Togo to avoid female genital mutilation. We first talked about that case here in the Senate a couple of weeks ago.

There have been two extremely positive developments since then. First, the INS filed a brief with the Board of Immigration Appeals, arguing—I believe for the first time—that the fear of female genital mutilation should

present a sufficient cause to seek asylum in the United States.

I do not think there should have been any question about this. If there is any doubt, we should amend this bill or law without hesitation to ensure that flight from such practices are covered by our asylum policies, as the Senator from Nevada [Mr. REID] has already suggested.

Second, last Thursday, April 25, after more than a year in detention under conditions that subjected her to unnecessary hardship, Ms. Kasinga was finally released by INS to await determination by the Board on her asylum application.

Her case was first reported on the front page of the April 15 New York Times by Celia Dugger. Both she and her newspaper deserve a great deal of credit for bringing this to our attention.

Ms. Kasinga has sought for 2 years to find sanctuary in this country, only to be detained, tear-gassed, beaten, isolated and abused.

Well, now we all realize how bad this is. It is something that should outrage men and women alike. I believe it does outrage men and women in this country.

Unfortunately, one thing has not changed yet, that is the provision I am seeking to amend in this bill. The provisions in the bill would still summarily exclude Ms. Kasinga, and others like her, from ever making an asylum claim. She traveled through Germany on a false British passport in order to escape mutilation in Togo. Under the bill before us, she would be subjected to summary exclusion at the border without judicial review.

In fact, does anybody in this body believe that an immigration officer at her point of entry would, as a matter of first impression, have agreed with her claim that fear of female genital mutilation was a proper ground to seek asylum?

We should, instead, restore protections in our laws to protect her ability to get a fair opportunity to be heard.

On April 19, Anthony Lewis wrote a column for the New York Times that captured the essence of this issue. In his column, he notes, "The asylum provisions effectively impose the absurd presumption that anyone who flees a country without proper papers is not a genuine refugee." As Mr. Lewis puts it, "Political asylum is one saving grace in a world of too much political brutality. Why should Americans want to undermine the asylum concept?" Indeed.

This is what has always distinguished the United States in our 200 years of constitutional history—200 years as a Nation protecting democracy and individual freedoms and rights more than any other country in existence. No wonder people seek asylum in the United States. No wonder people facing religious persecution, or political persecution, or physical persecution, look to the United States, knowing that we are the symbol of freedom. But that symbol would be tarnished if we were to close our doors.

Mr. President, in Mr. Lewis' column, he wrote: "The Senate will in fact have another chance to consider the issue when it takes up the immigration bill."

I ask unanimous consent that a copy of Mr. Lewis' column be printed in the RECORD.

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

[From the New York Times, Apr. 19, 1996]

SLAMMING THE DOOR

(By Anthony Lewis)

BOSTON.—The case of 19-year-old Fauzlya Kasinga, who says she fled her native Togo to avoid the rite of female genital mutilation, has aroused much sympathy. She arrived at Newark Airport in 1994, told officials she was using someone else's passport, sought asylum, was turned down and has been held in prison ever since. The Board of Immigration Appeals will hear her appeal on May 2.

But in future we are not likely to know about desperate people like Ms. Kasinga. If their pleas for asylum are turned down by a low-level U.S. immigration officer, they will not be allowed to appeal—and review by the courts will be barred. They will be sent back at once to the land where they face persecution.

This extraordinary change in our law is part of the counter-terrorism bill awaiting President Clinton's signature. It is not directed at terrorists. It applies to anyone seeking asylum who arrives here with false documents or none—the situation of many people fleeing persecution.

The issue raised in Fauzlya Kasinga's case, female genital mutilation, is an important one: Does that cruel practice come within the grounds for asylum? But the new summary process of exclusion will affect many more people seeking asylum for traditional reasons: the man fleeing a Nigerian Government that executed his political colleagues, for example, or the Vietnamese who escaped from a re-education camp.

The asylum provisions effectively impose the absurd presumption that anyone who flees a country without proper papers is not a genuine refugee. By that test Fidel Castro's daughter was not a true refugee because she fled Cuba with a false passport. Nor were Jews who fled the Nazis without papers.

Political refugees are not the only losers. The bill trashes the American tradition of courts as the arbiters of law and guarantors of freedom. I have seen a good deal of nastiness in the work of Congress over the years, but I do not remember such detailed and gratuitous cruelty.

The bill gives virtually final authority to immigration officers at 300 ports of entry to this country. Each is directed to interview people seeking asylum and exclude them if he finds that they do not have "a credible fear of persection." That phrase is unknown to international law.

The officer's summary decision is subject only to "Immediate review by a supervisory office at the port." The bill prohibits further administrative review, and it says, "no court shall have jurisdiction" to review summary denials of asylum or to hear any challenge to the new process. (Our present system for handling asylum applications works efficiently, so there is no administrative need for change.)

Stripping away the protection of the courts may be the most alarming feature of the legislation. It is reminiscent of the period after the Civil War, when a Congress bent on punishing the South took away the jurisdiction of the Supreme Court to consider cases that radical Republicans thought the Court would decide against their desires.

Political asylum is one saving grace in a world of too much political brutality. Why should Americans want to undermine the asylum concept? And why should a bill supposedly aimed at terrorists be used as a vehicle to keep the victims of official terrorism from finding refuge?

Why should senators as decent as Orrin Hatch, chairman of the Judiciary Committee, stand still for such harshness? The asylum restrictions originated in the House and were kept in the bill by conferees, so the Senate was presented with a fait accompli. A motion by Senator Patrick Leahy to send the terrorism bill back to conference on that issue failed, 61 to 38.

President Clinton has been so eager for an anti-terrorism bill that he is not likely to veto this one, over the asylum sections any more than over the gutting of habeas corpus. But he could call on Congress to reconsider the attack on political asylum.

The Senate will in fact have another chance to consider the issue when it takes up the immigration bill, which has in it a similar provision for summary exclusion of asylum-seekers. On reflection, Senator Hatch and other's should see the threat to victims of persecution and to our tradition of law.

Mr. LEAHY. Mr. President, I have an editorial by the New York Times, entitled, "Not So Harsh on Refugees." I ask unanimous consent that it be printed in the RECORD.

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

[From the New York Times, Apr. 22, 1996]

NOT SO HARSH ON REFUGEES

The ordeal of a young woman from Togo who came to America to avoid the practice of female genital mutilation should give members of Congress pause before they approve any further limitations on the rights of refugees seeking sanctuary in the United States. As detailed last week by Celia Dugger of The Times, Fauziya Kasinga was detained for months before she obtained a hearing, and she was strip-searched and held with convicted criminals. Shamefully, the anti-terrorism bill just passed by Congress and immigration bills still pending could subject many more refugees to similar treatment.

Ms. Kasinga's case involves female genital mutilation, a common practice in some two dozen African nations that involves cutting off portions of a young woman's genitals, often without anesthesia.

Ms. Kasinga fled Togo in 1994 to avoid mutilation after losing her status as a member of a privileged family. Her determination to avoid the practice could have subjected her to harsh treatment had she stayed, or if she is forced to return home. She may have a reasonable claim for asylum on the basis of membership in a social group vulnerable to persecution in her homeland.

But when Ms. Kasinga landed at Newark Airport in December 1994, seeking asylum

with a phony passport, she was immediately detained. Under the law, people who have credible claims for asylum and family members already living in the United States can be released, pending a hearing. Ms. Kasinga has a cousin in the Washington area, but she was kept in custody anyway. After being held for months at a New Jersey detention center, Ms. Kasinga was transferred to a Pennsylvania prison and housed with convicted criminals.

Ms. Kasinga fared no better in court, where an immigration judge denied her claim. The Board of Immigration Appeals will hear her case in May.

If some members of Congress had their way, Ms. Kasinga would have been returned to Togo long ago. Under an immigration bill passed by the House, but now held up in the Senate, anyone attempting to enter the country without proper documents would only be entitled to a one-hour interview with an asylum officer. Denial of an asylum claim would be subject to review by a supervisor, but not by any other administrative or judicial body. These provisions, similar to ones in the anti-terrorism bill, would deny a fair hearing to many asylum seekers.

The House immigration bill also calls for detention of any asylum seeker who is awaiting a hearing, even when a credible claim has been presented. That could subject more would-be refugees to the harsh treatment suffered by Ms. Kasinga.

Senator Patrick Leahy of Vermont plans to offer an amendment that would not only override the harsh exclusion provisions in the immigration bill but also supersede the same provisions in the anti-terrorism bill. Congress should follow his lead.

Mr. LEAHY. It is hard to think of a time when you find the New York Times, the Washington Post, and the Washington Times all agreeing on an issue. But this is, as I said before, not an issue of political ideology, it is an issue of simple justice. It is an issue that reflect what is best in this country, what is the best in us as Americans.

In fact, it would be hard to think of a better example of how unworkable this provision is—the one in the bill that we seek to correct—than a woman who joined me at a press conference yesterday. Two years ago, she fled Peru. She had been horribly treated and threatened by rebel guerrillas there. She came to this country without proper documents. She was able to convince an immigration judge after an opportunity for a fair hearing that she would suffer persecution if she returned home.

Yesterday, I asked her to tell about her experience. Less than two sentences into her story, as the memories of what she had put up with 2 years ago played back, she broke down crying. Her case has been very well-documented. She was able to establish a basis for asylum. But now, 2 years later, the memories are so strong that, emotionally, she was unable to talk with us about it.

Can you imagine if the provisions in this bill had been the law and she got to the border, and an INS officer said, "Quick, tell me why you should stay here. What is going on? Why should you stay here?" This woman, who was unable to talk about it 2 years later after having been granted asylum, what would she have done, how would she have established her case? The answer would have been, "Well, obviously, you are not establishing the necessary criteria. You did not come here with a proper passport, so you are going back. Come back when you get a proper passport." What would she have gone back to?

Fortunately, instead of being sent back summarily to the hands of her abusers, she had a chance to be heard before a judge.

Mr. President, I am sure there are others who wish to speak. I will have more to say about this.

Mr. President, I withhold my time.

Mr. SIMPSON. Mr. President, there is no one I enjoy and regard more highly than my friend from Vermont. He and I have, fortunately, been on the same side of more issues than ever on opposite sides. I find him a fast and true friend whom I enjoy very, very much. When he speaks, he speaks with genuine clarity and authenticity about something in which he deeply believes.

Let me be so very clear here. We are, as the Senator from Vermont said, not talking about an antiterrorism bill. There was an amendment on the antiterrorism bill which passed the Senate by a vote of 61 to 38 which is, in many cases, quite similar to this measure. It had to do with exclusion and summary proceedings. We are not speaking of that. What we are talking about is the bill itself, and Senator LEAHY is intending to strike—we are not talking about female genital mutilation, we are not talking about terrorism; we are talking about the immigration laws of the United States. The bill as it stands before you has section 131, which is a new ground for exclusion of aliens, for aliens using documents fraudulently. That would be stricken by the Senator's amendment. There is a section 132 which is a limitation on withholding of deportation relief for aliens excludable for using documents fraudulently. There is a provision for summary exclusion. That would substitute a similar procedure for only situations which would be described as an extraordinary migration situation and not for other circumstances of the bill.

So, I speak against the amendment for these reasons. The committee's bill provision, which is in the version we are addressing now on the new ground of exclusion relating to document fraud, on summary exclusion, and on asylum applications, three things there—new ground, summary exclusion, and asylum application by those who have attempted to enter the U.S. with fraudulent documents—will greatly reduce the ability of aliens to unlawfully enter this country and then remain here for years through use, or misuse, of various administrative and judicial proceedings and appeals. It is almost what we would refer to as an overuse of due process.

These people in the past—this is what we are trying to correct—often receive more due process than a U.S. citizen receives. For example, the provisions relating to asylum and withholding of deportation will help the United States deal promptly and fairly with a very common scenario. Here is the scenario. For every example that touches our hearts—and this floor is filled with stories that touch our hearts; we will hear many of them today—for each one I get to tell another one. Here is a story that will not touch your heart.

A young person with no obligation to family, or anything else, who has decided to take off from his country to seek the promised land, and that is us—here is the common scenario used by those who would abuse the compassion of the American people. This is why the American people suffer compassion fatique. This is what gives rise to proposition 187's. This is what gives rise to the continual polls saying 70 to 80 percent of these people should be excluded and so on—not excluded, but indeed that we should do something with both illegal and legal immigration.

The scenario is this: The young person with no family, no spouse over there in the country they are leaving, no children, no parents perhaps, maybe an orphan, whatever—they board the plane with documents. Then they give them back to the smuggler on the plane who is with them, or else flush them down the toilet of the aircraft. Some have eaten them. Then they come to the United States, and at the U.S. port of entry they claim asylum.

Many of us saw this so dramatically in the "60 Minutes" presentation. We are going to talk about dramatic things, where the alien without the document said the magic words. The magic words in any language, or their own, is, "I want asylum. I want to claim asylum," just as the smuggler instructed him or her to say. You need to know only one word when you are there, "asylum." The program of "60 Minutes" ended with the alien going forward out of the door of JFK, suitcase in hand with a rolling cart to disappear into America probably never to be heard from again because he is certainly going to tear up any notice to appear at some future time.

Mr. LEAHY. Mr. President, will the Senator yield?

Mr. SIMPSON. If I could finish my remarks, I would—I yield for a question. Yes.

Mr. LEAHY. One question: Is it not under the new procedures, when they ask for asylum, would they not be held in detention until a preliminary determination has been made about false documents?

Mr. SIMPSON. Mr. President, much of this is being relieved by the simple procedure of detention facilities. When those detention facilities are available—and we have provided significantly more money for detention facilities—we find that these things are going to be glimmering in more cases. But I wanted to cite it indeed.

Mr. President, I want to emphasize that the bill provides very clearly an opportunity for every single person, every single person without documents, or with fraudulent documents—please hear this—fraudulent documents or proper documents allow every person to seek asylum. A specially trained asylum officer will hear his or her case. This is the key. I want my friend from Vermont to share with me in the debate as we do this, which he will in fairness. A specially trained asylum officer will hear his or her case, and if the alien is found to have a "credible fear of persecution," he or she will be provided a full—full—asylum hearing. However, if he or she does not have such a credible claim, he or she will be subject to the summary exclusion procedures as will all persons who enter without documents or with fraudulent documents.

There is discussion about persons not being permitted to apply for asylum if they do not travel directly from the country in which they allegedly have a fear of persecution. This is always a difficult situation because we find people who will leave the country where they are being persecuted legitimately, or, if they are just simply using an inappropriate way to get here, they will go to one, or two, or three other countries all of which might be democracies, all of which would be free countries, all of which would be giving the precious refuge of a refugee or an aslyee. The only difference between a refugee and an aslyee is a refugee is over in the home country and an aslyee is here. They are absolutely the same. But the term is used "aslyee" when they are here, and "refugee" when they are there.

So the United States cannot be expected to provide asylum. I am not talking about asylum. I am talking about people who are fleeing persecution or have a well-founded fear of persecution based on race, religion, national origin, or membership in a social or political organization. That is an aslyee. That is a refugee. That is the definition under the law of the United States of America and the United Nations. We will always provide asylum.

There are some great asylee-receiving countries in the world. Two of them have completely revised their asylum laws because of the absolute gimmickry that is taking place. One is my native land, my original native land, Holland, the most open country in the world, a country that gave solace and comfort to fleeing Jews 500 years ago and to those fleeing Nazi Germany. They have now changed their asylum laws the same as we are doing in order to avoid gimmickry. The other country is Germany. After the war, the horror of the war, and the imprint of the Nazis upon the German people, who were appalled—I believe this because I lived among them for 2 years—appalled at the Nazi regime, real Germans are appalled by that.

They realized that, because of what they had done during the war, they made the broadest, most extensive asylum laws in the world because they had to; people were watching them after the war. And being the most generous country, they have had now to simply shut down the process because of gimmickry.

So it is important to know that those who come from a safe country where they could have obtained asylum—normally someone who is fleeing, I mean fleeing in terror of their lives, with the dogs and the soldiers and the arms coming at them—they stop where it is safe to do so, not select or choose leaving one or more safe countries in order to enter the United States or another country for which he or she has a personal preference. And the ultimate personal preference is always the United States of America.

Mr. President, I do want to point out, however, that the Attorney General will have the discretion to waive, under my proposal, under extraordinary circumstances this requirement of direct travel to the United States.

I wish to conclude by saying a few words about the summary exclusion procedure in general. The present system is vulnerable to mass migration and other extraordinary situations and to persons who exploit the numerous levels of administrative and judicial review to stay in this country for years even though they have surreptitiously entered or sought to enter this country or have presented themselves for inspection with fraudulent documents or no documents and such individuals have no grounds for being in the United States of America except the possibility of asylum.

The bill's summary exclusion procedures provide a method for the Attorney General to significantly reduce this problem while still giving aliens a reasonable opportunity to seek asylum or withholding of deportation because of a fear of persecution for race, religion or one of the statutory or treaty grounds. And subject to the credible fear asylum procedure I have already described, an immigration officer can order an alien who has entered without documents or with fraudulent documents to be removed from the United States without bringing the alien before the immigration judge or the Board of Immigration Appeals. Only limited judicial review would be available. It would be limited to a habeas corpus proceeding devoted to no more than three issues:

First, Whether the individual is an alien or if he or she claims to be a U.S. citizen;

Second, Whether the individual was in fact specially excluded;

Third, Whether the individual has proven that he or she is a lawful permanent resident.

The court could order no relief other than the full exclusion hearings.

Finally, let me conclude, at least for this moment, and I hope we will continue toward a result here. We are talking here of immigration, and certainly there has been a reference to female genital mutilation. That is a very serious issue. I certainly concur totally as to the horror of that, and who could not? Certainly any compassionate person could not.

My colleague from Nevada, Senator HARRY REID, noted that Canada had made female genital mutilation a ground of asylum 3 years ago and had only two persons apply since that time. My information from the Canadian Embassy is a bit different, and I hope my colleagues will hear this. All of us admit that this is a hideous, barbaric thing. I understand, first, that this mutilation is not by itself grounds for a grant of asylum. This is our Canadian neighbors. But it is merely one of several factors to be considered in determining whether the applicant qualifies under the definition of a refugee.

Second—I think we must hear this—I understand that as victims of mutilation have come to Canada, they have brought their relatives along with them, or the relatives at least followed later. In any case, the result now has been that the practice of female genital mutilation has become a growing legal and criminal problem in Canada. It has now been imported into Canada, and one or more Provinces plan to make it a criminal offense. Police currently have to prosecute it under the assault statute, I say to my friend from Vermont, who has been a prosecutor, as I have, on the lower levels.

In other words, we have a situation where Canada has found that the victims end up being joined by the perpetrators. That fact suggests as well that we may be dealing here with a cultural practice—and that is exactly what we are dealing with, ladies and gentlemen, a cultural practice—and perhaps not a practice of official government-sanctioned persecution. This is going to be a real debate in the coming times because we in this body talk continually about respect of other cultures—cultures of the native American in my State, cultures of other ethnic groups, cultures of Hispanic-Americans, cultures of African-Americans.

The best practice is not to create some per se ground of asylum but do just as we do in all asylum and refugee

determinations, and that is consider each one of them on a case-by-case basis. That is what we must do.

So, again, we get into these situations by our remarkable strength and our remarkable weakness, which is our compassion, and then we get the blend of emotion, fear, guilt, and racism and blend that in, and we do erratic things in immigration reform, or we would not be doing what we are doing in these last days. The reason this is so difficult, you will be on one side or the other and you say: "How can we do this? Why can't we do this? How can this be? How did I vote this way? How can I get out of this thicket?"

The reason is, you are going to stay right in it because this is about America. It is about America, and America is a very complex place, thank God. We still have one thing that binds us, or several—a common flag, a common language, and a public culture. When we break it all down into individual cultures, Balkanize these great States that were fought so hard for in this Chamber to unite and to unite in the great melting pot, we do a disservice.

We are about to pass what many in this body will describe as a tough illegal immigration bill, and it will be, and it will pass, whatever form it is. Win or lose your amendments, forget it. It is an accomplishment that we will proudly reflect to our constituents. But remember this: We take in more asylees than all the rest of the countries on Earth, total. We take in more refugees than all the rest of the countries on Earth, total. We take in more immigrants than all the rest of the countries on Earth, total, period.

Finally—you have all heard that a thousand times—and it is very important to someone listening, wherever these words fall, this bill explicitly provides that this special exclusion procedure does not apply if the alien has a credible fear of persecution on one of the required grounds—race, religion, membership in national organization, and so on. Therefore, nearly the entire argument of the Senator from Vermont, my friend, vests on the inadequacy of the procedure provided in the bill to determine whether an alien has a credible fear of persecution—that is the intent of the Senator from Vermont, saying it is inadequate.

Let me read the standard that would be used by the specially trained asylum officers to determine whether an applicant for asylum has a credible fear of persecution and therefore should receive a full—full—asylum hearing and not be subject to the special exclusion. I cite the language in section 193 on page 173 of the bill, lines 6 through 14, saying:

As used in this section, the term "credible fear of persecution" means that (A) there is a substantial likelihood—

"Substantial likelihood" that is,

that the statements made by the alien in support of the alien's claim are true, and (B) there is a significant possibility in light of such statements and of country conditions—

Which will be determined by the State Department,

that the alien could establish eligibility as a refugee within the meaning of section 101(a)(42)(A).

That is what this bill provides. It is not some swift or harsh provision. And this bill does not gut our asylum laws. The bill's provisions bring some sense and effectiveness to our asylum laws. These are laws that have been effectively gimmicked over the years because 400,000 backlogged asylum cases can well attest to that.

As my friend from Vermont says, if a person is fleeing for his life because of religious beliefs and must use forged papers and travel through several countries to get here under the bill that person will be summarily sent back—it is not so. If such a person arrives under the provisions of the bill he or she would get a hearing before a specially trained asylum officer. And if he or she had a credible fear of persecution, and there was a substantial likelihood the facts are true, as I have just cited, he or she will be permitted to remain in the United States and have a full asylum hearing when he or she is prepared and ready, with counsel.

So, I yield at this time.

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

Mr. LEAHY. Mr. President, I just want to make sure my colleagues understand the Senator from Wyoming and I have a longstanding friendship and affection and respect for each other, but we do look at this somewhat differently.

To begin with, regarding the vote on the anti-terrorism bill, while the issue may appear similar, the procedural situation was much different. There my motion would have required a recommitting of the whole conference report, a great burden to overcome.

As a matter of fact, I had a number of Senators come up to me and say, "Why do you not do this on the immigration bill? We will have a lot easier time voting for you on the immigration bill." Well, God bless you all, you will now have a chance to vote with me on the immigration bill.

In addition, that motion did not include the creation of authority for the Attorney General to declare a special migration situation of immigration emergency. The amendment I offer today includes such provisions.

Further, when we talk about the people coming in with false passports fleeing persecution, they do not get a hearing under the bill. They get an interview. They get an interview by whoever is there at the border, and they can get kicked out right then and there. It is cruel, it is fundamentally unfair to a traumatized and fatigued refugee, who would be allowed no assistance and no interpreter, to treat them so summarily.

The kind of screening process provided in the bill will mean an investment of enormous resources for a special screening that we do not need. We would be requiring extra resources to do an ineffectual job.

In 1995, for example, after our asylum processes were reformed, we had only 3,287 asylum seekers who arrived without valid documents. They could be handled through the normal process. They do not have to be bounced out following some truncated and confusing interview. As we have heard, these people have faced such traumatic experiences. They are not likely to be prepared to respond when hit with that first, all important interview.

We reformed, in 1994 and 1995, our asylum processes. The Justice Department can handle it very well under my amendment.

Do not confuse illegal immigrants with refugees.

This bill would establish summary exclusion procedures for refugees seeking to claim asylum. It would give low-level immigration officers unprecedented authority to deport refugees without allowing them a fair opportunity to establish valid claims. These provisions should not even be in this bill, if it is intended to focus on the problems of illegal immigration. Refugees who seek asylum in the United States are not causing problems for America and Americans. They come to us for refuge. They come to us for protection. They come to us for what America promises in constitutional freedoms and protections. We should not turn them back, and turn our back on them or destroy our country's reputation for protecting human rights.

Look at the Washington Times editorial, look at the Washington Post editorial, look at the New York Times editorial. They express the feelings of so many in this country.

Think about a person who talked before a press conference here on Capitol Hill yesterday, Alan Baban, who was held 16 months in detention.

He is a Kurdish national who had been in prison for over a year in Iraq. He was tortured, both because of his Kurdish nationality and his political involvement with an organization committed to securing political freedom for Kurds. His body has the scars of that ordeal. At one point in his captivity he bribed a guard and he escaped. His family's possessions were seized by the Iraqis.

Finally, in November 1994, he and his mother, who had been hiding for close to 3 years, used false documents to get out and arrived in the United States.

Most of us know what terrible treatment the Kurds have had at the hands of the Iraqis. But somehow the immigration inspector at the airport did not believe Alan and did not think that he had established a credible claim of persecution. So Alan was placed in detention, in prison, in the United States. A

year later, without a translator to help him, he was denied political asylum.

After 16 months in detention, when his true story came out, an immigration judge finally granted him asylum. Yesterday, he thanked the United States for finally listening to him and letting him out.

This is one of a number of examples of refugees who were initially ruled not to have satisfied a credible fear standard but who after a hearing were able to prove a claim for asylum.

I know the Senator from Massachusetts is seeking time.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. LEAHY. Mr. President, I just might ask the distinguished manager, am I correct in my understanding, as we offer these various amendments they will then be set aside for others so there will be a series of votes? Is that correct?

Mr. SIMPSON. Mr. President, at least this amendment and the next amendment of Senator ABRAHAM and Senator FEINGOLD will come up at a time around the hour of 2 o'clock. We will stack votes on these two, or others we might have problems on, including, perhaps, that of Senator BRADLEY, who is here.

Mr. LEAHY. Mr. President, just before that vote will we follow the usual thing where each side has a minute or so?

Mr. SIMPSON. We will put that in the unanimous-consent request, that there be 2 minutes equally divided.

Mr. LEAHY. I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I will just take a moment because the Senator from Vermont has made the presentation and made it exceedingly well, which he did in our judiciary markup as well.

What I want to do is just take a moment of the Senate's time to describe the conditions that we were facing a number of years ago, and where we are on the issues of asylum today, because I think it reaches the core of the Leahy amendment. There is no question that, as he outlined, there are people who come here with a well-founded fear of persecution. They come here, few of them with papers, many of them without any papers, for the obvious reasons they are in terror and have been persecuted by the existing regime. That is an important group, but I will come back to the numbers in just a moment.

But there is no question that large numbers of people came here requesting asylum for one reason: they wanted jobs. As Senator SIMPSON has correctly stated, the process and procedure was that people would come in and declare they wanted asylum. The first thing that happened was they got a green card, went out and got lost in society. There was very, very significant abuse of that whole process. But that has changed dramatically in the last year.

By and large, we ought to be looking at what the current condition is, not what the conditions were 1 year ago, 2 years ago, 3 years ago when we had all the significant abuses in the asylum system. The principal abuses for the asylum system, as in the whole issue of illegal immigration, were jobs. People saw this as an opportunity to come to the United States, say "asylum," get that green card and then go to work. Instead of running across the Rio Grande or trying to come on in across another border, that was one of the ways that they came in here.

That whole spigot, in terms of the jobs, has been closed down by the INS because they no longer provide the green card so that these people can go out to work, and second, they are held in detention.

We have to ask ourselves whether we are going to be satisfied with a counselor, as well trained as they are, making the final judgment about a well-founded fear of persecution. I can remember it was not long ago when we had a number of Soviet Jews who came through Rome and were being evaluated as to whether they were real or refugees coming into the United States. There were a series of counselors out there. All had been trained, all seeing these various refugees, refuseniks, people who had been persecuted in the Soviet Union. At the end of the day, one group let in 60 percent and another group let in 20 percent. We had hearings on that. So you find diversity.

What we are talking about are the limited numbers which we are faced with now. In 1994, we had 122,000 asylum claims and we completed 60,000. In 1995, we had 126,000 claims and we completed 53,000. We have seen this dramatic change that has taken place with asylum claims—dramatic, dramatic change. Out of the 53,000, there are approximately 6,000 that actually receive asylum. Mr. President, 6,000 in this country, 6,000 that are actually granted asylum.

These are individuals who have gone through not just the airplane ride across and flushed their ID cards down the toilet or ate their ID cards, these are 6,000 people who have a well-founded fear and have gone through the process. It seems to me that those individuals whose lives have been a struggle, as we define them, to try to develop democratic institutions, democratic ideals, democratic values, democratic priorities in their countries so that their countries will move toward the kind of value system in the broad terms of respect for democracy and individual rights and freedoms are real heroes in many, many instances. We have recognized that over the long history of this country.

So I think the amendment of the Senator from Vermont makes a great deal of sense. I think the opposition, quite frankly, is directed toward a condition which no longer exists because of the excellent work of the INS in addressing it. Asylum claims declined 57 percent as productivity doubled in 1995. That is in this last year. They are continuing to make progress.

We ought to be sensitive to this issue of individuals who have gone through the harshness and the brutality of these foreign regimes. We cannot pick up the newspaper without being reminded of them. In so many instances, these individuals, who really do deserve asylum, deserve to be able to receive that in our country, approximately 6,000. I have very serious fears that that kind of sensitivity to the real needs of individuals who have been struggling for democratic ideals will not be as respected as it has been if we adopt the proposed recommendations.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I also rise in support of the Leahy amendment. Senator SIMPSON is correct that for a period, we went through this where people just memorized three or four words in the English language, "I seek asylum."

When his bill was first introduced, I was inclined to believe some additional strengthening language was needed. But I was visited by the INS people. I have to say Commissioner Doris Meissner just has made a terrific impression on all of us. She really knows her stuff, is very conscientious, and is very able.

This morning's Washington Post has a story, "Russia Bars Jewish Agency," and the Russian Ambassador to Israel said he thinks it was just a bureaucratic slipup. But then you get to the inside pages and read the story that out in the boondocks in Russia there are some anti-Jewish activities taking place. I hope it is just temporary and isolated.

We do not know what is going to happen. I think that the Leahy amendment is one that moves us in the right direction. I think the graph that Senator KENNEDY has shown us shows fairly dramatic improvement in the situation. I hope the Leahy amendment will be accepted.

Mr. President, I ask unanimous consent to have printed in the RECORD the Washington Post article to which I referred.

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

[From the Washington Post, May 1, 1996]

RUSSIA BARS JEWISH AGENCY—BAN COULD HAMPER IMMIGRATION TO ISRAEL

(By Barton Gellman)

JERUSALEM, April 30.—The Jewish Agency, a quasi-governmental body that has brought 630,000 Jewish immigrants to Israel from the former Soviet Union since 1989, announced tonight that Russian authorities have revoked its accreditation and notified local jurisdictions that the agency no longer is authorized to function in Russia.

There was no clear indication of Russia's intentions and no explanation from Moscow. But the potential stakes were seen in Israel as high.

Russian immigration has changed the face of Israel, adding nearly one-fifth to its Jewish population and infusing the state with one of the world's most productive flows of human capital. Before the thaw that accompanied the Soviet Union's final days, the Moscow government's sharp restrictions on emigration—and ill-treatment of Jewish "refuseniks" who could not leave—were a major source of friction with the West.

An estimated 1.4 million Jews remain in the former Soviet Union, 600,000 of them in Russia, and Israel had projected until now that they would continue to make new homes in Israel at last year's rate of 65,000 for several years to come. Officials here have observed no slowdown in Russia's distribution of exit visas, and they do not foresee a return to Russia's old bans on emigration itself, but they said most Russian Jews could not readily leave without the practical and financial assistance of the Jewish Agency.

Israeli officials said they were uncertain of the origins of the present impasse, and the Russian ambassador here qualified it as a bureaucratic slipup. But Israelis voiced two theories about what is happening.

One focused on the growing nationalist cast of a Russian election campaign that is threatening to unseat President Boris Yeltsin. The second looked to bilateral tensions and the bitterness of the new foreign minister, Yevgeny Primakov, at Israeli moves to keep Russia far from its desired role at the center of Middle East diplomacy.

A third explanation—mere misunderstanding—prevailed at first when the Jewish Agency lost its legal accreditation on April 4, which effectively terminated its right to operate offices, hold meetings and stage other activities in Russia. Agency officials treated it as a slipped formality and discouraged Israeli reporters from writing about the change.

Other signs—including closure of the agency's Birobidjan and Makhachkale offices in the Russian hinterland, a Justice Ministry notice to local authorities about the loss of accreditation and an increase in vandalism directed at agency properties—began to convince them otherwise as the month wore on.

Avraham Burg, the agency's chairman, decided to make public his protests after police and local government officials descended on a Jewish Agency gathering today in Pyatigorsk, an important regional emigration center in the northern Caucasus, and ordered the meeting to break up. Three Israeli representatives of the agency were asked to leave town.

"If this is just a bureaucratic stupidity, I will be happy," Burg said in an interview, "and if it is something else, we shall be ready in the international arena with the Jewish voice, Jewish pressure."

"We are working in the former Soviet Union under two assumptions," he added. "The first one is that the right of the ancient Jewish people to repatriation is a given, and the second one is that the constitutional, basic, elementary right of family reunification is [Russia's] passport to the free world. Without this you are not a Western modern country."

Burg said he had summoned the Russian ambassador to Israel, Alexander Bovin, for what became a sharp meeting last week. Burg said the ambassador assured him that the difficulty was merely technical.

Neither Bovin nor any other Russian diplomats here, nor officials in Moscow, could be reached for comment tonight.

Burg and Prime Minister Shimon Peres agreed to take the position that there can be no link between the agency's travails in Russia and any bilateral disputes between the Moscow and Jerusalem governments on the grounds that it affects the human rights of individual Jews and the broader interests of the world Jewish community. Foreign Ministry officials said tonight that they would play no role in protesting the change in Russian policy, and Burg planned to fly to New York Wednesday to confer with American Jewish leaders on possibly bringing pressure to bear in Moscow.

Alla Levy, chief of the Jewish Agency's efforts in the former Soviet Union and a 1970 immigrant, said today's crackdown in Pyatigorsk was especially sensitive because that city is one of 10 from which Russian Jews fly directly to Israel.

Several irritants trouble Israeli-Russian relations, and Primakov rebuffed a meeting request last month from Foreign Minister Ehud Barak. A specialist in the Arab world, Primakov is seen as resenting the combined efforts of Israel and the United States to squeeze Moscow out of its place as co-sponsor of regional peace talks.

Israel acknowledges, in addition, that it has been slow to transfer legal rights to Russia from the former Soviet Union's valuable land holdings in Jerusalem. Additional frictions arose at Israel's treatment of Russian visitors at passport control points after police found evidence that Russian organized crime had made inroads here.

Mr. DEWINE addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, thank you very much. I rise today in strong support of this amendment. Our amendment would, in our view, greatly improve this section of the bill dealing with asylum. Frankly, this section does need improvement. It really creates a summary exclusion, a summary exclusion that would keep out of America some of the worthiest of all asylum seekers.

Further, it sets a legal standard that is both unprecedented and excessive for people who are the most in need, for people who are truly fleeing persecution, and it puts what for some people is a life-or-death decision in the hands of the INS bureaucrats.

As has been pointed out by my colleagues from Illinois and Massachusetts, there really is not the problem today that we may have seen 2, 3, 4 years ago. Today, the asylum system works pretty well, and we do not need this change, we do not need this summary exclusion. It is not worth the price that we are going to pay.

It is clear that several years ago, the asylum system was, in fact, broken. Under the old system, people could get a work authorization simply by applying for asylum, and this, obviously, became a magnet, even for those who had absolutely no realistic claim for asylum.

But the INS changed its rules in 1994, and it stopped automatically awarding work permits to those filing for asylum. Instead, it began to require an adjudication of the asylum claim before it awarded work authorization.

It also began resolving asylum claims within 180 days. The results are very, very significant.

According to the INS, in 1994, before the new rules were put in place, 123,000 people claimed asylum.

In 1995 however, after the new rules were established, only 53,000 people even applied for asylum. That is a 57-percent decline in those people who even apply for asylum, a 57-percent decrease in 1 year.

Also, the INS reports that it is now completing 84 percent of the new cases within 60 days of filing, and 98 percent—virtually all new cases—within 180 days of filing. That is why the administration, the INS, say that they did not need this provision.

Second point, Mr. President. The most worthy cases for asylum would be excluded if we impose this new summary exclusion procedure. Among those excluded would be cases of victims of politically motivated torture and rape, the very people who are most likely—most likely—to use false documents to flee from the country of their torture. These are the people who would be hurt the most, frankly, by this summary exclusion.

Let us talk about these individuals. We have already heard about the young woman who was seen in the press the last few days from Togo. But let me use two other examples. These are real world cases. These are cases where, if the law, as it is currently written in this bill, if this change does in fact go into effect, these people never would have gotten into this country. They would have been excluded by an INS bureaucrat and sent back to their country in that 1-hour determination that we have talked about.

A real example. First, a student in Sudan was beaten and given electric shocks by Government torturers for the crime of engaging in a peaceful protest against the Government. He escaped to the United States without a passport. He was placed in detention because an INS bureaucrat concluded he did not have the credible fear of persecution standard that we have heard about. However, on judicial review, this individual was granted asylum.

So under the procedure that is contained in the bill, under that procedure, the new procedure that we are

trying to take out, under the new procedure, it never would have gone beyond the INS bureaucrat. This student from Sudan would have been sent back to Sudan. There would have been no opportunity for this person to have a hearing on the matter beyond an initial 1-hour hearing from the bureaucrat where the bureaucrat made the decision, "Send him home."

Second example. A man from India—this is a true case—was imprisoned and tortured by the Government because of his religious beliefs. His family's home was bombed. Fearing for his life, he fled to the United States, where INS bureaucrats verbally abused him, and denied him food and water until the next day. They said his fear was not credible. This case on judicial review was changed. He was granted asylum. Again, under the provisions of this bill, without our amendment, this person never would have gotten to the judicial review, would have been sent back by the determination made by the bureaucrat.

Mr. President, I think that is too heavy a price to pay. I think it is very clear that we do not need to change the law in this area.

I think America, Mr. President, stands for something better than that. We have historically held out the lamp of freedom to the world. We are different than other countries. We have held out a lamp that is lit by the flames of justice, not by bureaucracy.

Mr. President, I ask the Members of the Senate, whether watching on TV or sitting in the Chamber, think back to stories you have heard—we have all heard stories—about people who have fled persecution, and whether that was in Nazi Germany, or more recent examples. How often did that person who fled persecution have to have a forged document? How often did that person go to great pains to obtain a forged document to flee the country? How often did that person have to have another country of immediate destination before they ended up in the country that they wanted to end up in? How many by necessity had to have that third country there?

Each one of us can remember these stories. I remember, as a very young boy, listening to a story told by a friend of my father, who fled Nazi Germany. Although some of the details have left me over the 40-some years since I heard this story, I can still remember parts of it, and how difficult it was and what great risks he took to get out of Nazi Germany, to get out of Nazi Germany with documents that clearly were fake. I think we need to keep this in mind, Mr. President, when we decide what to do in regard to this amendment.

My friend from Wyoming talks about compassion fatigue. I understand that. I get it. That is why, quite frankly, we have made changes. There are major changes in this bill. That is why the INS has made very, very significant changes in the last several years to speed up the process, to make sure that they weed out these cases that do not have merit. That system is working.

But I would just say that as we look at this amendment, I would ask my colleagues to keep this in mind, that in an immigration bill, more than in any other bill that we pass on the floor, more than any other bill that we debate, we do define who we are as a country. I think we should be different.

I understand the argument that Holland does it one way or Germany does it another way. That is fine. I understand the argument. But I think, quite frankly, we have to do it our way. We have to do it in a way that is consistent with our tradition. One of the great traditions of this country is that we have been a beacon of hope, and of light, as Ronald Reagan would say. We have been the country where people could come to when they were persecuted.

If you look at our history and our immigration policy, our best days—our best days—have been when we reached out and said, "Yes. We are this country that is different." The few times in our history when we have turned our back on people who are persecuted—and there are examples of this; the Nazi Germany situation, the few times we have done that—we have lived to regret it. And we have been sorry for it.

So, yes, I understand compassion fatigue. But we are, in a sense, in this bill defining who we are as a people and redefining that. I think the amendment that has been offered by my friend from Vermont is entirely consistent with that great tradition of this country. Thank you, Mr. President. I yield the floor.

Mr. JEFFORDS. Mr. President, I would like to express my strong support for the Leahy-DeWine amendment, which preserves critical due process rights for refugees arriving in the United States after fleeing persecution in their countries of origin. While the United States must control its borders and ensure that its hospitality is never abused, it must also live up to its finest traditions as a land of freedom and refuge for the oppressed.

Our country is built on the rule of law, and must preserve and protect that legacy for all. This amendment would ensure that those fleeing oppression have a fair opportunity to present their cases and have them studied and reviewed by appropriate officials. Many genuine refugees are forced to come to the United States with false documents and then apply for asylum. In fact, an argument could be made that the more dangerous their situation, the more urgent it is that they come to apply for asylum, and the more likely that they will not have access to government travel documents from the government which is persecuting them. It is just these most needy people who will suffer most directly from the summary exclusion measures which this amendment seeks to modify.

With adoption of this amendment, the United States will remain able to ensure that those with valid, deserving cases for asylum will continue to be able to apply for asylum in the United States.

I urge my colleagues to support this important amendment.

Mr. SIMPSON. Mr. President, I ask unanimous consent that this amendment be set aside for a few moments so Senator BRADLEY can go forward with an amendment. I do not think it will take a great deal of time. So if Senator BRADLEY will go forward, and then Senator HATCH could speak on this bill, and then I have a few more remarks on the pending amendment. I ask unanimous consent that it be set aside at this time.

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

Mr. BRADLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

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

AMENDMENT NO. 3790 TO AMENDMENT NO. 3743

(Purpose: To establish an Office for the Enforcement of Employer Sanctions)

Mr. BRADLEY. Mr. President, I call up amendment No. 3790.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. BRADLEY] proposes an amendment numbered 3790 to amendment No. 3743.

Mr. BRADLEY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 47 of the amendment, strike line 1 and all that follows through line 21 and insert the following:

SEC. . ENFORCEMENT OF EMPLOYER SANCTIONS.

(a) ESTABLISHMENT OF NEW OFFICE.—There shall be in the Immigration and Naturalization Service of the Department of Justice an Office for the Enforcement of Employer Sanctions (in this section referred to as the "Office").

(b) FUNCTIONS.—The functions of the Office established under subsection (a) shall be—

(1) to investigate and prosecute violations of section 274A(a) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)); and

(2) to educate employers on the requirements of the law and in other ways as necessary to prevent employment discrimination.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General $100,000,000 to carry out the functions of the Office established under subsection (a).

Mr. BRADLEY. Mr. President, this amendment is a second-degree amendment to the one proposed by the distinguished Senator from Wyoming. The amendment will improve the Federal Government's ability to deter illegal immigration by enhancing the enforcement of our existing laws. In particular, this amendment would create a separate office within the INS to ensure that our employer sanction laws are effectively and fairly enforced. The fact is that employment is the single most important enticement that brings illegal immigrants to our shores.

If we want to address seriously the illegal immigration problem in this country, we must address ourselves to the root of that problem, which is the jobs.

In 1986 we started down the right track with the Immigration Reform Control Act, better known as the Simpson-Mazzoli Act. In that bill we enacted, after considerable debate, employer sanctions which imposed civil penalties on employers of illegal aliens and criminal penalties for pattern or practice violations.

We put very tough teeth in the law—up to a $10,000 fine, up to 3 years in jail. Those provisions are strong and, if enforced adequately, would deter the hiring of illegal aliens.

This bill makes important headway in improving these laws. However, one critical element is missing: These laws, those that we passed in 1986, are not being adequately enforced.

I have heard many in the Chamber complain that employer sanction laws are not working and perhaps should be eliminated. I agree that they are not working as well as they could be working, but the problem is not with the law. The problem is with the implementation of the law. The INS' ineffective implementation of these laws has been noticed time and again by independent observers, including the Jordan Commission and the Office of the Inspector General.

For example, the Jordan Commission found that employer sanctions are accorded a low priority by the INS. The INS' own data bear that out. Between 1989 and 1995, the number of INS investigations of employer sanction violations dropped by more than 50 percent.

Let me repeat that: From 1989 to 1995, the number of investigations by the INS of employer sanctions dropped by more than 50 percent. The GAO found that the number of agents assigned to the workplace enforcement dropped more than half between 1989 and 1994.

Overall, financial resources allocated to the enforcement of employer sanctions also has declined significantly. While the INS is now increasing the number of workplace agents and resources directed toward the enforcement of employer sanctions, projections indicate that the INS will only employ, after these improvements are made, only employ about 708 workplace agents in 1996. Mr. President, 708 agents to cover a nation with 6.5 million employers—this contrasts sharply with the over 5,000 Border Patrol agents that the INS projects in 1996.

This disparity is notable given that according to the INS' own estimates, their own estimates, about half of all illegal immigrants do not cross the border illegally but overstay their visas.

Let me repeat that: Half of all illegal immigrants in this country are not sneaking across the border in the middle of the night but they are people that come into this country on a visitor's visa and overstay. They are people who come in on a visitor's visa, then get a job illegally. They are here in the workplace taking jobs away from Americans.

The law says an employer who hires an illegal immigrant who overstays on his visitor's visa, for example, is subject to fine and possible imprisonment. Yet, nobody is going after these employers. There is not enough enforcement.

Furthermore, the INS is failing to conduct investigations effectively. Like the Jordan Commission's report a year earlier, a September 1995 inspector general audit found numerous problems with the INS conduct of its employer sanctions investigations. The inspector general specifically found that "the INS is sending a signal to the business community that it does not take seriously its enforcement responsibilities in the area of employer sanctions." Those are the words of the inspector general that the INS is not seriously pursuing employer sanctions.

The problem is more, however, than numbers and authorizations. This bill provides much needed authorization for additional investigators available for the INS to use for employer sanctions. That is good. It does not go far enough because those investigators are not necessarily going to be directed toward employer sanction enforcement.

Moreover, these investigators are likely to continue to be wasted on less important and less effective enforcement efforts. That certainly is the case if past practice is any indication.

New investigators could deal with the part of the INS problems in this area, but only if they are used appropriately. As the critique of the Jordan Commission, the inspector general, and others have indicated, the problem is more than resources; it is more than simply a few more agents. Consequently, our solution must provide more than resources.

Mr. President, what is needed is a separate office for the enforcement of employer sanctions that will focus its activities on the most serious problem, which is employers hiring illegals, not having anyone go after them, as well as address the problems of employers discriminating on the basis of national origin. It is clear that a fundamental change is needed in the INS bureaucracy to make these laws work.

The amendment I am suggesting specifically addresses this problem by changing the task force provided by section 120(b) of the bill to an office for enforcement of employer sanctions and authorizing it for $100 million, the figure contained in the 1986 Immigration Act. The office will have two primary functions: to investigate and prosecute employer sanction violations, and to educate employers on the requirement of the law in order to prevent unlawful employment discrimination.

I think this amendment corrects the weaknesses in the existing bureaucracy. It will separate and dedicate necessary resources to the enforcement of employer sanctions so that it will be accorded the priority that it deserves. Of equal importance, the creation of a separate office within the INS will tell employers that the INS is now serious about enforcing the employer sanctions provision, that it has the budget and the manpower to investigate and follow up leads on the worst violations of these laws. As well, it will send a strong message to the INS that it needs to improve its enforcement activities.

I think it is also important to point out that this amendment does not add new sanctions or increase the burden on employers. It does not add one single form to the mountain of paperwork they must already fill out when they hire a new legal worker. It just asks that existing law be adequately enforced.

Finally, and of equal importance, it will require better education of employers to prevent discrimination.

In short, this amendment goes to the source of the illegal immigration problem in this country—the job magnet—by improving our mechanism for seriously working to eliminate that employment magnet, with adequate enforcement directed toward the problem, with no excuses, and with results required.

Mr. SIMPSON. Mr. President, I think my old friend, Senator BRADLEY from New Jersey, has put his finger right down on one of the most critical issues in dealing with the problem of illegal immigration, which is the magnet of jobs, employment, which draws illegals to this country.

This amendment would establish an office within the INS, as I understand it, specifically staffed and mandated to perform both of the functions that are essential to the success of any employer sanction provisions.

That is, the office would both educate employers about the law and their responsibilities to prevent unlawful discrimination, and would investigate and prosecute those employers who

knowingly hire illegal aliens. I think that we cannot claim to be serious about dealing with the problems of illegal immigration unless we are serious about dealing with those who knowingly hire illegals. So long as they can get the jobs they seek, illegal aliens will continue to regard this country as the land of opportunity, and some will refer to it almost as the land of slave labor as they come here as illegals and remain in that status. That is why it is important that we remove illegal persons from our society or else make them legal.

So we already have a special counsel for the prevention of discrimination against aliens. That is already on the books. I did not like that when it went in, but it is on the books. Surely, it would be appropriate to have an office of employer sanctions to deal with the single-most important element. As Barbara Jordan's Commission put it, "Shifting priorities and reduced funding have hamstrung some of those provisions."

As I understand it, this does not create a new Justice Department agency to enforce employer sanctions. It creates a new office within the INS. But there is a funding level increase. That is correct. Originally, that was not so, but it is so now, is that correct?

Mr. BRADLEY. Yes.

Mr. SIMPSON. This provision would not disrupt the balance between employer sanctions and antidiscrimination. I will have to, if I may, set the amendment aside because several wish to speak on that amendment. I personally do not have grave reservations about it, but others do.

AMENDMENT NO. 3780

Mr. SIMPSON. I ask that the amendment be set aside and that we go back to the Leahy amendment, and then we go to Senator ABRAHAM to lay down his amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. SIMPSON. Mr. President, let me just come to a little review of the amendment of Senator LEAHY. The Senator from Vermont spoke of the alien who was so traumatized that he or she cannot speak about it at entry, and so they would not be in a position to immediately show a credible fear and, thereby, attain a full asylum hearing.

The Senator certainly goes to the hardest case. If the Senator's amendment was precisely directed only to that possibility, it would be appropriate. But the Senator's amendment goes far beyond that. It would simply gut the reforms proposed in the bill to deal with the large number of aliens. What we are trying to get at is aliens who enter without inspection, or with fraudulent documents, and those who board a plane with documents, then dispose of them, and upon entry fraudulently claim asylum.

I think we are still having a bit of distortion, not from the Senators from Vermont or Ohio, but when someone says that they will not be interviewed by "the guy at the border," that is simply not true. This provision will only be administered by specially trained asylum officers with translators. There will be translators. There always are translators of any language, subject to review by a superior, another trained asylum officer. These are not low-level immigration officers. This is not correct. These are highly trained individuals.

I remind our colleagues of one other item that has sprung from the debate. Our laws and treaties prevent our Government from returning any person to any country where their life or freedom may be in danger. That is the law of the United States. It is the law of the United Nations. It is the sacred law. It is called nonrefoulment: You cannot return a person to a country where their life or freedom may be in danger. That is not done. We do not do it, and that is the law of the United States. That is the law of the United Nations. No matter if a person can establish credible fear or not, the person will not be returned to certain imprisonment and danger. That will not change under any provisions of this bill.

Finally, I hope that we recognize that 70 percent—I hope these figures can be heard—of all asylum applicants in fiscal year 1995 came from three countries. El Salvador, 72,000, which, at last look, was a democracy. They had worked through tremendous civil war to get where it is a democracy. We gave their people an extended program called "extended voluntary departure" a few years ago. Guatemala, 22,900; and 9,300 from Mexico. So out of a total of 149,500 applicants, they are the countries: El Salvador, Guatemala, Mexico.

While there may be problems in those countries, they are not highly repressive countries. At least our Government does not find them such. There is turmoil in Guatemala, killings in Guatemala. There are killings in the United States—an awful lot of them. They are, however, known as leading sources of illegal immigration.

What you are seeing is, when you have a country that is your leading source of illegal immigration, they are picking them up, and they have been here 2, 3 years, and they say, "I am seeking asylum" because they know that these procedures are interminable. That is what we are trying to get at. We are not after the person from Iraq, or the Kurd, or those people. We are after the people gimmicking the system. For every one that you can point to with passion and drama, you can point to a hundred who are gimmicking the system. This is what the people of America are appalled at, that we will not deal with the issue.

There is a balance to be struck between granting asylum to those who are qualified and preventing this country's traditional hospitality being taken advantage of in a most extraordinary way. Remember, when you have 9,304 cases from Mexico—and a case can be more than one person—how many of those asylum claimants from Mexico were granted asylum? There were 55—55 out of 9,304. If that is not gimmickry of the system, I am missing something. It means that one-seventh of our asylum applicants, even under the new provisions, are almost guaranteed to be bogus or fraudulent. I hope that our colleagues will hear that as we go to the eventual vote on that.

Of the first four major countries of asylum cases—Guatemala, Mexico, China, and India—the final approval rate is 2 percent—2 percent of these people that we have heard these poignant, powerful stories about. And 98 percent of them are fake or bogus. So if we hear the 1 and forget the 100, we are making a mistake.

I yield the floor.

Mr. BRADLEY. If the distinguished Senator from Wyoming will yield, I wonder if we can get some time agreement on the amendment that I offered. I know a couple other Senators would like to speak. Is that possible?

Mr. SIMPSON. Mr. President, I do not think I am prepared to do that until the two people that have indicated they wish to debate come over. When I get in touch with them, and I will get back to you, perhaps we will get a half hour or an hour. I will work toward that, with the approval of Senator KENNEDY.

I yield the floor.

AMENDMENT NO. 3752 TO AMENDMENT NO. 3743

Mr. ABRAHAM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant clerk read as follows:

The Senator from Michigan [Mr. ABRAHAM], for himself, Mr. FEINGOLD, Mr. DEWINE, Mr. INHOFE, Mr. MACK, Mr. LOTT, Mr. LIEBERMAN, and Mr. NICKLES, proposes an amendment numbered 3752 to amendment No. 3743.

Mr. ABRAHAM. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

Strike sections 111–115 and 118.

Mr. ABRAHAM. Mr. President, I ask unanimous consent that Senator NICKLES be added as a cosponsor for the amendment.

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

Mr. ABRAHAM. Mr. President, the amendment I proposed is cosponsored, in addition to myself, by Senators FEINGOLD, DEWINE, LOTT, MACK, LIEBERMAN, INHOFE, and NICKLES.

Mr. President, our amendment does basically two things. First, it would

strike sections 111 through 115 of the bill, which would currently begin to implement a national identification system.

Second, the amendment would strike a related provision, section 118 of the bill, which would require State driver's licenses and birth certificates to conform to new Federal regulations and standards.

Mr. President, I intend to devote at least my opening statement here today to the first Senate provisions that we seek to strike with this amendment, those which pertain to the national identification system. Senator DEWINE, while in addition to commenting on those sections, will be speaking in more specific terms about the driver's license and birth certificate provisions.

I recognize that we are not under a time agreement and that it will be the option of the Presiding Officer in terms of floor debate. But we hope Senator DEWINE will have an opportunity following my remarks to be recognized soon so that he may comment on that portion of the bill which he has particularly been focused on.

That said, Mr. President, let me just begin by making it clear that those of us proposing this amendment consider the hiring of illegal aliens to be a wrong thing. We think wrongful hirings, no matter how they might be brought about, are not appropriate. We are not bringing this amendment to in any way condone, or encourage, or stimulate wrongful hirings of people who are not in this country under proper documentation.

The question is, how do we best address that problem, and how do we do it in the least intrusive fashion? Already this bill contains a variety of provisions which will have, I think, a marked impact on addressing the problem. In the bill we already increase substantially the number of Border Patrol employees, people patrolling the borders to prevent illegal aliens from entering the country.

Mr. President, in the bill we already addressed a very serious problem alluded to by the Senator from New Jersey, people who overstay their visas, and constitute some 50 percent of the illegal alien population by for the first time imposing sharp, stiff penalties on those who violate the visa rules. In addition, as we dealt with on numerous occasions yesterday, Mr. President, we have attempted to address the issue of access to public assistance for noncitizens, and particularly for illegal aliens, as a way of discouraging some who may have come to this country, or who might consider doing so for purposes of accessing our social service programs.

In addition, under the bill, we have dramatically, I think, moved to try to expedite the deportation of criminal aliens, a very substantial part of our current alien community, and by definition, in the case of those who have committed serious offenses, individuals who are deportable, and thus no longer appropriate to be in the country.

I believe these steps, combined with other provisions in the legislation, move us a long way down the road toward addressing the concerns we have about the wrongful hiring of illegal aliens. I think we need to understand the provisions that pertain to verification, which, at least in this Senator's judgment, are a very obvious example of a highly intrusive approach that will not have much of an effect on the problems that we confront.

Frankly, Mr. President, what we confront in this country is less, in my judgment, of a case of an innocent employer who has been somehow deceived, or baffled by a clever alien. We have largely confronted a situation in which some form of complicity takes place between employers who are looking for ways to hire less expensive labor, and illegal aliens who have no choice in terms of the options available to them. So what we find is intent on the part of the employer, and, obviously, a willingness on the part of the illegal alien to be an employee.

This identification system is not going to do very much to address that problem because no matter what type of identification document is used, whether it is a birth certificate, a driver's license, an ID card, a Social Security card, or anything else, at least in my judgment, it is not going to matter if the employer's objective is to hire a lower priced employee who happens to be an illegal alien because, whatever the system is, it will be circumvented intentionally to accomplish the objective of trimming down on overhead.

As a consequence, to a large extent, the system, no matter how effectively it is perfected, is not going to really have much impact on the large part of the problem we confront with regard to the hiring of illegal aliens. In my judgment, that makes the cost of this program greatly disproportionate to any potential benefit it might have in terms of reducing the population of illegal aliens who are improperly employed.

I also say in my opening today that we have taken, I think, with the amendment, with the provisions of the bill that were sustained yesterday in the vote with respect to providing employers with a shield against discrimination cases, a further tool that will allow employers who are innocent to take the steps necessary to avoid hiring unintentionally people who are meant to be hired under the current laws.

That is the backdrop, Mr. President. We have big Government, an expansive Government, an intrusive Government solution being brought to bear in a circumstance where I do not think it is going to do much good. For that reason, I think the verification system is headed in the wrong direction.

This approach is flawed, and it is, in my judgment, overextensive in the way it is structured in the bill right now without any definition as to the dimensions that such pilot programs are envisioned in the bill might encompass, it has the potential to be a very, very large program. What is the region? And how advanced are all regions in an entire quarter of the country? The bill does not specify how large the pilot programs might be.

So for those reasons we believe that the verification part of this legislation is unnecessary and should be struck.

Let me talk more specifically about why the costs are going to be greater than the benefits under the program.

First, Mr. President, even though this is a potential pilot program, it seems to me, it is impossible to effectively run a pilot program of this type unless a national database is collected. That national database check is going to be a very extensive step in the direction of a national identification system.

Furthermore, Mr. President, it seems to me, given the enormous downstroke cost of developing that kind of system, that there will be an enormous amount of pressure on us to continue building the system into a national system in the very near future. Indeed, that is the direction that the sponsors of the legislation in both the House and Senate had originally envisioned. But the bottom line in terms of the costs of the program really falls on three categories of U.S. citizens that we need to focus on today.

First, it is extremely unfair and costly to honest employers. Any kind of system that involves verifying new employees prior to hiring them in the fashion that is suggested here will be costly. The employer must phone a 1-800 number in Washington, or someplace else to determine whether an individual's name is in the database, or the person who is the employer must develop some type of, or require some type of, computer interface system, whatever it might be. These are additional business costs that will fall hard—especially hard—on small businesses at a time when I think this Congress at least in its rhetoric has been talking about trying to make the burdensome costs on small business less cumbersome.

In addition, there will be a very disproportionately costly burden on those types of small businesses that have a high turnover of employees. And there are a number of them in virtually every one of our States, whether it is the small fast food restaurant, or whether it is the seasonal type of small business. The list is endless of those kinds of businesses which have huge amounts of turnover in terms of their employee ranks. For each of those

under a verification system we are adding additional costs and additional burdens that must be borne regardless of the circumstances.

But really, Mr. President, this is an unfunded mandate on these small businesses, on businesses in general, on employers in general, whoever they might be. And, in my judgment, it sets a very bad precedent because it would be for the first time the case that we would require people to affirmatively seek permission to hire an employee.

To me, Mr. President, that is a gigantic step in the direction of big government that we should not take. I do not think we want to subject employers, no matter how, or how many employees they have, to this new-found responsibility to affirmatively seek permission to hire employees.

Again, though, the people who will pay these costs and suffer these burdens are going to be the honest employers.

Those who are dishonest, those who would hire illegal aliens knowingly will not engage in any of these expenses, will not undertake any of these steps because, obviously, their intent is to circumvent the law, whatever it might be. They are doing it today. They will do it whatever the system is that we come up with.

So what we are talking about in short is a very costly, very cumbersome, very burdensome new responsibility on employers in this country that will disproportionately fall on the shoulders of those employers who are playing by the rules instead of those who are breaking them. As I say, Mr. President, it will, for the first time, require employers to affirmatively seek permission to hire employees, seek that permission from Washington.

However, it is not just the employers who will suffer through a system of verification as set forth in the legislation; it is also the workers, the employees, U.S. citizens who will now be subjected to a verification system that, in my judgment, cannot be perfected accurately enough to avoid massive problems, dislocations and unhappy results for countless American citizens.

As I have said, there is no way such a system can really be effective unless there is, first, a national database. Such a national database, no matter how accurately constructed, is bound to be riddled with errors. Indeed, some of the very small projects the INS has already launched have been discovered to have error rates, in terms of names in the database, as high as 28 percent.

Now, I hope that we could do better than 28 percent, but let us just consider if the database had an error margin of 1 percent and let us also consider that that was a national program. That would be 600,000 hirings per year that would be basically derailed due to error rates in the database.

The project, of course, is not a national program to begin with, but 1 percent of any sizable regional project is going to mean that U.S. citizens who are entitled to be hired will not be hired and be placed in limbo because of this experimental program.

Again, though, Mr. President, this is not going to be a problem in the case of illegal aliens hired by employers who knowingly choose to do so because they will not be subjected to this verification process.

If we were to have this margin of error, if we were to even have a small handful of American citizens denied employment under these provisions, we would set in motion what I think would be an extraordinarily costly process for those employers and employees so affected.

Is it right to impose a system that would in fact mean that U.S. citizens or legal permanent residents who are entitled to work would be potentially put on hold for weeks to months while the system's database is corrected? I think that is wrong. I think it is the wrong direction to go. Anybody who has dealt with computer databases knows the potential for error in these types of systems. In my judgment, to invite that kind of high cost on the employees and employers of this country would be a huge mistake.

So those are the first two issues to consider, the first two. The victims are the honest, play-by-the-rules employers and employees or potential employees who want to play by the rules. They are going to be the victims. They are going to pay a high cost.

So, too, Mr. President, will the taxpayers pay a high cost for this, in effect, unfunded mandate, because just building the database capable of handling any kind of sizable regional project will cost hundreds of millions of dollars. The question is, is it going to produce the results that are being suggested? I would say no.

As I have indicated already, those who want to circumvent a system will circumvent this system, and they will do so intentionally. Meanwhile, the taxpayers will be footing a very substantial bill for a system that can be easily avoided by those employers and illegal alien employees who wish to do so.

I intend to speak further on this amendment this morning, but let me just summarize my initial comments. I believe we should strike these verification procedures. I believe that the cost of imposing these programs even on a trial basis is going to be excessive. I feel as if it leads us in the direction of big Government, big Government expansion and the imposition of costly Federal regulations and burdens, especially on small businesses that they do not need at this time.

I believe that the tough standards we have placed in the bill to deal with illegal aliens, combined with some of the other relief that has been granted to employers to try to ferret out those who should not be employed, are the sorts of safeguards that will have the least intrusive effect on those who play by the rules. The costs of this verification system, in my judgment, far outweigh any potential benefits. For those reasons, I urge my colleagues to support our effort to strike these provisions.

At this point, as I said, Mr. President, I realize we are not on a time agreement to yield time, but I know the Senator from Ohio would like to speak to another part of this, so I yield the floor.

Mr. DEWINE addressed the Chair.

The PRESIDING OFFICER (Mr. GREGG). The Senator from Ohio.

Mr. DEWINE. I thank the Chair. I rise today to support this amendment.

The Senator from Michigan has discussed very eloquently the problems that we see with the employer verification section of the bill. I am going to talk in a moment about a related problem, a problem that we see in the part of the bill that will require for the first time, in essence, a national birth certificate, a national driver's license.

Before we discuss these parts of the bill, however, let me start by congratulating my colleague from Wyoming. He said something about an hour ago on this floor that is absolutely correct. We are going to pass an illegal immigration bill, and after we have had our way with the amendments, one way or the other, we are going to pass a bill. It is going to be a good bill, and it is going to be a real tribute to his work over the years and his work on this particular bill.

Make no mistake about it: This bill has very, very strong provisions, strong provisions that are targeted directly at the problem of illegal immigration. The bill that the Senator reported from the subcommittee, because of his great work and the other members of the subcommittee, is a strong bill targeted at illegal immigration, targeted at those who break the law. The bill that the committee reported out is a good bill as well. There are, however, several provisions in this bill—and this amendment deals with these provisions—we believe, frankly, are misguided and that are targeted and will have the undue burden not on the lawbreakers but we believe will have an undue burden, unfair burden on the other law-abiding citizens in this country. Let me discuss these at this point.

My colleague from Michigan has talked about the employer verification system. What is now in the bill is a pilot project. I am going to discuss this at greater length later on in this debate, but let me state at this point my experience in this area comes from a different but related field, and that is the area of criminal record systems. I started my career as a county prosecutor, and I became involved in the problem with the criminal record system.

In fact, I discussed this at length with the current occupant of the chair.

I have seen, as other Members have, how difficult it is to bring our criminal record system up to date, to make sure that it is accurate. We have spent hundreds of millions of dollars in this country to try to bring our criminal record system up to snuff so that when a police officer or parole officer or the judge setting bond makes a life and death decision—that is what it is many times—about whether to turn someone out or not turn them out, they have good, reliable information. We have improved our system and we are getting it better, but we still have a long, long way to go.

If, when the stakes are so high in the criminal system, and that is a finite system—we are dealing with a relatively small number of people—if we have such a difficult time getting it right in that system, can you imagine how difficult it is going to be for us to create an entirely new database, a much, much larger database? How many millions are we going to have to spend to do that and what are the chances we are going to get it right, and get it right in a short period of time? So I support the comments of my colleague from Michigan in regard to this national database, in regard to this national verification system.

Let me now turn to another part of this bill, a part that is addressed also by this same amendment we are now debating. This section has to do with the creation, for the first time, of a federally prescribed birth certificate and the creation for the first time of a federally prescribed driver's license.

Under the bill as currently written, on the floor now, all birth certificates and all driver's licenses would have to meet Federal standards. For the first time in our history, Washington, this Congress, would tell States how they produce documents to identify their own citizens. Let me read, if I could, directly from the law, or the bill as it has been introduced and as it is in front of us today. Then in a moment I am going to have a chart, but let me read from the bill. My colleagues who are in the Chamber, my colleagues who are in their offices watching on TV, I ask them to listen to the words because I think, frankly, they are going to be very surprised.

No Federal agency, including but not limited to the Social Security Administration and the Department of State and no State agency that issues driver's licenses or identification documents may accept for any official purpose a copy of a birth certificate as defined in paragraph 5 unless it is issued by a State or local authorized custodian of records and it conforms to standards prescribed in paragraph B.

Paragraph B, then, basically is the Federal prescribed standards. The bureaucracy will issue those regulations. Again, we are saying no Federal agency could issue this, and "No State agency that issues driver's licenses or identification documents may accept for any official purpose." Those are the key words.

Let me turn to what I consider to be the first problem connected with this language. It is a States rights issue. We hear a lot of discussion on this floor about States rights. This seems to be the time and the year when we are trying to return power to the local jurisdictions, return power to the people. It is ironic that the language of this bill as it is currently written goes in just the opposite direction. Although we oftentimes talk about the 10th amendment, I cannot think of a more clear violation of the 10th amendment than the language that we have in front of us today. This is the language that pertains directly to the States.

. . . no State agency that issues driver's licenses or identification documents, may accept for any official purpose a copy of a birth certificate . . . unless it is issued by a State or local government registrar and it conforms to standards . . . promulgated by the Federal agency designated by the President. . . .

Listen to the language, "No State agency that issues driver's licenses or identification documents, may accept for any official purpose. * * *" We are telling a State in one of the basic functions of government, one of their oldest functions, the issuance of birth certificates, and other functions we rely on States to do, issuing driver's licenses, we are turning to them and saying you cannot accept documents except as prescribed by the Federal Government. We are telling that agency, we are telling that State, what they can and cannot accept. This, I think, is going in the wrong direction.

I am not a constitutional scholar but I think it has clear problems with the 10th amendment if anything has any problems with the 10th amendment. You tell the State what they can accept and what they cannot accept for their own purposes.

Let me move, if I could, to another problem that I see with this provision. The second problem, I will call it sort of a nonmonetary problem, the nonmonetary cost. This bill as currently written, going to the national driver's license, going to a national birth certificate, is going to cause a tremendous amount of anguish and tremendous amount of inconvenience for the American people. It is the American people who are abiding by the law who are really going to be punished by this. This is, in essence, what the bill says. It says to the approximately 260-some million Americans, each presumably who has a birth certificate somewhere, that your birth certificate is still valid, it is still valid, you just cannot use it for anything, or almost anything. If you want to use that birth certificate, you have to get a new one. You have to get a new one that conforms to what the bureaucracy has said the new birth certificate must conform to.

Your old birth certificate is no good. You can keep it at home, you can keep it stored in your closet or wherever you have it, that is OK, it is still valid, but if you want to use it to get a passport or you want to use it for any purpose, you cannot do that. You have to go back and get a new birth certificate.

What am I talking about in the real world where we all live and our constituents live? Let me give three examples, real world examples of inconvenience and problems that this is going to cause. Every year, millions of Americans get married and many of them change their names. To have a name change legally accepted by Social Security—this is the law today—today, to have a name change legally accepted by Social Security or by the IRS, today you must show a marriage certificate plus birth certificate. That is the law today.

This amendment will not change that. But here is how it will affect it. If this bill becomes law, the birth certificate you currently have is no good and you will not be able to use it for this purpose. You are going to have to go back to your origin, the place of your birth. You are going to have to do as Mary and Joseph did, you are going to have to go back to where you came from, where you were born, or at least you are going to have to do this by mail, or in some way contact that county where you were born, because the birth certificate they gave your parents 20 years ago, 25 years ago, you cannot use that anymore, because that is what this bill says. They are going to have to issue you a new one and you are going to have to go back and get that new birth certificate. I think that is going to be a shock to many people when they decide they want to get married.

June is historically the most popular month, we are told, for weddings. My wife Fran and I were married in June so I guess we are average, with a number of million other Americans. If this bill passes, I do not think it is too much to say that June will not only be known as the month of weddings, people getting married, it will also be the month where people will have to stand in line, because that is really what people are going to have to do. It is one more step back to get a new birth certificate for them. How many people get married each year? I do not know, but each one of these people will be affected.

Let me give a second example. What happens when you turn 16 years of age? You ask any teenager. They will tell you that in most States at least they get the opportunity to try to get a driver's license. How many of us have had that experience, gone down with their child or, if we remember that long ago, ourselves, trying to get a driver's license? How many people had to stand in line? I do not think it is

unique to my experience, or the experience of my friends. You go and stand in line and it takes a while. Imagine your constituent or my constituent, our family members going down with our child at the age of 16, standing in line at the DMV. We get to the head of the line. You have a birth certificate. And the clerk looks at you and says, "Sorry." You say, "What's wrong? I have this birth certificate."

They say, "No, we are sorry. This is not one of the new federally prescribed birth certificates. This was issued 16 years ago. This doesn't conform. It doesn't work. The Federal law says we cannot accept that birth certificate."

You then leave and either go back to the place your child was born or write to the place your child was born and you get that birth certificate.

We live in a very mobile society. I always relate things to my own experience. In the case of our children, that means we would have to go back to Hamilton, OH; we would have to go back, for one of them, to Lima, OH; one to Springfield, OH; one to Springfield, VA, a couple to Xenia, OH. You would have to go back in each case to where that child was born and go back to the health department or whatever the issuing agency was of the State to get that birth certificate.

Once you got the birth certificate, you then have to get in line at the DMV. That is how it is going to work in the real world. Let me give one more example.

When people turn 65 in this country, they have an opportunity to receive Social Security and they have the opportunity to get Medicare. One of the things you have to do, obviously, is prove your age. How many people, Mr. President, who turn 65 in 1996, live in the same county they lived in when they were born? I suspect not too many.

How shocked they are going to be when they go in to Social Security and they present a birth certificate and Social Security says, "Sorry. Yeah, you waited in line for half an hour; sorry, we can't take this birth certificate."

"Why not? I have had this certificate for 65 years."

"No, Congress passed a law 2, 3 years ago. You can't use this birth certificate anymore. You have to go get a new one."

Imagine the complaints we are going to get in regard to that.

Getting married, turning 16 and getting a driver's license, wanting to go on Social Security—these are just three examples of how this is going to work in the real world.

I think it is important to remember that this is an attempt to deal with a problem not created by the people who we are, in essence, punishing by this language, not created by the teenager or his or her parents who turned 16, not created by the senior citizen who turned 65 and wants Social Security.

How many times are we going to have people call us saying, "I certainly hope you didn't vote for that bill, Senator." "I certainly hope, Congressman, you didn't vote for that bill."

Let me turn to another cost, because this is a costly thing, and we will talk just for a moment about the costs incurred in the whole reissuing of birth certificates. You can just imagine how many million new birth certificates are going to have to be issued. Somebody has to pay for that.

It is true the CBO has said this does not come under the new law we passed, because under that law, you have to be up to $50 million of unfunded mandates per year before it is labeled an unfunded mandate. But that does not mean it is not an unfunded mandate, nor does it mean it is not a cost to local or State government. Nor does it mean it is not going to be a cost to citizens. Let me go through a little bit on the cost.

If you look at the language in the bill, the idea behind the language is very good, and that is to get birth certificates that are tamper-free. We took the opportunity to contact printers and to talk to them to find out, under the language of this bill, what a State would have to do.

Although there is discretion left to the bureaucracy in how this is going to be implemented and the States are going to have some option about how it is done, the printers we talked to said there is anywhere from 10 to 18 to 20 different safety features that one would expect to be included in this new birth certificate.

Let me just read some of the things that they are talking about. I am not going to bore everyone with the details. We have two pages worth of different types of things:

Thermochromic ink—colored ink which is sensitive to heat created by human touch or frictional abrasion. When activated, the ink will disappear or change to another color.

Abrasion ink—a white transparent ink which is difficult to see, but will fluoresce under ultraviolet light exposure.

Chemical voids—incorporated into the paper must be images that will exhibit a hidden multilingual void message that appears when alterations are attempted with chemical ink eradicators, bleach or hypochlorites.

A fourth example: Copy ban and void pantograph.

A fifth example: Fluorescent ink.

A sixth example: High-resolution latent images.

A seventh example: Secure lock.

And on and on and on. This is not something, as I say, that is brain surgery. It is not something that cannot be done. It is something that clearly can be done. But let no one think this is not going to cost millions and millions of dollars, and someone is going to pay for it.

The American people are going to pay for it one way or the other. They are going to pay for it if the local government eats up the cost or absorbs the cost, and that is going to be what we like to refer to as an unfunded mandate.

If they pass it on to the consumer, to the couple who just got married, or the 16-year-old who gets his driver's license, or they pass it on to the 65-year-old who wants Social Security, that is going to be a tax. It will be a hidden tax. The cost is going to be there, and it is going to be millions and millions of dollars.

As my colleague from Michigan pointed out, all these changes, all this burden, all this inconvenience, all these violations of the States rights is being done, really, to go after the problem of illegal aliens and the people, really, who are hiring them.

We have talked—it is difficult to get accurate statistics on this—we talked to INS, we talked to the people who are experts in the field, and I think it is a common opinion that the majority of illegal aliens who are illegally hired are hired by people who know it. They know it.

This portion of this bill is not going to solve that problem at all. So, again, we narrow it down. We are doing an awful lot. We are doing all these things to correct only a portion of the problem.

Let me conclude by simply stating, again, this is a good bill. No one should think that there are not tough provisions in this bill. If a bill like this had been brought to the Senate floor 2 years ago, 4 years ago, 8 years ago, it probably would not have had any chance. I think I heard my colleague from Wyoming say something very similar to that.

It is a strong bill. It is a very strong bill without this what I consider to be a horrible infringement on people's rights. What we intend to do, or try to do, with this amendment is to take out these sections, these sections that are going to impact 260 million, 270 million Americans and punish them to try to get at this problem. We do not think it is going to work. We think it is going to be very intrusive, and we point out also that the bill, without these provisions, is, in fact, a very, very strong bill, and it is a bill that every Member in this Chamber can go home and be proud of and can say, "We have taken very tough measures to deal with illegal immigration."

I thank the Chair, and I yield the floor.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I rise to oppose the Abraham-Feingold amendment. Let me not mince words. This amendment, in my view, is a bill

killer, it is a bill gutter, it decimates the foundation of employer sanctions. It will provide, if it passes, a bill that is gutless, toothless, aged, and will not work.

We must make employer sanctions work. And let me tell you why. The reason why is, take my State, California. We have 2 million people in California illegally. How do these people survive? They survive one of two ways—they either get on benefits through fraudulent documents or they work. How do they work? With employer sanctions, an employer is not supposed to give them jobs.

My opponents would have you believe that every employer wants to break the law, that every employer is going to hire people simply because they know them. I can tell you from the State that has the largest number of illegal immigrants in the Nation—40 percent of them—that is not the case.

Employer sanctions can only be effective if there is some method of verification. The Simpson-Kennedy language is a pilot to ask the INS to see how we can verify information that employers receive. Let me show you graphically why it is important that we do so. The birth certificate, which Senator SIMPSON has pointed out correctly, is the most counterfeited document in the United States. Let me show you why. Let me show you a few forms for birth certificates.

This is one from the State of Illinois. It is a fraudulent document that has not been printed upon.

This is a second one from the State of Illinois. There are literally tens of thousands of different kinds of birth certificates in the United States. This is a form from somewhere in Texas.

So the birth certificate is easy. These papers are duplicated in the right color, that of Austin, TX, then they are put out wholesale. They are then laminated, as you see here. And no one can tell the difference.

Same thing goes here. This is a forged copy of a record of marriage, a marriage certificate.

This is another from Cook County, IL, a forged copy of a marriage certificate.

This is another one, a forged copy of a marriage certificate.

This is a forged GED application. I mean, if I am interviewing someone and this application is filled out, and they say this is testimony to the fact that they have gotten an equivalency degree in this country—and, look, there is the official seal and here are my grades on it—who am I to say it is not true? I would have no way of knowing.

Here is a forged divorce certificate. If this were handed to me as an employer I would have no way of knowing.

Here is a trade school diploma that is forged. If this were handed to me, I would have no way of knowing.

Here is an achievement test certificate for high school from the State of Indiana. If this were handed to me as an employer, when I asked the question, "are you qualified to work in this country?" how would I know? I would not.

Here is another forged divorce certificate. If this were handed to me, I would not know. Why would I not? Because the industry is very sophisticated.

Here are some of the preliminary forgeries, the basic paper from which these forgeries are done. How easily it is replicated.

Here is the back of a green card before it is finished. How easy it is replicated.

Let me show you what the final result is. This is a forged green card. The names are blotted out. This is a real green card. Who can tell the difference? No one. These are the backs. Who can tell the difference? No one.

This is a forged green card. Who can tell the difference?

This is forged—and look at them, look at the numbers. These are all perfect forgeries, every single one of these. These exist by the millions. They are made in less than 20 minutes. And they cost anywhere from $25 to $150. Anyone can get them. How is an employer supposed to know? You cannot know without some way of verifying the authenticity of the document which is submitted to you.

What the Simpson-Kennedy test pilot does is ask INS to see what can be done so that the documents can be verified by an employer. The bill narrows the list of documents down to six. So at least some of the confusion can be avoided there.

It is not fair to anybody to have a system that exists in a bogus form more frequently than it exists in a real form. How does a birth certificate mean anything to anybody for any official purpose if it is counterfeited by the tens of millions in this country? How does a green card mean anything? How does a divorce certificate mean anything if it is counterfeited and you cannot verify it?

These are the real problems with which this bill attempts to deal. If this amendment is successful, you might as well junk employer sanctions, you might as well say, "We're going to permit people to continue to submit bogus documents."

Remember, somebody here illegally has only two choices—one, they earn a living, secondly, they go on public support. Unless they have somebody very well to do in this country who can take care of them—and I would submit to you that that is a remote possibility—those are the only two chances. So the only way they can exist or stay—and right now it is very attractive to come to this country illegally because it is so easy to obtain these counterfeit documents.

That is the reality. That is why we have on the Southwest border 5,000 people crossing every single day, Monday, Tuesday, Wednesday, Thursday, Friday, Saturday, Sunday, because they can go to Alvarado Street in Los Angeles, and they can purchase these documents on the street within 20 minutes. Our system of verification is nonexistent, and they know that. Therefore, if they submit a counterfeit document to an employer, the employer has little choice other than to accept it or ask for more documents. Then if the employer asks for more documents, the employer very often is sued.

So it is a very, very tenuous, real-life experience out there. This bill makes a very modest attempt—where in committee, it became a test pilot. The language, which I think it was a Kennedy amendment, was already a compromise. Many of us on the committee wanted an absolute verification system, put into affect right away. That did not pass in committee.

So the compromise was a pilot. Then the results of the pilot would be brought back to Congress. Now we see an attempt to get rid of the pilot. If you get rid of a pilot, what is left? What is left is that we make ourselves into hypocrites, in my opinion, because we create a system that cannot function.

What we are seeing today is an employer verification method that does not function. It does not function because you cannot verify fraudulent documents, and because fraudulent documents abound.

I must say that I think it is very possible to verify. We live in an information age. Hundreds of data bases now exist in both public and private sectors, data bases for national credit cards, for health insurance companies, credit rating bureaus. Technology is, in fact, advancing so rapidly that the ability to create these data bases and ensure their accuracy is enhanced dramatically every year.

Why, then, does the Senate of the United States not want the U.S. Government to use a computer data base to try to find a better way to help employers verify worker eligibility? I really believe that many of the issues raised by opponents to this provision—that it is bureaucratic, that it is prone to errors, that it is unworkable, that it is too intrusive—are simply unfounded.

In fact, the provision was specifically written, as I understand, to alleviate such concerns, by defining clear limits on the use of the system, establishing strict penalties for the misuse of information, and requiring congressional approval before any national system goes into effect. What are the authors of this amendment so afraid of? Any national pilot system would come back to this body for approval prior to its being put in place.

The legislation also imposes some limits. It limits the use of documents.

Documents must be resistant to counterfeiting and tampering. The system will not require a national identification card for any reason other than the verification of eligibility for employment or receipt of public benefits. There is no one card. Those who use, I think, as a ruse to defeat this pilot project, I hear out there, "Well, Senator FEINSTEIN, you are calling for a national ID. That violates all our civil rights." To that I have to say, "There is no national ID anywhere in the legislation before this body". None. It is a red herring. It is a guise. It is a dupe. It is a ruse, simply to strike a mortal blow at the system.

I have a very hard time because California is so impacted by illegal immigration. For 3 years we have said we must enforce our border, we must improve customs, we must be able to really put a lid on the numbers because the numbers are so large. I have come to the conclusion that within the scope of possible immigration legislation, we are stuck with an existing system. That existing system is employer sanctions. Therefore, why not try to make them work? The already compromised verification system—just a pilot, which allows the INS to work it out, and bring it back to this body and let us say yea or nay to it—is simply a modest attempt to get some meaning into this legislation.

Let me say what I honest to God believe is the truth. If we cannot effect sound, just and moderate controls, the people of America will rise to stop all immigration. I am as sure of that as I am that I am standing here now, because where the grievances exist, they exist in large number. Where the fraud exists, it exists in large numbers. Where it exists, wholesale industries develop around it. It is extraordinarily important, in my opinion, that this amendment be defeated.

Let me talk for a moment about discrimination because I just met with a group of California legislators who wanted to know how this works. One of the big areas they raised was discrimination. As I understand the system, it must have safeguards to prevent discrimination in employment or public assistance. The way it would do that is through a selective use of the system or a refusal of employment opportunities or assistance because of a perceived likelihood that additional verification will be needed. The legislation contains civil and criminal remedies for unlawful disclosure of information. Disclosure of information for any reasons not authorized in the bill will be a misdemeanor with a fine of not more than $5,000. Unauthorized disclosure of information is grounds for civil action. The legislation also contains employer safeguards, that employers shall not be guilty of employing an unauthorized alien if the employer followed the procedures required by the system and the alien was verified by the system as eligible for employment.

In my view, the Simpson-Kennedy test pilot makes sense. I have a very hard time understanding why anyone would oppose it because it is the only way we can make employer sanctions work.

I yield the floor.

Mr. KENNEDY. Mr. President, the case for ensuring that birth certificates are going to be printed on paper to reduce the possibility of counterfeit has been made here. I want to speak to that issue because it has been addressed by some saying this is ultimately the responsibility of the State, and the Federal Government does not really have any role in this area.

Mr. President, sometime we will have to decide whether States will have their own independent immigration policies or whether we will have a national immigration policy. It really gets down to that. I have my differences with some of the provisions in this bill. One that I think the case has been made, and I know it will be made again in just a few moments by the Senator from Wyoming, is that if we do not deal in an important way with ensuring that we will have birth certificates which are going to be, effectively, even printed on paper that cannot be duplicated and other safeguards, really, this whole effort ought to be understood for what it is.

That is, basically, a sham. It will be a sham not only with regard to immigration, but it will be a sham on all of the programs that we talked about yesterday in terms of the public programs because individuals will be going out and getting the birth certificates and getting citizen documents to prove they are American citizens and then drawing down on the public programs.

We spent hours yesterday saying which programs we are going to permit, even for illegals to be able to benefit from, or which ones we will be able to permit legals to be eligible for, and we went through the whole process of deeming. If you go out there and are able to get the birth certificates and falsify those, you will be able to demonstrate you are a senior citizen and you will be able to draw down on all of those programs. This reaches the heart of the whole question of illegal immigrants. It reaches the whole question of protecting American workers. It reaches the whole issue of protecting employers. It reaches the issue about protecting the American taxpayers.

Let me give a few examples of what we are looking at across the country. Some States have open birth record laws. In these States, anyone who can identify a birth record can get a copy of it. The birth certificates are treated as public property. In some States—for example, in the State of Ohio, you can walk into the registry of vital statistics in Ohio, an open record State, and ask for, in this instance, Senator DEWINE's birth certificate. The registry would have to give it to me, no questions asked. I could walk into the registry in Wisconsin and get Senator FEINGOLD's birth certificate just as easily. Some States even let you have a copy through the mail. Once I have a copy of one of their birth certificates, I could take it, for example, down to the Ohio Department of Motor Vehicles and get an Ohio driver's license with Senator DEWINE's birth date and address, but my picture instead of his. I now have two employer identification documents to establish an eligibility to work in the United States and also to be able to be eligible for public programs.

Mr. President, with all that we are doing in terms of tamperproof programs, and all that we are doing in terms of setting up additional agencies and investigators and protections for American workers, and all of the resources that we are providing down at the border, when you recognize that half of the people that will be coming in and will be illegals came here legally, and they will have an opportunity to take advantage of these kinds of gaping holes in our system, then the rest of the bill—with all due respect, we can put hundreds of thousands of guards down on the border, but if they are able to come in, as half of them do, on various visas and be able to run through that process that anybody can achieve in a day or day and a half and circumvent all of that, then I must say, Mr. President, we are not really being serious about this issue.

We can all say, well, our local—I know the arguments and I have heard the arguments. There is a lot of truth in much of what is said in the arguments. But we have to, at some time—and I hope it is now—recognize that we are going to have to at least set certain kinds of standards and let the States do whatever they want to do within those standards. They have to print it on paper that is as resistantproof to tampering as we can scientifically make it. They can set this up, and they can do it whatever way they want to do it. But there are minimum kinds of standards to try to reach the basic integrity of the birth certificates that are going to be necessary. That has been pointed out. That is the breeder document. That is where all of this really starts. It is easily circumvented. We can build all the other kinds of houses of cards on top of trying to do something about illegal aliens, and unless we are going to reach down and deal with this basic document, we are really not fulfilling, I think, our responsibility to the American people with a bill that is really worthy of its name, because we are leaving these gaping holes.

I could go into other things, but I will not take the time because others

want to speak. I will go through other kinds of illustrations that are taking place today. We know what the problem is. You have, as Senator DEWINE said, the fraudulent documents that are all being duplicated fraudulently down at the border when we might be able to do something about tamperproof elements. But unless we are going to deal with the breeder document, which is the birth certificate, we are really not going to be able to get a handle not only on illegal immigration, but also on protecting the taxpayers, because people will be able to use the birth certificate to demonstrate that they are a citizen and then draw down on the various programs. That, I think, really makes a sham of a great deal of what is being attempted at this time.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, I rise today to urge my colleagues to support the Abraham-Feingold amendment to strike the worker verification proposal from this bill.

It has been said many times already in the past, and today on the floor, that we cannot effectively combat illegal immigration without having a national worker verification proposal. It has been said that the employer sanction laws implemented in the 1986 act have been largely ineffective due to the absence of such a verification system.

As we all know, Mr. President, there are two major channels of illegal immigration. The first is composed of those who cross our borders illegally, without visas and without inspection. Roughly 300,000 such individuals enter and remain in our country unlawfully each year.

This, as we all know and agree, is unquestionably a serious problem along our southwestern border. This Congress does have a responsibility to provide additional resources to the U.S. Border Patrol and other enforcement agencies to prevent such individuals from crossing the border in the first place. So I strongly support the provisions in S. 1664 that provide additional border guards and enforcement personnel.

Mr. President, the second part of the equation, though, which represents up to one-half of the illegal immigration problem, is the problem known as visa overstayers. These are people who enter our country legally, usually on a tourist or student visa, and then remain in the United States unlawfully only after the visa has expired.

But despite this phenomenon, representing up to 50 percent—50 percent—of our illegal immigration problem, there was not a single provision in the original committee legislation to address this problem—not a single word about half of the whole illegal immigration problem.

Instead, the bill supporters proposed a massive, new national worker verification system, complete with uniform Federal identification documents. So, rather than targeting the individuals who break our laws and are here illegally, the premise of that proposal was to ensure that the identity of every worker in America—U.S. citizens, legal permanent residents, and so on—had to be verified by a Government agency in Washington, DC.

Mr. President, we are going to hear extensive debate about whether or not what is in this bill is actually going to work, and I will comment on that in a few minutes. But I think we first need to ask the question of whether this, in any way, is an appropriate response to the illegal immigration problem.

According to INS figures, less than 2 percent of the U.S. population is here illegally. Mr. President, do we really want to require 98 percent of Americans to have their identities verified by the Federal Government every time they apply for a job or public assistance?

Think about what this means to every employer in this country, Mr. President. Every employer would have to live under such a system if it was fully implemented. Suppose a dairy farmer in rural Wisconsin, or perhaps rural New Hampshire, wants to hire a part-time employee. Should that farmer have to get permission from a Washington bureaucrat before he hires the worker? How is the verification check to be completed? If it ends up being an electronic system, does that mean the farmer is going to have to spend $2,000 or $3,000 on a new computer and another $1,000 on the required software to be able to interface with a computer somewhere in Washington, DC—all so he can hire just one part-time employee on his farm in Wisconsin or New Hampshire?

Mr. President, if fully implemented, this, obviously, is not a measured response to the illegal immigration problem. It suggests that the way to find a needle in a haystack is to set the haystack on fire.

It is not as if we are moving to a national verification system as a last resort. Just in the past few years has the administration begun to take seriously the task of patrolling our Nation's borders. Experiments such as Operation Hold the Line in El Paso, and Operation Gatekeeper in San Diego, have demonstrated that there is a way to prevent undocumented persons from entering the United States.

Moreover, we have never tried to attack the visa overstayer problem. Again, that is the problem that constitutes nearly one-half of the illegal problem. No one has ever proposed such targeted reforms—until now.

Our amendment contains provisions that impose tough new penalties on persons who overstay their visas by withholding future visas from persons who violate the terms of their agreements.

In addition, anybody who applies for a legal visa must submit certain information to the INS that will allow the INS to track such persons and determine who is here lawfully and who is here unlawfully.

These bold reforms should be given an opportunity to work. Let us give them a try before we commit ourselves to experimenting with a costly and burdensome national verification system.

Moreover, Mr. President—and, of course, I acknowledge that during the committee's work, this was turned into more of a pilot program approach. Nonetheless, the so-called pilot programs contained in this legislation are riddled with problems. Let us be honest. We would not be having these so-called pilot programs if the eventual goal was not to have a national verification system up and running in the near future. Why would we do them if that was not the ultimate objective? Indeed, in addition to the pilot programs, this bill, as reported out of the Judiciary Committee, requires the President to develop just such a plan for a national system and submit it to Congress.

We also know there are going to be numerous errors in the system. As the Senator from Michigan has pointed out, one Federal data base that is to be used with this system currently has an error rate of over 20 percent.

So we know that millions and millions of Americans will be wrongfully denied employment and Government assistance due to bureaucratic errors.

Now the sponsors of the provision will tell you that the system is only supposed to have an error rate of 1 percent. But read the bill. The bill clearly states that the system should have an objective of an error rate of less than 1 percent. It could have an error rate of 5, 10, or 20 percent and it would be perfectly OK under this bill.

But perhaps nothing is as troubling to me about this proposal as the fact that it puts us squarely on the road to having some sort of national ID card.

Now I know that the very words "ID card" ruffles the feathers of the sponsors of this provision. And I know that they have crafted this language very carefully so there is not an actual identification document created by this language.

But even many of the congressional supporters of a national verification system have pointed out that this proposal will not work without some sort of national identification document. Why? Because any job applicant can hand an employer a legitimate ID card that has, for example, been stolen or doctored.

The employer will run the card through the system and it will check out. But the card does not belong to the individual, so that individual has just fraudulently obtained a job or received welfare assistance.

That is exactly what is likely to happen if this bill becomes law.

Well, Mr. President, is there any way to prevent this sort of fraud from happening? One solution has been suggested. Let me quote Frank Ricchiazzi who is the assistant director of the California department of motor vehicles.

In testimony before the Judiciary Committee last May, Mr. Ricchiazzi said the following:

All the databases and communication systems in the world fill not prevent the clever and resourceful individual from assuming multiple identities with quality fraudulent documents. What is needed is the ability to tie the documents back to a unique physiological identifier commonly referred to as biometric technology (retinal scan, fingerprint, hand print, voice print, etc).

So fingerprinting every person in America is one suggested solution to this problem.

Now this approach may sound a little farfetched, but my colleagues on both sides of the aisle may be surprised that the original committee bill required every birth certificate and driver's license in America to be adorned with a fingerprint.

This is not totally far-fetched. It is what we had to consider in the first place in committee.

And it is my understanding that even with the last-minute changes made yesterday to the birth certificate requirements, the bill continues to allow Federal agencies to preempt the authority of the States by requiring State agencies to follow federally mandated regulations with respect to the composition and issuance of their birth certificates and drivers license.

The bill's supporters claim that the fingerprint requirements have been removed from the legislation. But again, read the bill. The legislation before us allows the administration to determine what sort of safety and tamper-proof features every State's driver's licenses must have.

We are going to put something in this Congress to say you cannot use it for something else.

So if the Department of Transportation decides to require the State of Wisconsin to begin collecting and processing fingerprints of all driver's license applicants, the State of Wisconsin would be forced to comply under this legislation with the national fingerprint mandate.

That is why this provision, even with the recent modifications, continues to be opposed by the National Association of Counties and the National Conference of State Legislatures.

The bill's supporters will also say that the legislation clearly prohibits any identification documents required for the verification system to also be required for other purposes.

Mr. President, that is not much of a guarantee. In fact, it is no guarantee and on the contrary, by establishing such federally mandated identification documents we open the door for these documents and the verification system to be used in the future for a variety of purposes that could be completely different from what we intended, and something that none of us would support.

At first, Mr. President, Members of Congress may propose that people present these documents and go through the verification process for very legitimate purposes. Maybe they will say, "Well, we have to use these ID's or documents to board an airplane; maybe we will be required to use them to adopt a child; maybe it will be required if you want to enlist in the Armed Forces."

And pretty soon, the verification process and identification documents will be required for so many purposes that it just might be a good idea to carry the I.D. document around in your wallet.

Does that sound farfetched Mr. President? It should not, because I just described the Social Security card—a card that was originally intended for one purpose and is now required for so many purposes that most people carry it around in their wallets or pocketbooks. And Social Security numbers are used for numerous identification purposes from the number on your driver's license to assessing computer networks.

I know, Mr. President, that the Senator from Wyoming will claim that the bill specifically prohibits the verification system from being used for other purposes.

But nothing in this legislation, including the so-called privacy protections, can prevent a future Congress from passing a law to require these identification documents and the verification system to serve different purposes than originally intended.

That is precisely why Senators should not be misled into believing that the pilot projects contained in this legislation are harmless and will have no effect on their constituents.

The pilot programs are not intended to merely provide a testing ground. If the pilot programs are just meant to provide us with test results, why does the bill specifically require the President to develop and submit to Congress a plan for expanding the pilot projects into a nationwide worker verification system?

That is the goal of the verification proposal contained in the legislation and Senators should not be misled into believing that these are harmless pilot programs that are not going to affect their constituents and are going to somehow magically disappear in a few years.

Mr. President, the number and range of groups and organizations supporting the Abraham-Feingold amendment is quite astounding. It is a coalition of the left, represented by the ACLU, the National Council of La Raza and the American Jewish Committee, and the right, represented by the NFIB, the National Restaurant Association and the U.S. Chamber of Commerce, as well as some 30 other national organizations representing business, labor, ethnic and religious organizations which all support the Abraham-Feingold amendment.

Why do they do this? Because they know it is critical that we abandon this rather heavyhanded, costly approach to combating illegal immigration and instead focus on true reform that focuses on the individuals who break the law, and not those who abide by them.

So I very much commend my friends from Michigan and Ohio, and others, in their efforts in fighting this intrusive proposal.

I ask unanimous consent that a listing of the organizations supporting the Abraham-Feingold amendment be printed in the RECORD.

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

ORGANIZATIONS SUPPORTING ABRAHAM-FEINGOLD

National Federation of Independent Business.
National Council of La Raza.
National Restaurant Association.
American Civil Liberties Union.
U.S. Chamber of Commerce.
American Bar Association.
Americans For Tax Reform.
United States Catholic Conference.
Mexican-American Legal Defense and Education Fund.
National Retail Federation.
American Jewish Committee.
Associated Builders and Contractors.
Associated General Contractors.
National Asian-Pacific American Legal Consortium.
Asian-American Legal Defense and Education Fund.
International Mass Retail Association.
Cato Institute.
Service Employees International Union.
Asian-Pacific American Labor Alliance.
National Association of Beverage Retailers.
UNITE (Union of Needletrades, Industrial and Textile Employees).
National Association of Convenience Stores.
League of United Latin-American Citizens.
Food Marketing Institute.
Hispanic National Bar Association.
Food Distributors International.
The College and University Personnel Association.
American Hotel and Motel Association.
International Association of Amusement Parks and Attractions.

Mr. FEINGOLD. I thank the Chair. I yield the floor.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I rise in strong opposition to the amendment.

Let me differ with my friend from Wisconsin who is one of the finest

Members of this body. It was a great day for the Senate when RUSS FEINGOLD was elected to serve here.

When he says this amendment increases penalties for those who come in legally and overstay, this amendment does nothing of the sort. This amendment does one thing and one thing only, and that is to weaken enforcement of illegal immigration.

What the bill does—not this amendment—on those who overstay legally, anyone who overstays more than 60 days cannot apply for coming back in again legally for 3 or 5 years. We hire more investigators. You have to apply for a visa to the original consular office where you made the original application.

Three things I do not think anyone can question. No. 1 is the thing that Senator SIMPSON has stressed over and over again, and that is the attraction for illegal immigration is the magnet of a job. I do not think anyone seriously questions that. No. 2 is that we have massive fraud that assists people who are here illegally. I do not think anyone questions that. No. 3 is the GAO report shows that we have a serious problem with discrimination particularly against Hispanics and Asian-Americans or people who speak with an accent, maybe a Polish accent or whatever the accent might be because there is a reluctance on the part of employers to hire them.

Unless we have some method of a voluntary identification, that discrimination is going to continue. So, in line with the recommendations of the Jordan Commission, pilot programs have been suggested. No pilot program can be followed through by a Clinton administration or a Dole administration or anyone else without congressional action. So there is that safeguard here.

I think this is essential. If this amendment is adopted, frankly, you just defang the whole bill. It is a toothless venture. You are trying to eat steak without teeth. I hope to never try that. I hope the Presiding Officer never has to try that. You have to have teeth in this if we are going to do anything about illegal immigration.

There are provisions in this bill that I do not like. I was defeated last night on an amendment, and I am probably going to be defeated today on a couple of amendments that I think make a great deal of sense. I think in some ways the bill is too harsh. But it is essential that we take a look at this.

Let me just add—and I know you should not make appeals on the basis of personalities—this whole issue of immigration is one of these cyclical things. Right now there is a lot of interest, but for a while there was very little interest. There were just three of us who served on that subcommittee, the smallest subcommittee in the Senate, because there was not that much interest—ALAN SIMPSON, TED KENNEDY, and PAUL SIMON. I was the very junior member both in terms of service and in terms of knowledge.

I say to my colleagues who may be listening or their staffs who may be listening, whenever ALAN SIMPSON and TED KENNEDY say this is a bad amendment in the field of immigration, I think you ought to listen very, very carefully. They know this area. Complicated as it is, they know this area well. We have a problem with illegal immigration, and you cannot deal with this problem unless you deal with the magnet that employers have, the area of fraud, and I also think the area of discrimination. There is no way of solving this without having some pilot programs.

We could launch something without having a pilot program. I think that would be unwise. It seems to me this is a prudent approach that really makes sense, and with all due respect to my friend from Michigan, I think this amendment should be defeated.

I yield the floor, Mr. President.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER (Mr. BURNS). The Senator from Wyoming.

Mr. SIMPSON. I think we have had an interesting debate. We probably will have a little bit more. There is no time agreement here. But there are some serious distortions presented to us, and that is always vexing because obviously persons are listening to those distortions and taking them to heart.

I have been in this business for 17 years, and that is not to say it has been a joyful experience, but it was much more a pleasure when Senator PAUL SIMON joined this ragged subcommittee consisting of Senator TED KENNEDY and myself because no one else would take on the issue. So for several years it was just a little three-member subcommittee—Senator KENNEDY, myself, and Senator SIMON—because others would come up to us in the course of the entire year of work saying, "When you get busy on doing something about illegal immigration, you let me know and I will help you."

Unfortunately, nobody does help because there are so many cross-currents. I have never seen more—I am not talking about the Senate. I am talking about outside the Senate. I have seen groups hop into the sack with other groups they would not even talk to 10 years ago. I have seen some of the most egregious pandering and prostituting of ideals outside this beltway that I have ever seen, people who are cynical, cynical in the extreme with what they are doing on this issue, some of the think tanks cynical to the extreme. I am not, please hear me, talking about a single person in this arena. I have the deepest respect for Senator SPENCER ABRAHAM. I helped campaign for him in Michigan and would do it again in an instant. I have high regard for Senator MICHAEL DEWINE. I helped campaign for him in Ohio, and I would do it instantly. Senator FEINGOLD I have come to know, a spirited legislator of the old school—doing your homework. So that is not the issue.

But you are missing everything we are trying to do. Somebody is missing the entire thing, and Senator SIMON has expressed it beautifully: You cannot do the things that are in this bill unless you have at least an attempt to find out what verification systems we will use in the United States.

The present stature of the bill simply says that we will have verification projects or processes of these following options. If I had my way, I would make them requirements, and I would say it is required that these following pilot projects take place in the next years. That is what we should be doing. Then none of them go into effect, or not one of them goes into effect, until we have another vote.

That is what is in this bill. There is nothing in here that has to do with national ID or all the sinister activity that you can ever discuss—Americans on the slippery slope, a tragedy of employers having to seek permission to hire people. They already do. It is almost as if one were speaking into a vacuum.

I know what it is. It comes from the fact when you are in it this long, you understand the nuances. That is not a cocky statement, I can assure you. But, boy, I tell you, when I first started the business, I would say, "You can't do that." Then 2 years later I said, "You have to do that."

That is where this one is. When I am up at Harvard teaching, I shall think of you all, and I will reflect. In a year or two—and I hope you are all here for many years—you are going to say, "I didn't know that's what we did," because if this amendment passes, you will have taken away everything from this bill. The rest of it, as Senator PAUL SIMON says, is like eating steak without teeth. You cannot do it with what you have put in this bill. If you think you have solved the problems of illegal immigration by the Border Patrol—put 20,000 of them down there—if you think you are going to solve it by this or that and all the things that are in this bill, forget it, because over half the people come here legally. You will not even touch them unless, ah, with the new Border Patrol we will give them the power to now go up and ask visa overstayers if they are visa overstayers. How is that one for discrimination in America? You are going to go up to people who look foreign under this provision, when we have nothing else that gives us any power or authority to do anything, and find out whether people are visa overstayers. I assume they will most likely be people who look foreign. So, remember, that one will take place.

It is a curious thing that the people and the institutions who want to do

the most to hammer illegal, undocumented persons will give us the least hammer. I do not understand that and I would like to have that explained to me in the course of the debate. How you can come to subcommittee and full committee and the floor and add layer upon layer of things which have to do with tightening the screws on illegal, undocumented people—and that is what you have done, and that may assuage all guilt, it may take care of all pain—but, then to take every bit, every tiny crumb left of how to do something about illegal undocumented persons in the United States, and that is to allow some kind, some kind of more counterfeit-resistant, more verifiable, identifiable—whether it is through the phone system with a slide-through or some kind of revised Social Security card or something—and then to go home and tell our people that, here in the United States of America, we finally did something about illegal immigration? And a year from now or 2 years from now you find out you could not get it done because you did not take the final step, which was minuscule, and that was to do something about the breeder document that Senator FEINSTEIN described so powerfully—you did not do anything with that document, did not do a thing with it.

You did not do a thing with the most stupefying thing that happens in America, where you look at the obituary list, and if you are between 20 and 40 years old you really look at that. You find out who died and then you go get their birth certificate—and between the years of 20 and 30 and 40, that is when most of this happens—and then off they go with the new birth certificate and into the stream they go, into the stream they go with a Social Security card, and into the stream with a driver's license, and into the stream of the public support system.

We are talking about the cost of a system to set that up? The cost to America, by what is happening to the welfare systems, the cost of what is happening to America with the hemorrhaging of California and Illinois and Florida, hemorrhaging—absolutely hemorrhaging, and we are not going to do anything about it? We are going to talk about the cost of a system? If this system costs $10 billion, it would be worth it, because we are losing $20, $30, $40 billion, with people who gimmick the housing programs, gimmick the welfare program, gimmick the employers. That is where we are. It is absolutely startling to me that those who want to do the most will allow us to do the least.

Let me just address a couple of old canards that just have to be addressed. In this league you are supposed to be as patient as you can. But I am always reminded of that great phrase in Rudyard Kipling's "If." Read it. You want to read "If." Read it every 5 years of your life because it will change.

If you can keep your head when all about you
Are losing theirs and blaming it on you,
If you can trust yourself when all men doubt you,
But make allowance for their doubting too;
If you can wait and not be tired by waiting,
Or being lied about, don't deal in lies,
Or being hated, don't give way to hating,
And yet don't look too good, nor talk too wise:

* * * * *

If you can fill the unforgiving minute
With sixty seconds' worth of distance run,
Yours is the Earth and everything that's in it,
And—which is more—you'll be a Man, my son.

But there is one part in it that is marvelous. It says:

If you can bear to hear the truth you've spoken
Twisted by knaves to make a trap for fools,

And that is what I have seen outside, in this beltway, "twisted by knaves to make a trap for fools." I am not referring to a single person in this Chamber. I am referring to people who I know out there. I know the groups. I know them well. I have seen them in action.

So, let us look at the stuff that has floated through here with regard to the national ID card. In an April 11 "Dear Colleague" letter you were all told that:

Americans should not have to receive permission from the Federal Government to work and support their families, nor should U.S. employers need permission from the Federal Government to hire their fellow citizens. But ill-conceived measures in the illegal immigration bill to be taken up on the Senate floor during the week of April 15 will do just that.

And we have heard similar claims here on the floor today. I do not know whether this outrageous statement reflects willful distortion or something more bizarre, because, first, it is already unlawful under section 274(a) of the Immigration and Nationality Act, 8 U.S.C. 1324(a) for any person or entity to knowingly employ illegal aliens, or to hire without complying with the requirements of an "employment verification system." That is the law. And that is described in that section.

Most important, neither current law nor the proposals in S. 1664 require citizens or lawful permanent residents to obtain any form of permission from the Federal Government to work: None. Nor is there any requirement that U.S. employers obtain "permission" to employ such persons. In the present context, the word permission connotes a form of consent that can be withheld, at least partly on the basis of discretion.

In fact, there is not, under current law, and there would not be under any pilot project authorized under the bill or any system actually implemented in accordance with the provisions of this bill, after the required implementing legislation, that would give any legal authority to withhold verification except on the basis that an individual is not a citizen, lawful, permanent resident, or alien authorized to work.

Indeed, the bill includes as an explicit prohibition, a requirement that verification may not be withheld except on that basis. That was to protect the employer. We did not do that for any other reason but to protect the employer.

In that same letter you were informed that the verification provisions of the bill are "more than merely a pilot program. It is a new system that can cover the entire United States and last for up to 7 years at the discretion of the President."

In fact—fact, section 112 of the bill authorized the President to conduct "several local or regional demonstration projects." Are you going to let California just sink? Are you going to let California just sink and float off into the ocean? That is what you are doing if you do not allow them at least to do something; a pilot program. What about Texas? Are you just going to let it sink? What about Illinois? What about Florida? You cannot get there.

So we provided several local or regional demonstration projects. That this does not authorize at all what the authors of this letter assert, it will be made ever clearer as we finish up our work on this bill.

I had an amendment. We will see what happens with that. The word "regional" will be defined as an area more than an entire State, or various configurations. That would make it clear that the system covering nearly the United States of America, the entire Nation, would not be authorized. No one ever intended that. But the letter also asserts that the bill "does not replace the I-9 form but is added on top of the existing system."

The bill does not say that. The bill provides that if the Attorney General determines that a pilot project satisfies accuracy and other criteria, then requirements of the pilot project will take the place of the requirements of current law, including the I-9 form.

Furthermore, those are things that seem to escape us. We are trying to assure that employers will not have to comply with the requirements of both current law and pilot projects, pilot projects where their participation is mandatory. In addition, this same letter states, "Error rates are a serious problem." The letter refers to an estimate by the Social Security Administration that in 20 percent of the cases handled, it will not be able to identify an individual's employment eligibility "on the first attempt."

Hear that, "the first attempt." I am not familiar with the details of the estimate, but there are three responses that come to mind immediately.

First, in the INS' pilot project, if verification is not obtained electronically and the very first time, an additional,

nearly instantaneous, electronic attempt is made—instantaneous—using alternative databases or names. In the vast majority of cases, verification of persons actually authorized to work is obtained in a very few seconds.

Obviously, the whole point is to not verify certain individuals. Illegal aliens will not be verified. A handful of cases then require a visit to an INS office. To our knowledge, every one of those cases was resolved without significant delay, and remember that this is a pilot project and not a fully developed system.

Second, if there is something wrong with the data base of the Social Security Administration, it should be fixed, but we will not have to worry about that because we do not deal with that issue either. We cannot do anything with the Social Security card, to make it as secure as the new $100 bill. We cannot seem to do that, and it will not bother us because we are already told that Social Security will be broke in the year 2029 and will begin to go broke in the year 2012. But we do not deal with that one at all. That one will be one for all of you to deal with.

Third, the whole point of the pilot project is to develop a workable system, I say to my colleagues. We are not trying to do a number on our fellow Americans. We do not have a workable system right now, and you helped correct some of that yesterday, and I appreciate that. Well done. You protected the employer from a heavy fine or penalty just by asking for another document. That was good work; I think good work.

We do not have a workable system. We do not know all the problems on the surface as these projects are conducted, but if the development process is not begun, if something as milk soup in consistency as the present part of the bill, which is the Kennedy-Simpson verification process, which is all optional, if we cannot even start that, we will never have a workable system, at least in the years to come.

The letter also states that, "Employers who break the rules will continue breaking the rules while legitimate business owners must confront new levels of bureaucracy."

Most employers try to comply with the current law. They work hard to do that. They work hard not to hire illegal aliens. However, the current verification system, with which they are required to comply, is not reliable because of fraudulent documents.

I am going to show it one more time. There is no such thing in our line of work as repetition. There it is. Anybody can get one and when you get one, you can begin to do things that to the Cato Institute would be repugnant, because when you get one of these, you can go down and get welfare. You can get welfare, you can access other programs, you can do this and you can even vote in some jurisdictions with that kind of a card.

What are you going to do about that? Well, we have something in there about that, about forgery and about this and about that. We handle that. You will not handle it until you go to a pilot program to figure out what you are going to do with this kind of gimmickry, and then every time I read a report or paper from some of these opinion-filled brilliants off campus here, I am always stunned by the fact that they say what are we going to do, what are we going to do about people who abuse the welfare system, what are we going to do about people who come here pregnant and have a child in the United States of America and then give birth to a U.S. citizen? What are we going to do about people who denied a mother or father the opportunity to receive a welfare benefit because the county and the State had expended it all? It is all gone, millions are gone down the rat hole because of fake documents.

So what you have here without reliable documents is you have hundreds of thousands of illegal aliens employed by such employer. Employers can be punished if they fail to employ someone because they suspect a person is illegal if such person has documents that "reasonably appear on their face to be genuine." At least we protected the employer a bit yesterday. Right now employers can be fined by simply asking for another form of document.

Now the letter asserts, finally, "The system will lead to a national ID card. A number of congressional advocates of this system have admitted that the system will not work without a biometrically encoded identification card." I am quoting. "Establishing this far-reaching program sets us on a dangerous path toward identity papers and other objectionable elements incompatible with a free society."

I also saw an article during the days of this issue coming before the American public where it was even suggested that we were looking into the examination of bodily fluids. There is a debate and there is a thing of give and take and there is a thing such as honesty, but bodily fluids was never anything ever mentioned by any "congressional advocate" that I have ever met.

This is an especially blatant—blatant—example of the misleading nature of so many of the statements in these letters.

First, the assertion that there is a national ID card, but then the statement about congressional advocates does not refer to a national ID card, and I am one of those trained "congressional advocates" who has opposed national ID cards for all of the 17 years I have been involved in this issue, period.

I put it in every bill. Anybody who can read and write has found it in there and ignored it. I am tired of that one. You do not have to take all the guff in this place, and that is not a personal reference. I have heard that one, too. I am talking about lying.

I have put in every bill I ever did that this would not be a national ID card, and that it would be used only at the time of new hire, and it would be only presented at that time or at the time of receiving welfare benefits, that it would not be carried on the person, that it would not be used for law enforcement. That is in every single bill I have ever done, period.

The card that I believe is probably necessary is the one already used for ID purposes by most Americans, and especially in California, the State that takes all the lumps while we give all the advice. That is the driver's license or some kind of a State-issued identification card. But, ladies and gentlemen, what do you think this is? This is a State-issued identification card. That is what this is. That is why I favor the bill's required improvements in these State documents.

The reference to "biometrically encoded" is pure demagogery. "Biometric" merely refers to information relating to physical characteristics that are unique to an individual making it easier to determine if a card is being used by an impostor. That is what "biometric" is. Look it up. A photograph is a common example. A fingerprint is another.

Use of the ominous term "encoding," I guess, just appears as a totally gratuitous crack or shot. Is a photograph on a card encoded on that card? I guess it is, if you want to be stern about it. You will have to ask the authors what they mean, if they mean anything at all, by the use of that term, except inflammatory language.

With respect to the "dangerous path" statement, it is an indication of something I have noticed about many of the opponents of any improved verification system. I have found, in the 17 years of my work in this area, and especially with the Congressman from California, who is tougher than anybody ever in this Chamber—he is no longer a Member, but I had the highest respect for him; he was tough—but he displayed a fundamental distrust of the Government to do what it would do, fundamental distrust of our people, fundamental distrust of our political system. That has to be the root of this, a fundamental distrust of what we are doing. For, as I said many years ago, "There's no slippery slope toward some loss of liberty, only a long descending stairway. Each step downward has to be allowed by the American people and their leaders." That will never happen.

The claim is also made that the system "imposes costly new burdens on States and localities." CBO estimates the cost of all of the birth certificate and driver's license improvements required by section 118 of the bill, as

modified by the floor amendment which was adopted without objection yesterday—how curious, a floor amendment of mine to get all of the snarls and the bumps out of an amendment that had objection in the committee, and I then made these specific corrections to satisfy most of my colleagues, and it passed here by a voice vote without objection. That will be stricken by this amendment.

This motion to strike will take the work product that was done, with all of us in here and their staffs, and junk it, gone, history. You can do that. You may do that. If that happens, life will go on, the Sun will rise in the east, and it will be a joyous day on the morrow.

But let us be real. What I did with the phase-in of the driver's license requirements is going to cost now $10 to $20 million, spread over 6 years. I have seen estimates of the losses to the American people because of the use of fraudulent ID's. That is in the billions and billions and billions of dollars, ladies and gentlemen. That is what is happening. Not to mention voter fraud, terrorism, and other crimes that often involve document fraud.

One other one we have to put to bed, at least pull the covers up, and then go on anywhere you wish to go with this. I have to respond to a wild charge that has been made before. You try not to respond to all this stuff, but finally you just kind of get a belly full of it. The heated rhetoric which has been flying about the Chamber—threatening and stern—is totally untrue. That was about the pilot program in Santa Ana, CA.

My colleagues have heard the bill will create a massive, time-consuming, error-prone, error-riddled bureaucracy. They have heard accusations that we are racing, with no brakes, toward a national ID card that will be "riddled with mistakes" and will be "dangerous to our own workers."

Mr. President, I would like to extinguish this fiery, heated rhetoric with the cold splash of hard fact. Once my colleagues hear the truth, maybe they will be better able to sort out some of the rest of it, and the American people will finally hear the truth. I believe we will no longer have to deal with some of the old canards which are in vogue and have been in vogue for weeks here, because currently under the authority of the 1986 immigration bill, the INS is conducting a pilot project on an employment verification system. I hope no one here will try to stop it, but you never know. It is working. You might want to go scotch it before it goes too far. It is just like the pilot projects authorized by this bill.

Let me tell you what has happened so that you can hear it. Over 230 employers in Santa Ana, CA—230 employers—have volunteered to participate in this INS project, volunteered.

After the hiring of a new worker, the employer fills out an I-9 form and checks the worker's documents. Everybody is doing that in the United States, so if you hear any more argument about what we are putting on the employers to find out if the people in front of them are authorized to work in the United States of America, are citizens, do not think that I put it in this bill. It has been in the law for nearly 10 years.

So this is just like every other employer in the United States. It is a requirement of current law. It is a total distortion of fact and reality to say that we are going to ask something more of an employer to either get "permission to hire," or to "clear it" when he had not had to clear it before.

Ladies and gentlemen, they have been doing it for 10 years, every single day while we go about our work here. The I-9 is asked for, and people do it every single day. Some were offended when it first began. "Why should I do that?" I have a provision, if you are a U.S. citizen, you need do nothing more than a test that you are a U.S. citizen. That would take care of that. But we will not get the opportunity, likely, to get to that.

So let us at least start with what is there. We have a requirement in current law which requires the employer to ask the potential employee in front of him for documents. He is asked to ask for 29 different ones under the previous legislation, the present law—worker authorization ID—and then to make a tragic mistake, with no intent to discriminate, and ask for another one, and get a fine or the clink. So we corrected that. I hope we will keep that.

But remember now, in this pilot program, if the new hire is not a U.S. citizen, the employer then begins the verification process. Using a computer the employer transmits the alien registration number or the "A" number on an employee's green card to the INS. This happens after the employee has been hired. Please remember that. It happens after the employee has been hired. The majority of the time the employer's request is answered in 90 seconds. All of the inquiries are answered within 48 hours by the INS.

Here is where this fake figure comes in. For 17 percent of the newly hired workers—or maybe it is 20; I have heard both, about 1,100 workers; this was newly hired, about 1,100 workers—the INS was unable to confirm that they were legally authorized to work, ladies and gentlemen. So all of those individuals then were given 30 days to set up an appointment with a specific INS officer in a special office set up to correct possible mistakes in the INS data base.

Guess how many—I hope my colleagues will hear this—guess how many of these 1,100 individuals actually came to the INS? Mr. President, 22—22—of them came to the INS. Of these 22 people, only 17 were actually authorized to work in the United States. Their troubles were resolved within the day—within the day. The other five people who showed up were not authorized to work in the United States. I guess you have to assume that the other 1,000 people or so who never showed up to the INS were not authorized to work, either.

What about the 17-percent error rate, or 20 percent, that some opponents have spoken about? Is it the number of illegal aliens who were denied jobs by the INS pilot program? Is that it? Look at the statistics, the real statistics. The current INS pilot project is more than 99 percent accurate. In the few cases where mistakes were made, they were fixed promptly. In no case did any legal permanent resident of the United States lose a job due to this system—not one, nor any U.S. citizen.

Let me repeat myself because this is one of the most important facts my colleagues should remember: No one has ever lost a job due to faulty data in the INS pilot program. The system is used only after a new employee had been hired.

No one will ever be denied a job under this system. The horror stories which opponents have bandied about are completely and utterly without basis and fact. They are fears and illusions summoned up from the vapors to scare the wits out of the American people.

My colleagues should also know that the employers who participate in this verification pilot program think it is great stuff. They do not consider it a burden. They believe it to be a great help. I share with my colleagues' comments of those who use the system and try to look askance at the blather of the business lobbyists. When I make these remarks, I am not speaking of people in this Chamber, but those groups I know so well. I know them well. So they look askance at this blather of the business lobbies whose sole job is to vigorously oppose all legislation which impacts business.

Here is what these employers say about the INS pilot program. "I love this system," says Virginia Valadez, the human resources officer for GT Bicycles. "Now I don't have to be responsible for whether or not these people are legal. I don't have to be the watchdog."

Comments of the California Restaurant Association: "Some means of verifying Government documents is vital to the integrity of the employment system. We desperately need a reliable, convenient means for employers to verify the authenticity of the documents that the Government itself requires. I can assure you the restaurant industry will participate eagerly." It will be the first time in my memory—the restaurant groups, when I started this business, were the most resistant,

and they feel this would be extremely helpful.

Says their publication, describing the fledgling pilot verification program, "Bring offers of ready volunteer to our offices." The testimony of Robert Davis, the president of St. John Knits Co., before the select committee of the California Assembly, after describing the widespread availability of this stuff and the great difficulty that puts on the law-abiding employer says, "To a business that wants to comply and build a stable labor force, this is a major concern. Economic loss from hiring, training and loss of output from the removal of a forged document worker can be severe." He said, now he can "invest with confidence in the training of the individual, and plan for a long-term permanent work force." He believes in it. He has seen it work. "As a businessman * * * it is exciting and reassuring" and has had dramatic success.

There they are. The current program only tests individual or noncitizens in order to get a job. The illegal alien only has to claim to be a U.S. citizen, present a driver's license, Social Security card, and those are the things we will find out. How do they avoid the verification process? What do they do? Find out.

Others say we should try and call in—there has been a toll-free number called 1-800-BIG-BROTHER. They must have forgotten the one called 1-800-END-FRAUD. That is an 800 number, too, that you want to pipe into that next time you are grappling with 1-800-END-FRAUD or BIG-BROTHER and find out whether it will be cost effective, find out what we will do, see what is up in this country, do the testing we need to do, trust a Congress 6 years in the future having to cast another vote to do it right. If you do not get started, you will never get it started.

Obviously, I hope my colleagues will oppose the Abraham amendment and will acknowledge that some of the apocalyptic cries that come from out there, from the beltway, are truly without foundation and reality or fact. Remember, this is a pilot project that you are seeking to strike, with all the inevitable problems that a pilot project to a new system will involve, but if we do not even try to work out the bugs through pilot projects, we will never have a workable system. That will be, then, truly a hazing of the American public. They thought we got the job done, but we failed—and failed totally—in that.

I yield the floor.

Mr. ABRAHAM. Mr. President, I similarly acknowledge the efforts of Senator SIMPSON both with respect to the broad subject of immigration policy over the last 17 years and, more specifically, his hard work on the bill before the Senate on illegal immigration.

The positions which I have advocated on a number of the issues that are part of this bill, in some cases, have been this opposition to his position, and, in some cases, they have been on the same side. They have always been advocated with great respect for his efforts here.

I must say I sympathize with his feelings about some of the rhetoric which those outside of this Chamber have launched during the past couple of months as we have dealt with this issue before both the committee and here on the floor. I, too, have been the target of many rather unusual, strange, and exaggerated charges, as well as complaints. In my State of Michigan, in fact, groups who oppose some of the views I have on this issue have even launched paid media campaigns critiquing my activities here in the U.S. Senate on these issues. I am both an admirer of Senator SIMPSON's efforts and a sympathizer with the role he finds himself thrust into when he chose to become involved in highly important issues that touch a large number of Americans.

I comment now and finish on the comments I made earlier with respect to the implications of this verification system on the American people. We have been told as a starting point that the bill, without this pilot program, would be gutless, it would be toothless and, in various other ways, be a bill unworthy of us here. I cannot help, when we talk about exaggerated rhetoric, be a little shocked and surprised at those allegations, because I consider the bill as it currently stands, even if it did not have these pilot programs, an extraordinary piece of legislation that will combat many of the problems this country has with illegal immigration, and combat them squarely, head on, effectively, whether it is increasing the border patrols, whether it is cracking down on and ensuring the deportation of alien criminals, whether it is in partially penalizing the visa overstayers who make up such a large percentage of the illegal alien population, or whether it is sharply reducing the availability of public assistance programs to illegal aliens. All of these, I think, combined, will play a very effective role in dramatically reducing the illegal immigration problems we confront.

Equally, I think, we will see that the provisions in the legislation which protect employers, particularly small employers, from charges of discrimination, in cases where no intent to discriminate exists, are going to, likewise, allow us to address the problem of individuals who are legal aliens securing employment in this country and do so, I think, with great effectiveness.

(Mr. BROWN assumed the Chair.)

Mr. ABRAHAM. Does that make this pilot program that we are talking about, this identification verification program, the linchpin in this legislation? Is the absence of that going to make this toothless, Mr. President? I do not think so. Quite the contrary. I think, if anything, it will burden the bill and burden American citizens—taxpayers, employers, and employees—with an excessive amount of redtape, bureaucracy, and big Government intrusion that is not going to handsomely pay off in terms of the benefits it produces.

Let me just talk about some of those costs once again. First of all, this approach is the kind of big Government bureaucracy approach that I think most of us in this Congress have been arguing we find too dominant already in the American economy. Do we really want to have another bureaucracy, another effort here to try to create hoops for businesses to jump through as they make employment decisions, or for U.S. citizens, who are entitled to be employed, to jump through in order to secure employment?

Clearly, it is going to be a costly venture and a costly one both in terms of bureaucratic redtape as well as in taxpayer dollars. I was glad to hear the term "$10 billion" used as a possibility of the cost involved here. I do not know what the total costs are going to be. No one, in fact, on the floor knows that. But it is certainly conceivable that it will be great. Just as far as we are aware to this point, the assembling of this database is going to be in the hundreds of millions of dollars. The Social Security Administration has said that a national program would be $3 to $6 billion, and then it would have to be sustained.

Mr. President, that is thousands of dollars per illegal immigrant in the country just to build this system, if that is what we would end up doing. I do not think that is exactly the kind of cost-benefit approach we want to take. Let us not just talk about the burdened taxpayers; let us talk about the burden to business, and particularly to small business.

We can debate the terminology, we can talk about whether it is seeking permission or some other way to describe what would be called for under this type of an approach. But it certainly would be an additional step in the process, and it certainly would require, in some way, communicating with someone in a bureaucracy run by the Federal Government somewhere in America to determine whether or not verification indeed has occurred.

We have never, in my judgment, Mr. President, ever placed that level of burden on employers in this country. It is a costly burden, potentially a very costly burden, for small businesses, and particularly for those small businesses that have a large turnover of employees.

In addition, it is a burden on the employees themselves. Again, we have one

pilot program in Santa Ana, CA, carefully monitored by the INS, who are presumably pulling out all the stops to try to minimize delays on a database. So there are 22 cases out of 1,000—1, 2, 3 percent. Extrapolate that to the entire country or a large region, as is contemplated by the pilot program, and we are talking about thousands of American citizens who will be, in one way or another, denied initial hiring because the verification system database is not able to run at 100 percent.

While it may be the case that when a program is highly localized in a single city, with INS monitoring, the 22 people can get relatively quickly into the correct category, I do not think such a quick turnaround will be possible if the program is indeed larger, whether it is larger in terms of a full State or a region that goes beyond one State, or certainly if it was a national program.

We have had other similar kinds of things happen, Mr. President. Whenever databases are involved, there could be interminable delays. The Social Security Administration encounters this quite often, and it takes days to months to correct errors. I do not think that is the way to deal with the illegal immigration problem in America—by creating problems for people who are citizens who are entitled to work, rather than cracking down on those who are not entitled to work.

Let us not overlook the acquisition costs of the documents that will be required in order to effectuate this type of system if it goes beyond a very small project. The acquisition costs were so, I think, accurately and movingly laid out by the Senator from Ohio earlier. Imagine what we will encounter from our constituents if they determine or learn that we have moved us in a direction where new birth certificates are required, whether it is for passports, weddings, or anything else. Imagine what we will encounter if when young people go to get their driver's license, now living in a wholly different State or part of the country, find out that our law here today, in attempting to crack down on illegal immigration, has thwarted that effort, forcing them to incur additional costs in order to get their first license.

These are significant costs—costs not borne by the people who are breaking the rules, but by the people who are playing by the rules.

I do not believe, Mr. President, that we should attempt to solve the illegal immigration problem by bringing huge burdens on people who are playing it straight. I am sympathetic to the problems raised with respect to people who live in States such as California. I understand that they have different circumstances than we might have in my State, or yours. But to basically impose upon the entire country ultimately or, in the short-term, full States or regions the kinds of burdens that are contemplated by this type of verification system, it just seems to me, Mr. President, that is not a cost-benefit analysis that works out favorably for the American people.

Now, Mr. President, the real issue that we should focus on, in addition to costs, are benefits, because that is the calculus. I think it is important for everyone who is considering how they feel about this issue to think about the degree to which such a program as is being contemplated here can possibly work. Will the forgery stop, Mr. President? Will it really mean that there is not the capability of circumventing the new system that might be developed? Do we really believe that a system can be made perfect? Do we really think that on Alvarado Street in Los Angeles, or in any other city where there might be this type of forgery, in a couple of years, if not sooner, somebody not will come up with a system that breaks the code, that somehow penetrates the new security that is developed as part of these pilot programs? I am very skeptical, Mr. President.

But, also, let us not lose sight of the fact that, even separate from the ability to develop a foolproof system, we have the problem that many, if not an overwhelming percentage, of the employer problems we have are intentional. So let us ask ourselves this: If there is an employer who knowingly or intentionally intends to hire someone who is an illegal alien, are they even going to participate in the verification system? I do not think so. I do not think so, Mr. President.

So while the people who play by the rules are incurring the additional costs of setting up the kinds of systems that will be required to interface with the database in Washington, the ones who would shun the rules today will shun the rules tomorrow. As a consequence, the issue of whether or not there is a job magnet will not be very effectively addressed by this type of an approach, because as long as there are people willing to work around the rules, there will be an audience of people who will think they can come to the country illegally and get jobs with those who basically eschew the responsibilities as employers of following the rules today.

So there we bring ourselves to the final balance. On the one hand, massive costs, taxpayer costs, putting this kind of program together. Whether it is a national database, regional database, State database, it is going to be costly—costs for the small businesses, in particular, but for the employers of America, who have to develop whatever system it is to comply with and interface with the database; and then costs in terms of actually doing such compliance; costs to the employees themselves, who will be required to go through the additional step, and especially to those who, because of a database mistake, do not initially get hired and have to go through the additional bureaucratic red tape to get back into the system; costs to all who will need either birth certificates and driver's licenses and find out that because of what we have done, they now have to get a new one. Those are the costs on one side.

On the other side, as I say, the benefits, in my judgment, are substantially less than that which has been suggested earlier, because I think it will ultimately still be possible to find a way around the system. For those who want to find a way around the system on the employer side, a verification system will only make a very minimal impact. For that reason, I think we do not need this step in the direction of more big Government. I think we should strike the verification system and the driver's license and birth certificate provisions of the legislation.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. DEWINE addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I again rise in support of the amendment.

I would like to return, if I could, to the issue of the birth certificate because I think it is so revolutionary what we would do if we actually passed this bill as it is written and if we turn this amendment down. As I pointed out earlier, we are saying to 270 million Americans that your birth certificates are still valid. You just cannot use them for anything. If you really want to use them in the traditional way in which we use birth certificates today, you have to go back to the county where you were born or contact that county. You have to get a new birth certificate under the prescription of the Federal Government. For the first time, we have a federally prescribed birth certificate. We have a federally prescribed driver's license. In essence, they are not even "grandfathered in," to use the term we use many times. You will have to get a new one if you want to use it.

A 16-year-old who just wants to get his or her driver's license, we are going to say, "No, you cannot use that birth certificate that your parents have held onto for 16 years. You have to get a new one." We are going to say the same thing to someone who wants to get married. You have to go back to contact that county where you were born 20, 30, or 40 years ago to get that birth certificate. You have to be reissued a new form. We will have to say to someone 65 years of age who wants to get Social Security, or Medicare, "Sorry." You come into the Social Security Administration and you think you are going to get your check next month. You sign up, doing what you are supposed to be doing. We will say to them, "No, you have to go back and

get a new birth certificate," a birth certificate that was issued initially 65 years before that. I think that is an undue burden. I think it is a terrible burden.

I would like to talk now for a moment about another aspect of this, and that is those who argue in favor of requiring this national birth certificate—nationally prescribed birth certificate. To those who argue that it is worth it, we are going to help solve the illegal immigration problem—and I know they are well intentioned when they say this—and it is worth it to require the people we represent to do all of this, I would argue, walk through this with me and see if at the end you still think that a birth certificate—this new tamperproof birth certificate—is really going to solve very many problems, because it is based upon the premise that the person who gets this new tamperproof birth certificate is in fact the person they purport to be. That, I think, is a leap in logic which may not necessarily be true.

My colleague from Wyoming has consistently—and I respectfully say that he has been at this for 17 or 18 years. He refers to the birth certificate as the "breeder document." This is the real problem: We have to get at the birth certificate. The difficulty with that is that under the laws of many States and the way it operates in many States, that breeder document may be a second-generation document or a third-generation document.

Let me take my home State of Ohio. Ohio is what might be referred to as an open State. It is not the only State that follows this procedure. There are many other States that follow this as well. All you need to do in Ohio to get a birth certificate is to stop in at the county health department office. You put down your $7, and you get a copy of your birth certificate. Not only can you get a copy of your birth certificate, Mr. President, but you can get a copy of anybody's birth certificate. It is a public document. It is a public record. So I can go into Ohio and get a birth certificate for anybody if they were born in that county.

What is the protection here? You can issue the finest document in the world, with all the bells and whistles on it in the world; you can spend all of the money you want to make it tamperproof, but if the person who walks in and gets that document is not that person, what good have you done? So in States like Ohio that have this open system, open record system, what good does it do? There is absolutely no good at all.

There are other States that probably are more restrictive, but I would say even in those States that are more restrictive, unless we are willing to impose burdens on American citizens that no one in this Chamber will impose, unless we are willing to say to the 65-year-old who wants to get Social Security who now lives in South Carolina and was born in Ohio that you have to personally go back to Cleveland, OH, or Cincinnati where you were born to get your birth certificate, unless we are willing to say that, how in the world do you protect the integrity of that birth certificate? How in the world do you do it by mail?

Let us take it a step further. Let us assume the State even has some very restrictive ways in which they will issue a birth certificate. What is the use of being able to demonstrate who you are, whether it is a driver's license, if you have a driver's license such as Senator SIMPSON has over there—I heard him tell the story of how cheap it was to get that driver's license. It is a great story. It illustrates a lot of the problems that we have. Then you go to get the breeder document, and you can go circular. Even if you have a restrictive State, not like Ohio and other States where you can get anybody's birth certificate, what in the world good does it do to have all these bells and whistles on these birth certificates?

We will spend a ton of money. We will violate States' rights because we are going to tell the States what they can accept and what they cannot accept for official State business, all in the name of trying to solve this problem. I would submit it is not going to solve it at all. In fact, again, it is not too much of a leap of the imagination to think it may create more problems. Why? Because now you are going to have this routine of millions of people every year having to go back through when they turn 16 and want their driver's license and want their Medicare card, or when they want to get married; millions of people have to go back to the origin county of their birth to get a birth certificate. These will be issued en mass.

It seems to me that you do not have to be too smart if you are a person who wants to violate the system. If you are a person who wants to game the system, as the Senator from Wyoming said very eloquently, there are people who are doing it, and it is a problem. But now you do not have to be too bright to be able to figure out how to start working that system and how to get out of some of these counties, particularly in States that are open for birth certificates, this breeder document. Only now it is going to be a breeder document that is going to be superior. You are going to be in the situation where you, as an imposter, are going to have a better document than the person who is actually that person.

MIKE DEWINE can go in; I could figure out how to game the system. I could get someone's birth certificate if I was close in age to that person. It might be able to pass. It might be able to work. I have a great birth certificate. If I took it to the Chair and he was the employer, he would say, "That's it, a new birth certificate, it has to be right." And if the next day the real person came in and they had their old birth certificate, the old, moldy birth certificate that had been in their closet or in their attic, or had been in the desk for a number years, you would say, "Well, that is not as good. I have to take the other one."

So I think when you work this out—it all sounds great in theory—it just will not work. If you look at how the government really works at the county level, if you look at how health departments issue these certificates that really work, if you take into consideration the fact that an open State can get anybody's birth certificate, this just does not make any sense.

Let me turn to another point. I think my friend from Wyoming has been too modest. This is a good bill. He has made it a good bill. He has had 17 years of experience at looking at things that we need to do. There is a consistent list of things that we have done. I say "we"—"he" has done. This is the legal immigration bill passed by the subcommittee, a portion of it. These are the things each one of us think relates to a specific problem of dealing with illegal aliens.

I reduced it to a chart form because I do not want anyone in this Chamber to think that if this amendment is accepted—which I certainly hope it will be—that there is nothing left in the bill to deal with illegal aliens. This is a tough bill. The Senator has done a great job. He has taken his years of experience in the subcommittee, along with members of the subcommittee, and he did a great job.

Look at what the subcommittee did:

Increased Border Patrol, INS investigators, wiretaps for alien, smuggling, and document fraud;

RICO for alien smuggling and document fraud;

Increased asset forfeiture for alien smuggling and document fraud;

5. Doubled fines for document fraud;

Next, faster deportation of illegal aliens;

And finally, faster deportation of immigrants convicted of crimes.

That was the bill coming out of the subcommittee. It is a bill that I think I have heard my friend say would have been hard to get through on the Senate floor even as recently as a couple of years ago. But it is tough and it is good.

Then the bill went to the full committee, and the full committee even upped the ante. The full committee added additional things. This is what the full committee did.

"Bill Made Tougher in Committee."

Increased penalties for visa overstayers.

Let me stop with that for a minute because that is a problem. My friend

from Wyoming has identified this as a problem. These are people who overstay. They are people who come here legally—they are not legal immigrants, but they are people who come here legally. They are students. For any number of reasons they are here, but then they stay. That is a problem. This provision put in by the full committee deals with that—increased penalties for visa overstayers.

Next: More investigators for visa overstayers;

Next: Eliminate additional judicial review of deportations;

No bail for criminal aliens;

Three-tier fence along the border;

Next: Expand detention facilities by 9,000 beds;

And finally: Increase Border Patrol by 1,000 agents.

All of those provisions are in this bill. So it is a bill that is a strong bill, and no one, no one should be ashamed of voting for this bill. No one should feel they cannot go home and be able to say, "We passed a very, very tough bill."

Let me turn, as I said I would earlier, to the issue of a national verification system.

I understand that this is a pilot project. Again, I only bring to the floor my own experience. Each one of us brings our own experience. I think that is the great thing about the Congress and the Senate. We do have varied backgrounds. My background has been, at least in part, in law enforcement as a county prosecuting attorney.

One of the things that shocked me 20 years ago is when I found what kind of state our criminal records were in. What am I talking about when I am talking about criminal records? I am talking about basically the same type of thing here, only I am talking about a finite group of individuals, criminals.

It is important for the police officer who comes up behind a car to be able to determine who is in that car, if that person has a record, to be able to determine if that person is wanted, or at least if that car is a stolen car. When someone is apprehended, then it is important to be able to determine whether that person is wanted, whether they have had a criminal record in the past. The same way for a judge who looks down at arraignment. He is on his 52d person, or she is on her 52d person, the judge is, and is trying to determine what the bond is. It is important, when they glance at that record, the record be complete; that they know 3 years ago this person committed a rape, or they know that 4 years ago this person fled the jurisdiction. All of that is important, and police officers deal with this every day and have to rely on this information to make life and death decisions.

I was shocked a number of years ago to find that this system is not entirely accurate. That is a kind way of putting it. When I became Lieutenant Governor in Ohio, we had as one of our goals to try to upgrade the criminal records system so police officers would know who they were dealing with. We found that only 5 percent of the criminal records in the State of Ohio were totally accurate—only 5 percent. That is not unusual. That is not unusual.

In all the discussion about the Brady bill, we got into the whole issue of the accuracy of criminal records. We found that there are very, very few States that could put in an instant check system because of the high inaccuracy level.

Now, after having spent hundreds of millions of dollars to try to upgrade a criminal record system that we depend on to make life and death decisions, how in the world do we expect to, overnight, re-create a national data base system for employment, a system that, by definition, is going to have to be a lot bigger?

Now, people could say: "Well, you are talking about a pilot project, Senator. Isn't that what you are talking about?"

"Yes."

Yes, we are talking about a pilot project, but I have been thinking about this, and I cannot come up with any way you can have a pilot project that really works and is really accurate and really protects employees or potential employees unless you have a national system. We cannot build walls around States. We cannot build walls around communities. People go back and forth. You have to create a national system, even if you are only using it in four or five pilot projects, and so we will have to build a national system. We will have to build a national system that is not going to be error prone. Anyone who has had any experience with the criminal system in this country, who really has looked at it, I think is going to be hard pressed to be able to make a good argument that this new system we are going to create is not going to cause serious, serious problems as well as be extremely expensive.

I know there are some of my colleagues who want to talk some more on this bill, but I just believe this amendment makes eminent sense. It is a good bill without it. It is a great bill. It does a lot. The Senator from Wyoming is to be commended for the work he has done. But unless we take out these provisions, unless this amendment passes, I think we are all going to be very sorry, and I think we are going to have a lot of explaining to do to our constituents when that 16-year-old wants to get his or her driver's license and they find out, no, that birth certificate is not any good; the 65-year-old finds out, no, my birth certificate is not any good anymore; I have to go back and get a new one, or when someone wants to get married and they find out their birth certificate is not any good either. I think that is a very serious problem.

Mr. President, I see my friend from Wyoming standing. I yield the floor.

The PRESIDING OFFICER. Is there further debate on the amendment?

The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I thank the Senator. I wish to review the situation. We have a Leahy amendment, on which, I believe, if anyone wishes to address that, we are ready to close that debate. There is no time agreement here, but I think that is ready to be closed. I think Senator HATCH has a statement and maybe will enter that in the RECORD. Senator BRADLEY has an amendment, and there were several who said they wished to speak on that. I have not had any further word from anyone on that. There is no time agreement on it. Then the Abraham amendment, which now goes to Senator KYL for his time. I have really nothing much further on any of those three.

So, again, if we are going to go on, maybe we could lock in a time agreement to be sure that we let our colleagues know there will at least be three votes on these three amendments.

Mr. KYL addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, I shall be quite brief. If the ranking majority and minority members wish to discuss a time agreement, that would be fine, or perhaps while I am speaking they could do it, but I will not speak more than 15 minutes for sure.

Mr. President, I rise in opposition to the amendment. The discussion that my colleague from Ohio has just engaged in primarily relating to the issue of the birth certificate, I will leave to Senator SIMPSON. I should rather respond to arguments primarily made earlier by the Senator from Michigan and, to some extent, the Senator from Ohio relating to the problem of verification of employment status.

I wish to go back in time to set this issue in proper context. In 1990, 6 years ago, the Congress increased the limit on legal immigration to the country by 37 percent because we thought the laws that imposed serious sanctions for hiring illegal immigrants would have the effect of reducing that illegal immigrant population; that making it harder to employ illegal immigrants would in effect remove that magnet—employment—that was drawing many people across the border, particularly from Mexico.

Unfortunately, it has not worked out that way because the system just has not worked very well. Unfortunately, between 300,000 and 400,000 illegal immigrants are now entering the United States every year, many of them people seeking these job opportunities. In fact, in my own State, the INS estimates that about 10 percent of the State's work force is made up of illegal immigrants.

I hope Members of the Senate believe that it should not be acceptable to have so many illegal immigrants taking jobs here in the United States. The question, then, is what we do about it. We have a system that is not working, and we need to do something about it.

That is what the bill attempts to deal with. We started out with a bill that dealt with it in a much more effective way. But in order to compromise and get more support over the weeks and months, many changes were made, to the point, now, that it is really a very modest approach. This is a very modest change we are seeking, to try to find out how to strengthen this verification process so not so many illegal immigrants are working in the United States. This is clearly the focus of the effort, to reduce the effect of the magnet of employment.

It has been illegal to hire illegal aliens for 10 years now. So I think the first thing you have to do is ask what is not working and what can we do about it? The Jordan commission, which has been referred to many times in this debate, studied this problem as much as any, and it came up with several recommendations. What the Jordan commission and many other immigration experts have concluded is that the best way to reduce the number of illegal aliens working in our country today is to implement some kind of an easy-to-use, reliable employment verification system. In fact, the Jordan commission reported that current employer sanction laws cannot be effective without a system for verifying the work eligibility of employees.

So, if the current system is not effective in weeding out those individuals who are here illegally and, as the Jordan commission and others have said, we have to find a way to develop a workable system, what is the next step? You do some research. You try to do some pilot projects, some experiments, some demonstration projects, as they are sometimes called, to find out what will work the best. That is what the committee did. It adopted a verification provision which authorizes a series of pilot projects. We are not changing the law. We are not imposing a system. We are certainly not imposing a national system. We are simply authorizing the Attorney General to experiment with some pilot projects over a short period of time, 4 years, to determine what will work, what is the most effective way for employers to verify that the person they have hired is legally authorized to work. That is very straightforward.

These projects are intended to assist both the employer and, frankly, the person seeking employment. Because, if an individual seeks employment and, frankly, looks like me, there probably are not going to be too many questions asked. But, in my own State of Arizona, we have a very large Hispanic population. There are a lot of people who seek employment in which the employer is basically in a dilemma, in a catch-22 situation. If he asks too many questions of that individual, perhaps because he or she looks Hispanic, speaks with a Spanish accent, that employer can be charged with discrimination. But if the employer does not ask enough questions to verify the legal status of the employee, he can be charged with violating our immigration laws for hiring somebody who is not legally authorized to work here.

As Senator SIMPSON and others have said, the system we have tried to devise to verify the working status, or legal status, of the individual for work purposes is not working because it relies on a series of documents, all of which are easy to forge. Therefore, you end up with a situation where it is virtually impossible for the employer to really know whether the individual is entitled to work or not.

The employer fills out what is called an I-9 form to verify the eligibility of each person hired. But, as I said, that system is open to great fraud and abuse. So one of the purposes of the verification system is, obviously, to make the law work. Another purpose is to make it easier for the employer to verify the legal status of the individual. Another purpose is to protect the individual seeking employment.

I want to make it very clear that the bill specifically prohibits the establishment of any national ID card. What many of us believe, ideally, is there is no card at all. Let us take the Social Security number. You are frequently asked to give your Social Security number, but you do not necessarily have to have a card with you that identifies you as an individual for other purposes. On those few occasions in your life, hopefully few for most of us, where you are applying for a job, you give the Social Security number. Perhaps one of the pilot projects is a 1-800 number that the employer can dial up and punch in the numbers of the Social Security number and get information back that the individual who he has just hired is, in fact, legal.

In any event, we are not talking about a national ID card here, and the debate should not be confused with that prospect. Moreover, the employee verification would only be used after an individual was hired, so you do not run into problems of discrimination here. Perhaps most important—and I really view this as a deficiency in the bill, not something to brag about, but it certainly answers one of the objections of my opponents—is that these pilot projects would not in and of themselves establish any new verification system for the country. The Congress would have to actually act, would have to pass a law implementing a verification system before it ever took effect. So there would be plenty of opportunity for those who oppose this, once a pilot project had established some good ideas here, to pick those ideas apart if they do not like them. Basically what they are arguing against is something that has not even been created yet. They are saying we cannot imagine a system that would work well and therefore we should not even try to find one.

As one of my colleagues said, it is impossible to have a foolproof system. That is the last argument, except for the ad hominem argument, that is made in a debate when you do not have a good answer. It makes perfection the enemy of the good. There is only one perfect thing in this universe and that is He Who made the universe. None of us is perfect. None of our laws is perfect. No system we can devise is perfect. Nothing is foolproof. Nothing is even tamperproof for people who are not fools but are very clever individuals.

But we can try to do something to enforce a law that, 10 years ago, everyone thought was still a good law and none of the opponents of this verification system is trying to repeal. They are, in effect, willing to allow a law on the books they know cannot be enforced. Nothing detracts more from a society than keeping laws on the books that everyone knows are not being enforced. It breeds an attitude against the law, and, after all, the law is the underpinning of the country. We are a nation of laws.

If we willingly, knowingly, allow a lot of laws to be on the books that everybody ignores because we know they do not work, it makes them unimportant, in effect. It make the purpose behind them unimportant. I submit we are not seriously doing our job if we simply argue against trying to improve a law with nothing to substitute to make it better. There are no concrete, positive suggestions here, no constructive criticism. It is all negative criticism. You cannot make a perfect, foolproof system, they say.

Nobody is saying we can. But we can sure make it a lot better than it is. We cannot make a foolproof system along the border either, but that does not keep us from trying. Almost everyone here is going to support training 1,000 new agents to put on the border and in our cities every year for the next 7 years; to build fences, to build lights, to do all the other things to try to keep the border more secure than it is. It will never be totally secure, but we do not give up. We try to seek new ways of protecting that border. In fact, we have some pilot projects in this bill to experiment with different kinds of fencing and different kinds of lighting and roads, to see what works the best to secure the border.

Why can we not have some pilot projects to experiment, to see what are

the best ways of verifying the legal status of people for employment purposes—and welfare benefits, I might add? It is a false argument, to make perfection the enemy of the good.

All this bill does is allow us to try some new things to see if they will work. Now what is wrong with that, Mr. President?

I also heard an argument that it is going to cost the employers. Absolutely false. First of all, we made it very clear that the pilot projects cannot cost the employers anything and, secondly, one of the reasons we are trying to develop a new verification system is to decrease the cost of compliance. It is not easy to comply with the filling out of these I-9 forms. I know, I talked to a lot of employers who do it. It is a hassle. It will be much easier and less costly for them if we can implement a truly effective verification system.

In the end, Mr. President, as I said, the verification system that is contemplated in this legislation is really a very minimal effort. It is a pilot project only. There is no assurance, as the original bill provided, that a nationwide system will ever be implemented. Such a system would only arise if we concluded that there are some really good ideas that come out of this pilot project, presumably with a majority of the House and Senate agreeing to implement that verification system with legislation.

As I said, this can really only be called a beginning, but it is an important first step, and I think that the verification provisions of this bill, minimal as they are, should not be eliminated as the opponents suggest, but rather should be retained.

Therefore, I urge my colleagues to vote against the motion to strike these important provisions from the bill.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I know we have had a good debate and discussion on this amendment. Let me just summarize very briefly the reasons that I believe that the existing provisions are so important if we are serious about dealing with the problems of illegal immigration.

First of all, there have been comments by those who are supporting striking these various provisions that utilize an old technique that we know of around here and many of us have seen many times, and that is, misstate what is in the bill and then differ with it. Misstate what is in the bill and then differ with it.

That is true with those who have suggested that we are moving toward a national identity card. It is also true of those who say we do not want a new kind of national system that is going to be governing in the rural areas or urban areas of this country; that it somehow is going to be national.

Mr. President, at the present time, we know, as it says in the Immigration and Nationality Act, to hire for employment in the United States an individual, complying with the requirements of the subsection (B), and subsection (B) is spelled out in such a way as to require everyone in the United States of America, whether they are in Maine, Wisconsin, Florida, Massachusetts, Texas or California, to fill out this particular form, the I-9 form. That is a national requirement in existence at the present time.

Do we understand that that is already in existence? And behind that, with the other requirements in terms of the identification of the individual, you have a list of acceptable documents.

The purpose and the thrust of this particular amendment in the first instance, on the question of the birth certificate, is to make sure that documents that are going to have to be required and be supplied are going to be accurate.

Why is that important? It is important, first of all, if we are serious about doing something about illegal immigration. If we are not going to do that, then the magnet attraction of jobs in the United States is going to continue to invite people from all over the world to come to the United States.

We can build fences and fences and fences and hire border guards and border guards and border guards, but we have seen what happened in Vietnam when we had those various fences out and mine fields and every kind of lighting facility. People still were able to bore through to where they wanted to go if they had a sufficient interest in doing so.

No. 1, we have a national program at the present time.

No. 2, everyone who wants to work and every employer in this country is required to fill this out.

The thrust of the Simpson proposal is to get at the question of ensuring that the documents that are going to be provided to that employer are going to be legitimate and that we are going to make substantial improvements with the problems of fraud in the making of those documents, as well illustrated by the Senator from California. That is what this is all about.

One of the provisions says that we are going to have to try and make sure that we are going to have birth certificates put on tamperproof paper. We hear how the world is coming down because we are going to have that requirement.

Let us look at what the legislation says on birth certificates:

The standards described in this paragraph are set forth in the regulations on page 38, and it says on line 13:

(i) certification by the agency issuing the birth certificate—

Whatever agency in the State issues the birth certificate.

Use of safety paper, tamper-free paper, that is true. We have said that they have to move toward tamper-free paper.

The seal of the issuing agency—

Whatever that agency is in any State.

and other features designed to limit tampering—

Left up, again, to the State.

counterfeiting, and use by impostors.

There it is, I say to my friends. Those are the provisions that we are asking in order to stop illegal immigration into this country. How can we say that these are unreasonable? How can we say that these are not necessary? How can we say if we are serious about illegal immigration that just insisting that there is going to be tamperproof paper out there, the seal of the issuing agency, whatever that might be, and other features designed to limit tampering and counterfeiting. We let the States do whatever else they want to do, but we are trying to get a handle on this.

Mr. President, we have heard a lot of questions about how this is going to be costly. It is approximately $10 an issuance of a birth certificate in the State of Georgia. We can give other illustrations of that as well.

So it is important as we go to this issue about the birth certificates to really understand it. As has been pointed out time in and time out during this debate, the birth certificate is that breeder document. If you get that birth certificate from any State that has open files on it—we have 13 States that have open files on it—as I mentioned earlier, and you can go on in there and get a copy of anyone's birth certificate and get your own picture put with that birth certificate, and you can have a driver's license, if you pass the driver's requirement, and that is one of the eligibility cards for employment.

So, Mr. President, if we are serious about trying to deal with this underlying issue, this proposal that Senator SIMPSON has is absolutely essential, necessary and reasonable to try and deal with this issue.

On the second question about the various pilot programs to figure out a better way to help employers verify who can work, because the current approach is not working, our provision simply requires the Attorney General to conduct some pilot programs.

I wish we would spend a moment, and I will just take a moment, referring our colleagues to those provisions on page 13 of the legislation which outlines what will be necessary in terms of these various pilot projects. We pointed out they are not being put into effect. They will be completed and then a report will be made to the Congress, and the Congress will be able to take whatever steps that it will.

It says:

(2) The plan described . . . shall take effect on the date of enactment of a bill or joint resolution . . .

The objectives it must meet: the purpose is to reduce illegal immigration, to increase employer compliance, to protect individuals from unlawful discrimination, to minimize the burden on businesses.

Those are the objectives. They sound pretty good to me. That is basically what we are considering on that.

Within that, Mr. President, as I have seen as a member of the Judiciary Committee, they believe that they may very well be able to issue or develop programs to increase the certification and accuracy that are industry based, perhaps regionally based, but industry or employer based. You have about 80 percent in seven States, 80 percent of the illegals in seven States.

There are some very interesting pilot programs that are in the process at the present time. We have not the time to go through them, although I think anyone on the Judiciary Committee who took the time to get the briefing from the Justice Department has to be impressed about what they think the possibilities are of really strengthening the whole process to be able to root out illegal immigrants from the employment process in this country.

There are very important privacy protections, Mr. President, and the list goes on. We have drafted to deal with that. The amendment has been drafted to try to take into consideration every possible limitation and sensitivity.

But, Mr. President, we are going to have to ultimately make a judgment. If you are serious about controlling illegal immigration, serious about that, recognizing that half the illegals get here legally and then jimmy the system with these documents that are fraudulent, picked up easily, and get jobs and displace American workers. If you are interested in halting illegal immigration, you are going to have to do more than border guards. You are going to have to get at the breeder documents and get it in an effective system.

If you are interested in protecting the Federal taxpayer, from illegal aliens getting fraudulent documents so that they can qualify for public assistance programs, you better be interested in doing something about these fraudulent documents or otherwise we are just giving lip service to trying to protect the taxpayer.

If you recognize the importance of trying to do something about the illegals, again, displacing jobs, we feel that it is important that we at least try to develop three pilot programs to see what recommendations can be made to try to deal with this problem. These are recommendations that are made by the Jordan commission and by others who have studied it. We ought to be prepared to examine those at the time they are recommended, to evaluate them, to find out if they are going to make a difference. I believe they can make important recommendations and suggestions.

Mr. President, this is a hard and difficult issue. It is a complicated one. For people just to say that we can solve our problems with illegal immigration by bumper-sticker solutions, that with that we are going to halt illegal immigration, that all we have to do is put up fences and more border guards, that we are going to halt that just by adding more penalties—I have been around here. We have added more penalties on the problems of guns since I have been around here than you can possibly imagine. You think it is stopping gun crimes in this country? Absolutely not.

You can just keep on adding these penalties, but unless you are going to get to the root causes of any of these problems, we are not going to have a piece of legislation that is worthy of its name in dealing with a complex, difficult problem.

Let me just say, finally, unless we are going to do that, we are going to do what we have heard stated out here on the floor, the American people are going to get frustrated by the failure to act; and then we are going to have recriminations that are going to come down in a cruel kind of world and divide families and loved ones, and there will be a backlash against legitimate people being reunited and trying to make a difference and contribute to this country.

This, I think, is one of the most important pieces of this whole legislation. I hope the Abraham-Feingold amendment will be defeated.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. This has been a good debate. It appears to be winding down. Let me just add a couple responses to the comments of the Senators from Wyoming and Massachusetts.

One of the words that has been kicked around here is the word "permission." Does this employer identification system, if it is fully implemented, require permission from the Federal Government for an employer to hire somebody? It has been sort of muddying the issue.

I suppose you could call the current system, asking for "permission." It is kind of a loose use of the word, because what is required now with the I-9 is the obtaining of a certain kind of identification card. But what it does not include—and this is the phrase I used when I spoke; I did not just say "permission," I said, "having to ask permission from Washington, DC." That is what this system that could arise from this proposal may create.

What happens now is the employer does not have to get on the phone or through a computer to find out something from a national databank. That is a big difference. Ask anybody who tries to run a small business or a farm how they are going to like the idea that, in addition to everything else they have to do now to try to keep their business going, every time they want to hire somebody under one of these alternatives, they would have to either call Washington or they would have to communicate with Washington through some other system, such as a computer system.

Who is going to pay for all those systems? Who is going to make up for the lost time of the employer who has these additional burdens? It is very important to distinguish here between what is current law and what this bill could do if this amendment is not adopted—getting permission from Washington, DC. I think that is a fair statement of what this adds to this bill.

How can this possibly square with the rhetoric and legislation proposed in the 104th Congress? Whatever happened to the notion that we should not do more unfunded mandates from Washington, especially on small businesses? Whatever happened to the notion of regulatory reform, which almost every Senator at least paid lip service to? This seems to be one of the biggest potential unfunded mandates that has ever been proposed on this floor.

I am confident that almost no employer in the State of Wisconsin would feel comfortable with the notion that suddenly, in addition to everything else they have to do, they have to call up Washington under this. If there is any ambiguity involved about the possibility that this might occur, I refer to page 26 of the bill, and subsection (E), where it explicitly states that one of the things that could be done in these pilot projects is to create the following:

A system that requires employers to verify the validity of employee social security account numbers through a telephone call, and to verify employee identity through a United States passport, a State driver's license or identification document, or a document issued by the Service for purposes of this clause.

So it is explicit in the bill. It is not just some objectives, general objectives, as the Senator from Massachusetts was reading earlier.

You go 13 pages later, there are the explicit approaches that are permitted. One of those approaches is to put in place a pilot program that presumably would lead to a national program requiring every employer to essentially call Washington after they have hired someone. I think this is very troubling and certainly something that should be removed from the bill.

Another comment that I found interesting was the comment of the Senator from Wyoming. He said that if this system costs $10 billion, it would be worth

it. I think that is debatable, perhaps. But we have no assurance that even after we have gone through this process, either allowed every employer to do this or mandated every employer to do this, after we spend $10 billion, we have no assurance at all that this system will work.

There will still be fraud. There will still be fraudulent documents. No one has been able to assure us this is foolproof. We may have created this giant mandate and spent $10 billion, have this huge system in place, and it may not work. So it is not just a question of spending the money. There is no guarantee it would, in fact, work.

So the question here in the end is, What the adoption of this amendment will do to this whole bill? Some say it will destroy the bill. Others think, as I do, as Senator ABRAHAM does, that it will make it a measured response. Instead of using a meat ax to deal with the problem of illegal immigration, we will focus on the tough items that are in the bill that the Senator from Ohio identified.

There are strong measures in this bill. Frankly, I think a couple of them might go a little too far. This is not a weak-kneed piece of legislation if we get rid of this extreme mandate that could potentially arise from these pilot programs.

So, Mr. President, for those who support a strong immigration bill, I reject the notion that getting rid of this potential employer verification system would make it a weak bill. I think that is wrong. I think everyone should remember the balance here between keeping the strong provisions that are in the bill versus making the bill so difficult for so many Americans and so many businesses that it would be resented rather than welcomed. Mr. President, I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. SIMPSON. Mr. President, let me propose a unanimous-consent request, which will get us to vote on the pending amendments, if I may, and answer any questions, or you may reserve the right to object. I will certainly do that. Here is the consent agreement I would propose.

I ask unanimous consent that the vote occur on or in relation to amendment No. 3790 at the hour of 4 o'clock today to be followed by a vote on or in relation to amendment No. 3780, to be followed by a vote on or in relation to amendment No. 3752; further, that there be 2 minutes of debate equally divided in the usual form prior to each of those votes.

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

Mr. SIMPSON. Let me say, too, that there are two other amendments. There was an amendment of Senator FEINSTEIN from last night with regard to fencing, which Senator KYL and Senator FEINSTEIN are working toward resolving and may have something on that. We are not ready for a vote there. Of course, that is not part of this.

Then there is an amendment of Senator SIMON with regard to deeming, with regard to the issue of disabled persons. We have not included that here, but that will be coming up as soon as we conclude this.

Senator REID has an amendment with regard to criminal penalties on female genital mutilation.

Mr. ABRAHAM. Mr. President, I do not intend to speak much longer. I just wanted to give a brief summary of a few points, both in response to some of the arguments that have been made by the last few speakers and also just to kind of put in perspective exactly what this all comes down to.

First of all, a statement made earlier that this pilot program approach or the broader approach would not have any cost to employers is simply not the case for a variety of reasons, but the National Retail Federation has suggested that even the pilot program as conceptualized would probably work out to something in the vicinity of $7 per verification. That might not mean a lot to a business that does not have much turnover, but to those that have lots of employees coming and going it is a pretty big impact.

In addition, it has been suggested that somehow because the 1986 legislation has not gone as far as people had hoped for, it is a mistake to resist this approach that is being proposed with the pilot program. I think that is actually counter-intuitive, Mr. President. The fact is, every few years people come along with a new, better mousetrap, it would seem, or they would claim, for addressing the problems of illegal aliens securing employment.

Ten years ago we burdened the American economy and our businesses and employers with a lot of redtape—I-9 forms and other things—and they have not worked. Those who bring this amendment today are saying, "Let's not add yet another level, another tier, another round of redtape to those people who are trying to play by the rules and create opportunities for people in this country."

Third, Mr. President, it has been suggested that somehow this is really something good for employers, it is good for people who might be discriminated against because of their ethnicity or their race. This is a case, though, where frankly the people who are the alleged beneficiaries are saying, "Thanks, but no thanks." That is why this amendment that we are bringing, both the verification amendment as well as the amendment that Senator DEWINE has separately offered with respect to birth certificates and driver's licenses, are being supported by the National Federation of Independent Business, and they are key votes for that organization, by the chamber of commerce, by the National Association of Manufacturers, by the National Retail Federation, and yes, the National Restaurant Association. We have heard earlier somehow that restaurants were supporting this. The national association opposes it.

The businesses who will have to implement this, whether in pilot program form or otherwise, say, "Thank you, but no thanks." So, too, do groups historically fighting discrimination, such as the ACLU and others. The fact is, the beneficiaries are not really going to benefit, Mr. President, if this is looked at closely.

Meanwhile, I draw attention to the issue of the pilot project. We are being asked to support this on a theory it is not really a national system but a pilot project. The way the legislation is drafted allows that type of pilot program to encompass regions with no definition as for their size. In addition, because of the nature of verification, it almost certainly will require the creation of the type of national data base that will be both costly, onerous, and burdensome. To say that a pilot program is just a small step is not accurate, Mr. President. It is a very big step.

That brings me to the final point I want to make today—the cost versus the benefits. The costs will be great to employers who have to verify new employees, whatever the size of the program. The cost will be great to the employees themselves who are playing by the rules—U.S. citizens and those who legally can seek employment—because those people in some cases will be denied employment because of data base malfunctions. The cost to taxpayers of setting up the type of data base involved will be considerable, and the cost to average American citizens who, because of this type of program, find they need new birth certificates or new driver's licenses, will be considerable as well. A lot of costs, Mr. President.

The benefits, on the other side, are not very clear to me. First of all, as I have said in previous comments, those employers who intend to fire illegal aliens at lower-paying jobs or below the wage level they otherwise would have to pay will get around any kind of verification system because they will not participate. To the idea that we will create a foolproof system, a card that defies any type of tampering or counterfeiting, to me, is a remote possibility.

There will be plenty of costs and very few, in my view, benefits. Rather than going down the route we went in 1986, it is our argument that we understand, very simply, the losers here are the taxpayers, the employers, the employees, the people playing by the rules. Those are the folks we should be helping, Mr. President.

The balance of this legislation does exactly that, by cracking down on the people who are violating this. I do not think we should take a step other than in that direction. For those reasons, Mr. President, I strongly urge passage of this amendment, support for the striking of both the verification procedures as well as the procedure of the driver's license and the birth certificate procedure.

Mr. SIMPSON. Mr. President, I think this has been a very impressive and important debate. I commend Senator ABRAHAM. I can see why the people of his State placed him here. He will have a great career here. I wish him well. He is very able, formidable, and fair. We try to express to each other what is occurring on the floor, even though it may be arcane and somewhat bizarre from time to time, but I always try to do that. To Senator DEWINE and his participation, and Senator FEINGOLD, a very thorough debate.

Now, the reason we set that unanimous-consent agreement is that there are at least several who have told me, "I do want to get over and speak on the amendment of Senator LEAHY and Senator BRADLEY." I do not believe any further persons intend to debate on the issue of the Abraham amendment, but the reason we set the vote for 4 o'clock is to allow those who wish to debate the issues of Senator LEAHY's amendment and Senator BRADLEY to come forward. If they do not, they are foreclosed as of 4 o'clock. I hope they realize that, that there will be no further opportunity to address those two amendments, or three amendments—the Abraham amendment, too—after the hour of 4 o'clock. Then we will go to the order of the amendments as Senator BRADLEY, Senator LEAHY, Senator ABRAHAM, with the usual 2 minutes of debate.

Mr. President, let me inform the Chair that the majority leader has designated Senator HATCH as the manager of the bill for the present time and that the majority leader has yielded 1 hour to me, in my capacity as an individual Senator, for the purposes of being able to complete debate on the bill, because I only have 27 minutes left. That is the purpose of that. I promise I shall not expend any more on the other issue. Maybe on the birth certificate—I could do a few minutes on that.

Well, I think I will since no one has come forward.

Let me indicate that I will speak a very few minutes on the issue of the birth certificate, but if these Senators who are going to come forward immediately will notify me—I will yield to them—that will expedite our efforts.

Let me just briefly remark about the birth certificate, because I think it is very important that we understand that that is the fundamental ID-related document. I think it would be just as disturbing to the Senator from Ohio as it is to me. We do not have any way to match up birth and death records in the United States. That seems bizarre, but we do not. Maybe some States have tried to do that. One of the questions that arose in the debate was, well, what will this do? One thing it will do, which we do not do now, is that if it is known that the person is deceased, the word "deceased" will be placed upon that birth certificate, wherever that birth certificate is. Now, that is one of the advantages of the word "deceased" being stamped on a birth certificate. You would think, surely, they must be doing that in the United States of America. But they are not doing that in the United States of America.

That is just one part of the proposal. Again, please recognize that the motion to strike is directed toward the revised or amended form as it left the Senate Judiciary Committee, as I say, trying to work with all concerns, realizing that we cannot indeed satisfy all aspects; but a good-faith attempt was done with regard to that.

Of course, the ID-related document that is the most fundamental. It proves U.S. citizenship, the most valuable benefit the country can provide. As we all have indicated, it is the common breeder document used to obtain other documents, including a driver's license and a Social Security number and card. That is the power of the birth certificate.

With the birth certificate, plus the driver's license, and a Social Security card, a person can obtain just about any other ID-related document and would be verified as authorized to work and receive public assistance by nearly any verification system it is possible to conceive, including any system likely to be implemented in the foreseeable future.

Yet, the weird part of it is that this birth certificate—and it is a sacred document, the type of document that is pressed into the Bible; it is the book that goes into the safe deposit box—is the most easily counterfeited of all ID-related documents, partly because copies are issued by 50 States, some with laws like Ohio, some with laws like Wyoming—50 States and over 7,000 local registrars in a myriad of forms and political subdivisions and, as Senator LEAHY indicated in committee, I think townships.

So how can anyone looking at a particular certificate know whether it even resembles a bona fide certificate? Furthermore, birth certificates can readily be obtained in genuine form by requesting a copy of a deceased person's certificate. And birth and death records are only beginning—this is the very beginnings—to be matched. That is puzzling to me in every sense. In most States, it is only for recent deaths. So we have a situation where people want to build a new identity. They try to get the certificate of a person who was born in the year they were, or near their own birth year, or died as an infant, perhaps, so that the deceased person would not have obtained a Social Security card or otherwise established an identity.

It is acknowledged by a great majority of experts that a secure verification system cannot be achieved without improvements in the birth certificate, and in the procedures followed to issue it. Without a secure, effective verification system, the current law prohibiting the knowing employment of illegal aliens cannot be enforced. I emphasize current law because some of my colleagues argue as if this bill would put this provision into law, and that is not so. It need not.

This is the law now. We are not putting this into the law. There is a system in the law. The issue simply is, do we here in Congress intend to take reasonable steps so that this part of current law can be effectively enforced? That is the problem. Do we want to do that?

Mr. President, without effective employer sanctions, illegal immigration, including not only unlawful border crossing, but visa overstays, will not be brought under control. It is just that simple. Thus, fraud resistant birth certificates and procedures to issue them are a crucial part of any effort to make that effective. In addition to immigration and welfare advantages, a more secure birth certificate will help us to reduce many more harms associated with fraudulent use of ID's, ranging from financial crimes—we will see ever more of those—and then those through the Internet—and we will see more of those—and through electronic and computer-based systems, to voting fraud, to terrorism. Accordingly, S. 1664 proposes significant reforms in birth certificates themselves, and in the procedures followed to issue them, and improvements of a similar nature for driver's licenses, which I think are critically important.

The final provision on birth certificates was drafted with assistance from the Association for Public Health Statistics and Information. I want to share that with my colleagues. The National Association of State Registrars and Vital Statistics Offices—that was drafted with their assistance—these officials made very valuable suggestions to us, and they expressed their approval of the final language, which is here to be stricken. Additional improvements were made in the amendment I offered yesterday, which was accepted, and which will be stricken if this amendment is passed.

I will just summarize the birth certificate provisions of the bill. I am using my time, but I will yield to my friend from Ohio. I emphasize to those who are waiting to come to the floor on the Bradley amendment or the Leahy amendment that their opportunity will close at 4 o'clock on that procedure.

If my friend from Ohio has any comment at this time, I will save some of my time.

Mr. DEWINE. Mr. President, I thank my colleague from Wyoming, and I agree with him that we have had a very spirited debate and, I think, a very good debate—a debate that has covered, I think, most of the issues that we are going to cover here today.

Let me just state, on a couple of related subjects, the following. We have, again, confirmed, I say to the Members of the Senate, this afternoon that this amendment is supported by the National Conference of State Legislators, the National Association of Counties, and by the National League of Cities. All three organizations support this amendment. Again, they emphasize they support it on the basis of cost—cost to them as local units of government—and they also support it on the basis of the whole question of preemption. Once again, that is the Federal Government coming in and, frankly, telling them exactly what to do.

Let me just make a couple of additional comments in regard to the issue my colleague from Wyoming was talking a moment ago about, which is birth certificates. To me, it is almost shocking when we think of the implications of what this bill, as currently written, would do. I have given the example here on the floor that when you turn 65, you are hopefully going to get Social Security and Medicare; at 16, in most States, a driver's license, or try to get your driver's license; or you will get married. For any of those purposes, you will have to get a birth certificate, and your old birth certificate is no longer going to be any good for that purpose.

Let your imagination run. You can think of all the other reasons why during your lifetime you might need a birth certificate. Everybody can just about figure 270 million Americans are at some point in time going to need their birth certificates.

I suppose if you are over 65 and already on Social Security, and you are not traveling, I suppose some folks never are going to have to use this new birth certificate and are never going to have to do what tens of millions of Americans are now going to have to do under the provisions of this bill, which is to go and get new birth certificates.

Again, what we are saying in this bill and with this amendment, what we are saying to 270 million Americans is, "Yes, your birth certificate is still valid, but you really just cannot use it much for anything. You will have to get a new one." That, to me, is onerous, whether you travel overseas—how many of us have had occasion as Members of the Senate or the House to get the frantic call from someone who says, "I am supposed to be going overseas and I had this passport. I cannot find it. I found out today it is expired. I am leaving in 5 days, or 4 days." What if you had to add to all of the problems they have to go through now, with the red tape, one more thing—you have to go back and get a new birth certificate because that birth certificate which you have had all of these years will not work anymore. That might be acceptable. At least, it would not be for me. I do not think it would be.

If we could make the case that the reissuance of a new birth certificate on this tamperproof paper, with all of the bells and whistles prescribed by the Federal bureaucrats, if that would deal with the problem—but maybe I am missing something in this discussion. I believe my colleague from Wyoming when he says it is the breeder document. I trust him on it. He has had enough experience on this. He has talked about this problem. But it still is going to be a problem, and, in fact, it may be even worse of a problem, more of a problem.

There are States—and Ohio is one, but Ohio is not the only one—where you can get anybody's birth certificate. Let me repeat that: You can get anybody's birth certificate. You walk into the county, and if someone was born there, you can get their birth certificate. You put down $7; you can get 5, 20, or as many birth certificates as you want as long as you know the name of the people. You can get them. They are public records.

What we are now saying is, instead of the old birth certificate copy, these are going to be new ones. Obviously, they are more expensive—tamperproof, bells and whistles—with all of the things the printers told us when we tried to find out what the cost would be, and they will have them. So what? What is the protection? What is the protection if I have walked in and MIKE DEWINE, at the age of 49, went in and got somebody else's who is 49 and might look the same? I now have a birth certificate. I do not see what has been accomplished. I do not see what we have done in regard to this, even in States where it is more difficult.

Again, instead of the breeder document, instead of the father document or the mother document, this may be the son, or the granddaughter. This may be two generations away. It may be an illegal license, as my colleague still has displayed in the Senate here, maybe an illegal license that is the breeder document. I do not know.

Again, this is not going to solve the problem. My friend talks about now the provision is in the bill that States should, if they know it, stamp on this birth certificate if the person is deceased. We can imagine how accurate that is going to be, or what percentage of these birth certificates is going to ever be stamped with the deceased on them. It may be a great idea. But, again, it is going to be a very, very small percentage where the local clerk of the county is going to know that someone is deceased. In some cases, they will, but in a great majority of the cases, they will not. We live in a very mobile society, Mr. President. This, I do not think, is going to help a great deal.

If you really want to make these tamperproof, what you are going to do is require people to go in and, face to face, get their new birth certificate. I do not think we are going to do that. I do not think we are going to say to a retiree who lives in North Carolina or who lives in Florida or lives in California, "You have to go back to Cincinnati, OH, you have to drive back and get a new birth certificate." I do not think anyone is going to make them do that. I do not think it is a serious idea. But yet, if you are going to make it tamperproof, you at least have to do that, not allowing it to be by U.S. mail and getting anybody's birth certificate. I think it is very onerous, but I think it is not going to be effective. It is going to be no good at all.

In thinking about this, we ought to learn from our past mistakes. We ought to learn from what this Congress has done in the past that we have regretted. I have cast votes that I have regretted. I have cast votes where I looked around and said later on that I was wrong. This is not the first time we have tried in this Congress within recent memory to deal with a specific targeted problem by putting an onerous burden on everybody. We have a finite problem. It is important. But the way we deal with it, the way we would deal with it, without this amendment, is to put the burden on absolutely everyone, to say to 270 million Americans that "your birth certificate no longer is any good. You will have to go get a new one." If you ever want to use it, you will have to say to every employer in this country that if you, in fact, want to hire someone, you will have to call a 1-800 number. You will have to seek permission from the Federal Government. I know there has been comment on the floor about that not being the right terminology. That is what it is. You will have to check the person out and to do it by how the Federal bureaucracy tells you how to do it. As an employee, you are going to be in the situation of arguing with a computer.

Again, I have had some experience in dealing with the criminal records system. Anybody who has dealt with any kind of big data base knows the problems. Someone gets turned down for a job or someone is told after they have been hired that we have a problem. You need to get this problem straightened out with the INS. You need to get this problem straightened out with the computer data base. How many of us in this world today enjoy dealing with computers, particularly in regard to one of the most important things in our lives, how to make our livelihood?

So this is not the first time Congress has spread a burden among every single American to deal with a few people. If history tells us anything, it tells us that people in this country ultimately will not put up with this.

Let me give you a couple of examples. Remember contemporaneous recordkeeping for people who used their car in business? Remember when we passed that? We did it because some people cheated on their taxes when calculating the business use of their car. Because of that fact, because some people cheated, Congress made all of the people who used their car in business to keep very detailed daily records. I was in the House when that happened. I was in the House when we started getting calls. I was in the House when I would go out and have office hours and be flooded by people who said, "What is this? I do not keep records every single day just because a few people cheat." What did we do, Mr. President? We did what we always do: We repealed it. It was a mistake.

Remember section 89 because some businesses discriminated in setting up the benefit plans for their employees? Congress made all businesses comply with detailed recordkeeping to prove they were not discriminating. We did that. The public did not stand for that either. And, again, it was repealed. It happens every single time that we spread the burden among everyone for a very specific problem. In fact, I do not think Congress has ever had a provision as burdensome or really as broad as this particular provision. This provision applies to everyone who wants to use a birth certificate or a driver's license—to everyone.

I submit, Mr. President, that we do this at our own peril. The public ultimately is not going to stand for it. I think it is a very, very serious mistake.

Therefore, again, I urge my colleagues to pass the Abraham-Feingold amendment. It is an amendment that is supported by a broad group of Senators, certainly across the political spectrum.

At this point, Mr. President, I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. 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. REID. Mr. President, I ask unanimous consent the pending amendment be set aside.

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

AMENDMENT NO. 3865, AS MODIFIED

Mr. REID. Mr. President, I send to the desk a modified version of my amendment, No. 3865.

The PRESIDING OFFICER. The amendment is so modified.

The amendment (No. 3865), as modified, is as follows:

At the appropriate place in the matter proposed to be inserted by the amendment, insert the following:

SEC. . FEMALE GENITAL MUTILATION.

(a) CONGRESSIONAL FINDINGS.—The Congress finds that—

(1) the practice of female genital mutilation is carried out by members of certain cultural and religious groups within the United States;

(2) the practice of female genital mutilation often results in the occurrence of physical and psychological health effects that harm the women involved;

(3) such mutilation infringes upon the guarantees of rights secured by Federal and State law, both statutory and constitutional;

(4) the unique circumstances surrounding the practice of female genital mutilation place it beyond the ability of any single State or local jurisdiction to control;

(5) the practice of female genital mutilation can be prohibited without abridging the exercise of any rights guaranteed under the First Amendment to the Constitution or under any other law; and

(6) Congress has the affirmative power under section 8 of article I, the necessary and proper clause, section 5 of the Fourteenth Amendment, as well as under the treaty clause of the Constitution to enact such legislation.

(b) CRIMINAL CONDUCT.—

(1) IN GENERAL.—Chapter 7 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 116. Female genital mutilation

"(a) Except as provided in subsection (b), whoever knowingly circumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or clitoris of another person who has not attained the age of 18 years shall be fined under this title or imprisoned not more than 5 years, or both.

"(b) A surgical operation is not a violation of this section if the operation is—

"(1) necessary to the health of the person on whom it is performed, and is performed by a person licensed in the place of its performance as a medical practitioner; or

"(2) performed on a person in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed in the place it is performed as a medical practitioner, midwife, or person in training to become such a practitioner or midwife.

"(c) In applying subsection (b)(1), no account shall be taken of the effect on the person on whom the operation is to be performed of any belief on the part of that or any other person that the operation is required as a matter of custom or ritual.

"(d) Whoever knowingly denies to any person medical care or services or otherwise discriminates against any person in the provision of medical care or services, because—

"(1) that person has undergone female circumcision, excision, or infibulation; or

"(2) that person has requested that female circumcision, excision, or infibulation be performed on any person;

shall be fined under this title or imprisoned not more than one year, or both.".

(2) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 7 of title 18, United States Code, is amended by adding at the end the following new item:

"116. Female genital mutilation.".

(c) EFFECTIVE DATE.—Subsection (c) shall take effect on the date that is 180 days after the date of the enactment of this Act.

Mr. REID. Mr. President, the modification I send to the desk is a modification of the amendment regarding female genital mutilation. The modified version of this amendment strikes the language requiring the threat of female genital mutilation be made consideration for an asylum claim.

I repeat, at this time I believe in the asylum aspect of it, but I understand the problems associated with this; that we would need to make a better case to the committee and to this body. Therefore, I will not go into the reasons why I think it should be made a basis for asylum. The fact of the matter is, we are not going to do it in this legislation. We will look down the road to work with the committee to see if we can come up with a basis for doing that.

I offer this modified version of my amendment today so we can criminalize this torture in the United States, as a number of other countries have already done.

The PRESIDING OFFICER. Is there further debate?

The Senator from Wyoming.

Mr. SIMPSON. I thank the Senator from Nevada. This is not some issue that he has come to in recent times, simply because of media attention. He has been involved in this, and I have observed him with great admiration. It is a serious issue. It is an issue of criminal activity. It is an issue of assault. It is an issue of culture. And there is much to it.

As the Canadian experience has indicated, the problem, sometimes, with bringing in an asylee is that soon thereafter, when other family members join, they have not only brought the victim but they bring the perpetrator. We will be glad to have some hearings on that. We will discuss that.

I thank the Senator from Nevada. He has always been very helpful. This is very helpful, that we do not go into the deep issue of asylum, but that we make it a crime because at that point we will solve a great deal of it.

Mr. REID. Mr. President, I will just say in closing—and I would want spread on the record—that I have spoken personally with the chairman of the Judiciary Committee in the House, HENRY HYDE. He acknowledges the brutality of this and has indicated on the bill that was signed by the President last Saturday, the omnibus appropriation bill, there was this provision that was taken out in conference.

That is not because of the chairman of the Judiciary Committee in the House that was taken out. He supports this issue. I hope my friend, as I know he will during the conference on this matter, will hang tough for this issue.

THE PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 3865), as modified, was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

AMENDMENT NO. 3810

Mr. SIMON. Mr. President, I think we may be able to dispose of one of my amendments just before the 4 o'clock vote. I will simply speak briefly on this.

This is an amendment that says, "To exempt from the deeming rules, immigrants who are disabled after entering the United States."

That is the current law. It simply goes back to the current law. It sets a safety net there. So that no one thinks all of a sudden people are going to claim that they are disabled, the amendment says, the requirements of subsection (A) shall not apply with respect to any alien who has been lawfully admitted to the United States for permanent residence and who since the date of such lawful admission has become blind or disabled, as those terms are defined in the Social Security Act.

Social Security disability is not an easy thing to achieve, as my colleagues here know. I will add, the amendment is endorsed by State and local governments. I think it makes sense, and I hope it can be adopted.

Mr. SIMPSON. Mr. President, we do have a Member ready to debate briefly the Leahy or Bradley amendment. May we come back to that, please?

I yield to Senator HATCH, whose time is limited. We certainly thank the chairman.

The PRESIDING OFFICER. The Senator from Utah is recognized.

AMENDMENT NO. 3780

Mr. HATCH. Mr. President, with regard to the Leahy-Simon amendment, let me say that this amendment is an improvement of the amendment that Senator LEAHY offered in the Judiciary Committee, because it will permit for special summary exclusion procedures in extraordinary migration situations. The amendment will remove summary exclusion procedures where they could be problematic.

In particular, the amendment removes the summary exclusion procedures for asylum applicants. Those would require that INS officers at points of entry make threshold determinations of how an alien traveled to the United States and whether someone claiming asylum has a credible fear of persecution. This would present a burden to our INS officers at borders, who would now have to become experts in asylum law and would have to perform additional bureaucratic functions.

I am also concerned about the harsh consequences that could result to asylum applicants who do have a valid claim but who may not speak English, may not have the necessary proof of their claim with them, and that sort of thing.

I also note that the INS has had success with reducing frivolous asylum claims. This provision seems unnecessary at this time and could create burdens on INS border agents, who should be focussing on other matters.

This amendment also deletes provisions of the bill providing that an alien using fraudulent documents for entry is excludable and ineligible for withholding of deportation. Many asylum applicants fleeing persecution may have to destroy their documents for various reasons and may have to present fraudulent documents. The bill does provide for an exception for those who have a valid asylum claim. Accordingly, I do not think those provisions of the bill are as problematic. but I think that on the whole the provisions of the amendment are meritorious and I support the amendment.

I realize that the terrorism bill that came out of conference included summary exclusion provisions for asylum applicants. That provision was primarily driven by some House Members and, although I did not think it belonged in the terrorism bill, I knew that we would deal with this here on the immigration bill. Accordingly, I do not think it is inconsistent for those who supported the terrorism bill to support the Leahy asylum amendment.

Mr. President, I am going to support the Leahy asylum amendment because I think it is the right thing to do. I do like the changes he made. Even though I voted against the amendment in committee, I think the changes make the amendment a good amendment.

AMENDMENT NO. 3790

Mr. HATCH. Mr. President, I would like to speak to the Bradley amendment for a few minutes as well, and I appreciate my colleagues giving me this opportunity.

This Congress is supposed to be about reducing the Federal bureaucracy. I must confess that I am perplexed about where the idea for a new Federal bureaucracy is coming from. The administration opposes this provision for a new Office of Enforcement of Employer Sanctions. It argues that this new Office would be duplicative of ongoing programs within the INS and the Office of Special Counsel. In fact, the Attorney General's office suggests that a new office would not only be a waste of money, but make the program even less effective.

The employer sanctions provisions of the Immigration Reform and Control Act of 1986 [IRCA] have not successfully controlled illegal immigration. That is not simply my opinion, it is a fact.

Illegal aliens continue to pour into this country. A cottage industry in counterfeit and fraudulent documents has flourished, and an increasingly lucrative black market in smuggling aliens into this country has thrived.

Employer sanctions do not work. If they did, we would not be debating a verification system. If sanctions worked, we would not have the level of concern we presently have about the very issue of illegal immigration. We would not have seen so much television footage of persons illegally crossing our borders by running against traffic on highways in order to defeat vehicular pursuit. We would not have seen a ship ground off of the New Jersey shore a few years ago loaded with aliens to be smuggled into our country. We would not be reading about illegal aliens loaded onto boxcars which are then sealed south of our border on their way north.

At the same time, sanctions have had serious adverse consequences. Though unintended, they are still very real. Some employers have engaged in illegal discrimination against Americans who look or sound foreign in order to avoid potential lawsuits, fines, and jail sentences under IRCA's sanctions provisions. Further, the paperwork and related burdens on American businesses—as small as entities with just one employee—impose costs onto the American consumer.

In my view, employer sanctions simply are not worth the price of increased employment discrimination and increased burdens on small business.

Let us speak for a few moments about the anticivil rights nature of employer sanctions. The easiest way for an employer to avoid sanctions is to refuse to hire those who look or sound different. To be sure, the law penalizes such discrimination. But the law does not always catch up with all the discrimination that occurs. So to place an incentive into the law for discrimination is, I respectfully submit, truly unfortunate.

The Comptroller General's testimony before the Judiciary Committee on March 30, 1990, highlighting key issues in GAO's report to Congress on IRCA and the question of discrimination was quite simple and straightforward: He stated that the GAO had found widespread discrimination as a result of IRCA.

The GAO said:

> The results of our survey of a random sample of the Nation's employers shows that an estimated 891,000 employers, 19 percent of the 4.6 million in the population surveyed reported beginning discriminatory practices because of the law.

The American people have a right to know these facts, and I think Members of the Senate have a right to know these facts.

Notably, in 1994 the AFL–CIO Executive Council called for "a thorough reexamination of * * * employer sanctions * * * and their effects on workers,

as well as the exploration of changes and viable alternatives that will best meet our criteria of fairness and justice for all workers."

EMPLOYER SANCTIONS PLACE AN UNREASONABLE BURDEN ON BUSINESS, PARTICULARLY SMALL BUSINESS

Even those who have long disagreed with my position on sanctions have, in effect, acknowledged that the current system does not work. The failure is due, in part, to the number of work eligibility documents and the widespread use of fraudulent documents.

This bill seeks to address those deficiencies in some way, but potential improvement efforts have not yet been implemented, let alone evaluated. To assume, therefore, that the employer sanctions program will now be more workable is simply wrong.

There is little evidence to support the assumption that employer sanctions have done anything more than increase discrimination and place tremendous burdens on small business. While jobs may be a magnet for illegal immigration, there is no evidence that the existence of sanctions has in any way deterred illegal immigrants from attempting to enter this country. These sanctions have been in effect for 10 years. The problem of illegal immigration, as we all know, has gotten worse during that period.

The employer sanctions regime, in effect, converts our Nation's employers into guardians of our borders—that is the job for the Border Patrol and the INS.

I support many of the provisions in this bill, and I compliment my distinguished colleague from Wyoming for the hard work he has done in putting this together. I support including strengthening our Border Patrol and curbing alien smuggling.

Our 10 years of experience with employer sanctions, however, offers more than sufficient evidence that they do more harm than good.

Our employers have enough to do competing in the global marketplace while complying with hundreds of other Federal rules and regulations.

The appropriate response to a bankrupt policy with a 10-year history of all costs and no benefits should not be to throw more money at it. And most certainly, the appropriate response is not to create a new Federal bureaucracy to manage it.

Mr. President, I really believe that we should defeat this amendment, and I ask my colleagues to consider doing that.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided on the Bradley amendment.

Mr. BRADLEY addressed the Chair.

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

Mr. BRADLEY. Mr. President, I hope people will support this amendment. What is the problem with illegal immigration? Why are illegal immigrants coming to this country? Because they get jobs. Employers hire them.

In 1986 we said, if an employer hires an illegal immigrant, taking that job away from an American, that person can be fined, ultimately can be put in jail for up to 3 years. Employer sanctions were the right policy in 1986. The problem is, they were not enforced.

The number of inspections, the number of inspectors between 1989 and 1995, dropped 50 percent. Employer sanctions should be enforced. If so, we would have fewer illegal immigrants coming into this country. This amendment simply creates a special enforcement office in the Immigration Service, allocates such funds to do the job, and says to the Immigration Service, "Enforce employer sanctions. Stop illegal immigration."

I am pleased to yield the remainder of my time to the distinguished Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. SIMPSON. Mr. President, I do agree with the Senator's amendment. Senator HATCH and I respectfully differ on this. There are two things wrong with employer sanctions—lack of enforcement and fraudulent documents. This will solve one.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I yield 30 seconds to the distinguished Senator from Wisconsin.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized for 30 seconds.

Mr. FEINGOLD. Thank you, Mr. President.

I use these few seconds to say I strongly agree with the Senator's opposition to this amendment. As we learned in committee, this is a duplication to add to this agency. Where is the $100 million going to come from that this amendment provides for this agency? The Clinton administration has been clear that they do not need it, that this would probably make their lives more difficult in terms of fighting the problem.

On a bipartisan basis in committee we were able to defeat this notion. I hope we will not go backward on it on the floor. I thank the Senator from Utah.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, the Clinton administration, as my distinguished colleague just said, opposes the creation of an office for the enforcement of employer sanctions. The Congress should be about cutting the Federal bureaucracy, not adding to it. This bill throws another $100 million of employer sanctions enforcement on top of the $43 million spent in the current year on worksite enforcement.

Sanctions have not worked. They are a burden on business, especially small business. They cause discrimination against those who look and sound foreign. The Judiciary Committee struck the office from the bill. Frankly, I urge the rejection of the Bradley amendment for those reasons.

The PRESIDING OFFICER. The question now occurs on agreeing to amendment No. 3790, offered by the Senator from New Jersey [Mr. BRADLEY.

Mr. BRADLEY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have been requested. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question now occurs on agreeing to the amendment No. 3790, offered by the Senator from New Jersey [Mr. BRADLEY]. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 26, nays 74, as follows:

[Rollcall Vote No. 99 Leg.]

YEAS—26

Akaka	Ford	Moynihan
Boxer	Graham	Nunn
Bradley	Hollings	Pryor
Breaux	Inouye	Reid
Bryan	Lautenberg	Robb
Daschle	Levin	Rockefeller
Dodd	Lieberman	Shelby
Exon	Mikulski	Simpson
Feinstein	Moseley-Braun	

NAYS—74

Abraham	Feingold	Lott
Ashcroft	Frist	Lugar
Baucus	Glenn	Mack
Bennett	Gorton	McCain
Biden	Gramm	McConnell
Bingaman	Grams	Murkowski
Bond	Grassley	Murray
Brown	Gregg	Nickles
Bumpers	Harkin	Pell
Burns	Hatch	Pressler
Byrd	Hatfield	Roth
Campbell	Heflin	Santorum
Chafee	Helms	Sarbanes
Coats	Hutchison	Simon
Cochran	Inhofe	Smith
Cohen	Jeffords	Snowe
Conrad	Johnston	Specter
Coverdell	Kassebaum	Stevens
Craig	Kempthorne	Thomas
D'Amato	Kennedy	Thompson
DeWine	Kerrey	Thurmond
Dole	Kerry	Warner
Domenici	Kohl	Wellstone
Dorgan	Kyl	Wyden
Faircloth	Leahy	

The amendment (No. 3790) was rejected.

AMENDMENT NO. 3780

The PRESIDING OFFICER (Mr. THOMPSON). Under the previous order, there will now be two minutes of debate on the Leahy amendment.

The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, this is an important amendment. You each have on your desk editorials from the Washington Times, the Washington Post, and the New York Times. They all

agree and are in support of this amendment.

Do not confuse asylum with illegal immigration. This speaks of America's vital role in offering asylum. Senators HATCH, KERRY, DEWINE, HATFIELD, and I have united on this because what we are saying is, if somebody comes to this country trying to escape religious oppression, political oppression, or whatever, the mere fact that they have come here under a false passport—usually the only way they can get out of the country these escape—we should not have a low-level person be able to turn them back automatically for that.

Let them have a full asylum hearing. It does not do anything for illegal immigrants. But it makes sure that the U.S. promise of a fair hearing for those who are escaping religious or political persecution can get it.

Mr. SIMPSON. Mr. President, this amendment would seriously impair the bill's provisions to expedite the exclusion of aliens who attempt to enter the United States surreptitiously, or through the use of fraudulent documents. You saw the "60 Minute" segment some time ago.

This is the scenario. The alien uses documents to board an airliner, then disposes of the documents, and claims asylum. And that cannot be. The amendment is not required to protect the deserving asylum applicants. We have a credible fear exception. If they have credible fear, they get a full hearing without any question. They simply show that to a specially trained asylum officer, and not to just somebody who is at a lower level. It is a significantly lesser fear standard than we use for any other provision.

That is what we use with Hatians.

I yield two seconds to Senator D'AMATO.

Mr. D'AMATO. Mr. President, if we pass this amendment what you are saying is let people come in with illegal documents with just plain political persecution, and set them lose. They just continue. You are just going to compound this problem. You do not have to the facilities to hold them in, nor the facilities to have hearings. You will be gutting this bill. It absolutely flies in the face of what we are attempting to do.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Vermont. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 51, nays 49, as follows:

The result was announced—yeas 51, nays 49, as follows:

[Rollcall Vote No. 100 Leg.]

YEAS—51

Abraham	Baucus	Biden
Akaka	Bennett	Bingaman
Boxer	Graham	Mack
Bradley	Harkin	Mikulski
Breaux	Hatch	Moseley-Braun
Bumpers	Hatfield	Moynihan
Byrd	Heflin	Murray
Campbell	Inouye	Nunn
Chafee	Jeffords	Pell
Daschle	Kennedy	Pryor
DeWine	Kerry	Robb
Dodd	Kohl	Rockefeller
Feingold	Lautenberg	Sarbanes
Feinstein	Leahy	Simon
Ford	Levin	Snowe
Frist	Lieberman	Wellstone
Glenn	Lugar	Wyden

NAYS—49

Ashcroft	Gorton	Murkowski
Bond	Gramm	Nickles
Brown	Grams	Pressler
Bryan	Grassley	Reid
Burns	Gregg	Roth
Coats	Helms	Santorum
Cochran	Hollings	Shelby
Cohen	Hutchison	Simpson
Conrad	Inhofe	Smith
Coverdell	Johnston	Specter
Craig	Kassebaum	Stevens
D'Amato	Kempthorne	Thomas
Dole	Kerrey	Thompson
Domenici	Kyl	Thurmond
Dorgan	Lott	Warner
Exon	McCain	
Faircloth	McConnell	

The amendment (No. 3780) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3752

The PRESIDING OFFICER. The question occurs on amendment No. 3752, offered by the Senator from Michigan [Mr. ABRAHAM].

There will order in the Senate.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, after the 2 minutes of explanation on this, I will make the motion to table and ask for the yeas and nays.

The PRESIDING OFFICER. The Senate will come to order.

The Senator from Wyoming.

Mr. SIMPSON. Mr. President, it is appropriate you recognize the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I will not make the motion now, but immediately after the 2 minutes of explanation on this amendment, I will make the motion to table and ask for the yeas and nays.

Mr. SIMPSON. Are you asking for the yeas and nays?

Mr. SIMON. I have not made the motion to table because we have not had the final 2 minutes.

I move to table, Mr. President, and I ask for the yeas and nays.

The PRESIDING OFFICER. It would not be appropriate at this time. It will be necessary to wait until the time for debate has expired.

Mr. KENNEDY. Mr. President, can we have order, now? This is an extremely important 2 minutes we are having here on this debate. I think it is probably as important as any issue on the legislation. Members ought to have an opportunity to be heard.

If we could still insist on order in the Senate?

The PRESIDING OFFICER. The Senate will come to order. There will now be 2 minutes of debate equally divided.

The Senator from Michigan.

Mr. ABRAHAM. Mr. President, I would say this is an amendment brought by Senators DEWINE, FEINGOLD, INHOFE, MACK, LOTT, LIEBERMAN, NICKLES, and myself. It represents an effort to strike from the bill a verification system that is a Government intrusive system to try to verify employment. In our view it will not succeed, but it will be very costly, costly to employers, costly to employees who will be denied jobs because it is impossible to perfect such a system, costly to the taxpayers to the tune of hundreds of millions of dollars, and costly for reasons that the Senator from Ohio will now address in terms of the need for people to obtain new birth certificates in order to comply with this legislation.

I yield the remainder of my time to the Senator from Ohio.

Mr. DEWINE. Mr. President, this bill says to 270 million Americans that your birth certificate is still valid, but if you ever want to use it, you have to go back to the origin, the place you were born, and get a new federally prescribed birth certificate that this Congress is going to tell all 50 States they have to reissue.

If you get a driver's license at age 16, when you turn 65 and you want Social Security or Medicare, or you get married, or you want a passport, you are going to need your birth certificate, and that birth certificate that you have had all these years no longer is going to be valid for that purpose.

It is very costly. It is a hidden tax, and it is going to be a major, major mistake. It will be something I think, if we vote for it, will come back and we will be very, very sorry.

Mr. SIMPSON. Mr. President, this is the critical test of the legislation. Without effective employer sanctions, the United States will not achieve control over illegal immigration. Without an effective verification system, there cannot be effective employer sanctions. Without more fraud-resistant birth certificates and driver's licenses—this is my California variety, you can get them for 75 bucks—there will never be an effective verification system.

This amendment strips the verification process that was in the bill and strips any ability to deal with the worst fraud-ridden breeder document, which is the birth certificate. I yield.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, Senator SIMPSON is absolutely right. This is the most important vote we are going to have on immigration. It is a question of whether we are going to continue with document abuse or not. That is the basic difficulty in terms of trying to protect American jobs, as well as trying to limit the magnet of immigration, which is jobs. If we deal with that, we are going to stop the magnet of immigration of people coming here illegally.

This is the heart and soul of that program. Otherwise, we are going to continue to get these false documents produced day in and day out. This is the only way to do it. It is a narrow, modest program. If we do not do it now, the rest of the bill, I think, is unworkable.

The PRESIDING OFFICER. All time has expired.

Mr. SIMON. Mr. President, I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table amendment No. 3752, offered by the Senator from Michigan [Mr. ABRAHAM].

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

The bill clerk called the roll.

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

The result was announced—yeas 54, nays 46, as follows:

[Rollcall Vote No. 101 Leg.]

YEAS—54

Akaka	Exon	Lautenberg
Biden	Faircloth	Levin
Bingaman	Feinstein	Mikulski
Bond	Glenn	Moynihan
Boxer	Gorton	Murkowski
Bradley	Grassley	Nunn
Brown	Gregg	Pell
Bryan	Harkin	Pryor
Byrd	Heflin	Reid
Campbell	Hollings	Robb
Chafee	Inouye	Rockefeller
Cochran	Jeffords	Roth
Cohen	Johnston	Sarbanes
Conrad	Kennedy	Shelby
D'Amato	Kerrey	Simon
Daschle	Kerry	Simpson
Dodd	Kohl	Specter
Dole	Kyl	Stevens

NAYS—46

Abraham	Graham	McConnell
Ashcroft	Gramm	Moseley-Braun
Baucus	Grams	Murray
Bennett	Hatch	Nickles
Breaux	Hatfield	Pressler
Bumpers	Helms	Santorum
Burns	Hutchison	Smith
Coats	Inhofe	Snowe
Coverdell	Kassebaum	Thomas
Craig	Kempthorne	Thompson
DeWine	Leahy	Thurmond
Domenici	Lieberman	Warner
Dorgan	Lott	Wellstone
Feingold	Lugar	Wyden
Ford	Mack	
Frist	McCain	

The motion to lay on the table the amendment (No. 3752) was agreed to.

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

Mr. LEAHY. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

Mr. SIMPSON. Mr. President, let me commend you on a very forceful and fair procedure during these many months. It has been a rare privilege for me to come to know you better and to know you as a legislator. You are fair, formidable, efficient, and effective. That is not just because of the win and lose issue. I would have said that under either circumstance and meant it. And Senator DEWINE, dogged and determined. I would not want to be practicing law or doing much more of this with worthy adversaries such as Senator SPENCER ABRAHAM and MICHAEL DEWINE and my friend RUSS FEINGOLD from Wisconsin. I commend them all.

Someone came up to me said, "Oh, you really are on a roll," and I said, "I have been rolled for 6 months." The roll is not always in the eye of the beholder. Win a few, lose a few, and you move on in good camaraderie, good spirit. You are setting that tone as you occupy the chair after a very vigorous debate. You have learned the essence of the Senate: Do your work, give it your best shot, take a shot in the neck and a belt in the head, swallow hard and move on, shake hands with the adversary, and go off, have a great big pop or something else.

Mr. KENNEDY. If I could have 30 seconds, I want to thank all those that participated in that debate and discussion. I think the Members found there were appealing arguments on all sides. I think as we find out on these immigration issues sometimes, when you prevail you are not always right. It has been a constant learning experience because it involves human beings' behavior and trying to predict how people will react to different suggestions and recommendations.

I join Senator SIMPSON and thank all those who are on different sides and those that were on our side for the courtesy and attention they gave to the debate and discussion.

Mr. SIMON. Mr. President, let me just comment, I have frequently said on the floor we are too partisan, excessively partisan. It is true. But this is a case where we discussed the issues, where on one side you had the Simpson-Kennedy leadership, on the other side you had Senator ABRAHAM and Senator FEINGOLD. That is the way it should be on most issues. Very few issues, really, involve party political philosophy. Whether you won or lost on this issue, this is the way legislating ought to take place.

AMENDMENT NO. 3810

Mr. SIMON. Mr. President, I believe the pending amendment is my amendment No. 3810, is that correct?

The PRESIDING OFFICER. The amendment is now pending.

Mr. SIMON. Mr. President, what this does—and this is not a complicated one—this simply says that we are going to go back to the current law that if someone is disabled under the definition of the Social Security Act, if you are blind or disabled, then the deeming provision does not apply.

The pending bill requires that 100 percent of an immigrant sponsor's income be deemed to the immigrants. Say your sponsor has a $30,000-a-year income; it is totally unrealistic, among other things, to assume that sponsor can provide $30,000 worth of support for the immigrant.

I hope we would keep the current law. I think it is simply sensible and compassionate as well as practical that we not move in this direction. I know my colleague from Wyoming has a slightly different perspective on this. My amendment is supported by the National Conference of State Legislatures, the Natural League of Cities and the National Association of Counties.

Mr. KENNEDY. Mr. President, I commend my colleague and friend for this amendment. I think it is important to note that disabled persons are covered by this amendment only if they become disabled after the immigrants arrive. It is unfair to make the sponsors foot the bill for unforeseen tragedies such as this. No one can predict when disability will strike. It is a very small target, but it will make a very important difference to a number of individuals who are experiencing this type of tragedy. I hope we might be able to see this amendment through and accept it.

Mr. SIMPSON. Mr. President, again, what seems to be so appropriate in immigration matters often has a deeper tenor when we are talking about the blind and the disabled. We all want to respond.

Let me say this: We only make the sponsor pay what the sponsor is able to pay. We are back to the same issue. This is a very singular issue, as were the amendments we voted on last night. The issue is, when you come to the United States of America as a sponsor, you are saying that the immigrant you are bringing here will not become a public charge. That is the law.

If you become disabled or blind and you go to seek assistance, the law provides that if your sponsor has a lot of money, you are going to get the money from the sponsor first. That is what we are going to do. It does not matter what your level of disability; that is the law, or will be the law under this bill. It will be clarified, it will be strengthened, and that is what this is about. We are not saying that we are going to break the sponsor because the person is disabled. If the sponsor has tremendous assets, and you have a disabled or blind person, that sponsor is supposed to keep their promise. Why should he or she not? That was the promise made. Maybe they were not

disabled at the time. I understand that. But they become disabled and here they are. Should the taxpayers of America pick that up when the sponsor is financially able to do it?

But there is a little more to this here. The number of "disabled immigrants" receiving SSI has increased 825 percent over the last 15 years. That is an extraordinary figure. The number of disabled immigrants receiving SSI has increased 825 percent over the last 15 years. American taxpayers pay over $1 billion every year in SSI payments to disabled immigrants. The purpose of the requirement that immigrants obtain the sponsor agreement is precisely to provide a reasonable assurance to the American taxpayer that, if they need financial assistance, it will come first from the sponsor and not from the taxpayers.

It would actually be more reasonable to provide an exception, I think, here, if the sponsor became disabled and it was impossible for that sponsor to provide the support. Of course, please hear this: If the sponsor has no income, there is no income to deem, and no exception is needed. You do not need to have an exception if the sponsor went broke or if the sponsor cannot afford to do this. Then there we are. The sponsor's income is not deemed, and then the taxpayers pick up the program, pick up the individual. That is where we are.

I urge all of us to remember, as we do these amendments, that they all have a tremendous emotional pull. We have seen the emotional pulls for 11 or 12 days on this floor. But in each of these amendments related to deeming—whether it is blindness, whether it is disability, whether it is veterans, whether it is kids, whether it is senior citizens, whatever, plucks genuinely at your heartstrings—the issue is that none of those people should become the burden of the taxpayers if they had a sponsor that remains totally able, because of their assets, to sustain them. That is it. That is where we are. That was the contract made. That is what they agreed to do, and that is the public charge that we have always embraced since the year 1882, and which we are now trying to strengthen, and believe that we certainly will.

Mr. SIMON. Mr. President, I will take 1 minute in rebuttal. The figures that my friend from Wyoming cites are people, many of whom came here disabled, and so they have ended up on SSI. This applies to people who have become disabled after they have come here. I hope that the amendment will be accepted.

I ask the Senator from Wyoming this. I have another amendment that I am ready with. The understanding is that we will stack the votes, is that correct?

Mr. SIMPSON. No, Mr. President, that is not my understanding. The leader is here. Mr. President, we will work toward some type of agreement if we can either lock things in, and maybe get time agreements. There are not many amendments, actually, left. There are some place-holder amendments. But I cannot say that we will be stacking votes.

Certainly, if you wish to present an amendment and go back-to-back on that, we will certainly do that and maybe have 15 minutes on the first vote and 10 for the second. I think we can get a unanimous consent to do that, with the approval of the leader, at an appropriate time, according to the leader.

Mr. SIMON. Mr. President, if this is acceptable to the Senator from Wyoming, I will ask that we set aside the amendment I just offered so that I may consider a second amendment that I have.

Mr. SIMPSON. That is perfectly appropriate with me, Mr. President.

Mr. SIMON. Mr. President, I ask unanimous consent to set aside my first amendment.

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

AMENDMENT NO. 3813 TO AMENDMENT NO. 3743

(Purpose: To prevent retroactive deeming of sponsor income)

Mr. SIMON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Illinois [Mr. SIMON], for himself, Mr. GRAHAM, Mrs. FEINSTEIN, and Mrs. MURRAY, proposes an amendment numbered 3813 to amendment No. 3743.

Mr. SIMON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

Strike page 199, line 4, and all that follows through page 202, line 5, and insert the following: "to provide support for such alien.

"(d) EXCEPTIONS.—

(1) INDIGENCE.—

(A) IN GENERAL.—If a determination described in subparagraph (B) is made, the amount of income and resources of the sponsor or the sponsor's spouse which shall be attributed to the sponsored alien shall not exceed the amount actually provided for a period—

(I) beginning on the date of such determination and ending 12 months after such date, or

(ii) if the address of the sponsor is unknown to the sponsored alien, beginning on the date of such detemination and ending on the date that is 12 months after the address of the sponsor becomes known to the sponsored alien or to the agency (which shall inform such alien of the address within 7 days).

(B) DETERMINATION DESCRIBED.—A determination described in this subparagraph is a determination by an agency that a sponsored alien would, in the absence of the assistance provided by the agency, be unable to obtain food and shelter, taking into account the alien's own income, plus any cash, food, housing, or other assistance provided by other individuals, including the sponsor.

(2) EDUCATION ASSISTANCE.—

(A) IN GENERAL.—The requirements of subsection (a) shall not apply with respect to sponsored aliens who have received, or have been approved to receive, student assistance under the title IV, V, IX, or X of the Higher Education Act of 1965 in an academic year which ends or begins in the calendar year in which this Act is enacted.

(B) DURATION.—The exception described in subparagraph (A) shall apply only for the period normally required to complete the course of study for which the sponsored alien receives assistance described in that subparagraph.

(3) CERTAIN SERVICES AND ASSISTANCE.—The requirements of subsection (a) shall not apply to any service or assistance described in section 201(a)(1)(A)(vii).

(e) DEEMING AUTHORITY TO STATE AND LOCAL AGENCIES.—

(1) IN GENERAL.—Notwithstanding any other provision of law, but subject to exceptions equivalent to the exceptions described in subsection (d), the State or local government may, for purposes of determining the eligibility of an alien for benefits, and the amount of benefits,under any state or local program of assistance for which eligibility is based on need, or any need-based program of assistance administered by a State or local government (other than a program of assistance provided or funded, in whole or in part, by the Federal Government), require that the income and resources described in subsection (b) be deemed to be the income and resources of such alien.

(c) LENGTH OF DEEMING PERIOD.—Subject to exceptions quivalent to the exceptions described in subsection (d), a State of local government may impose the requirement described in paragraph (1) for the period for which the sponsor has agreed, in such affidavit or agreement, to provide support for such alien.

Mr. SIMON. Mr. President, this is an amendment that is cosponsored by Senator GRAHAM of Florida, Senator FEINSTEIN of California, and Senator MURRAY of Washington.

This amendment simply makes the deeming provisions prospective. Every once in a while—not often in this body—we retroactively change the law. And three out of four times, we do harm when we do it. This simply says to sponsors that this is going to apply prospectively.

Let me give you a very practical example. Let us say that, right now, because under the present law the only Federal programs that are subject to deeming are AFDC, food stamps, and SSI. Without my amendment, I say to my colleagues here from Michigan, Kansas, New Mexico, and Wyoming, if a student is at a community college and getting student assistance of one kind or another, without this amendment, the sponsor who signed up for 3 years is responsible for 5 years, not just for the three welfare programs, but for any Federal assistance.

I just think that is wrong. We ought to say it is prospectively. And I support Senator SIMPSON in this. Let us make it 5 years, but we should not say

we are going back to sponsors who signed up for 3 years, and say, "Even though you signed up for 3 years, we are making it 5. And you thought you were only going to be responsible for three programs—AFDC, food stamps, and SSI—but you are going to be responsible for every kind of Federal program."

Let me just add, the higher education community strongly favors my amendment.

I think we ought to move in this direction. I think it is fair. I think, again, three out of four times when this body tries to do something retroactively, we make a mistake. If we go ahead with this retroactively, we are going to make a mistake.

I see my colleague, Senator GRAHAM, on the floor. I believe he wants to speak on this, too.

Mr. SIMPSON. Mr. President, here we are again dealing with the issue of deeming. When I said that my colleagues were persistent, I did not mean to leave out Senator PAUL SIMON of Illinois. In my experience of 25 years knowing this likeable man, I know his persistence is indeed one of his principal attributes.

He is back again with another deeming type of amendment. They are all very compassionately offered. They are carefully thought through. But, again, it is an issue we dealt with last night.

It is true, and he is right; he has found this provision that individuals already in this country will not be the beneficiaries of the new legally enforceable sponsor agreements. They are going to be very strict. We have done a good job on that. The ones that will be required is after enactment.

It is also true that some of them who have been here less than 5 years will nevertheless be subject to at least a portion of the minimum 5-year deeming period. Thus, there could be a case where such an individual would be unable to obtain public assistance because under deeming they neither received the promised assistance from their sponsor nor were able to sue them for support.

But, again, let me remind my colleagues that no immigrants are admitted to the United States if they cannot provide adequate assurance to the consular officer, or to the immigration inspector, that they are not likely become a public charge, making that promise to the American people that they will not became a burden on the taxpayers. If they do use a substantial amount of welfare within the first 5 years, they are subject to deportation under certain circumstances. That is not a swift procedure. It is a thoughtful procedure.

I remind my colleagues again that major welfare programs already require deeming—AFDC, food stamps for 3 years, SSI for 5, even though sponsored agreements are not now legally enforceable. Furthermore, the President's own 1994 welfare bill proposed a 5-year deeming for those programs. This would have applied to those who had only received the sponsor agreement to provide support for 3 years, an agreement that is not legally enforceable.

So I just do not believe it is unreasonable for the taxpayers of this country to require recently arrived immigrants to depend on their sponsors for the first 5 years under all circumstances if the sponsor has the assets. If the sponsor does not have the assets, we will pick them up. We have never failed to do that.

It is only on that basis of assurance that they even came here because they could not have come here if they were to be a public charge.

Regardless of the compassionate aspects of it, that is what we ought to do.

Thank you.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I had not intended to speak on this subject, but we have now had about a half dozen amendments on this deeming issue. It seems to me that the Senate has spoken on this issue. Far be it from me to say that our colleagues are infringing on our patience, but it seems to me this is a very clear issue. The American people have very strong opinions about it. We have voted on it. I do not see what we gain by going over and over and over again plowing this same ground, or in this case dragging this dead cat which smells rank back across the table.

Here is the issue. When people come to America, they get the greatest worldly gift you can get. They have an opportunity to become Americans. I am very proud of the fact that I stood up on the floor of the Senate and fought an effort that was trying to slam the door on people who come to this country legally. I believe in immigration. I do not want to tear down the Statue of Liberty. I believe new Americans bring new vision and new energy, and America would not be America without immigrants. But when people come to America, they come with sponsors, and these sponsors guarantee to the American taxpayer that the immigrant is not going to become a ward of the State.

If you want to know how lousy the current program is, in the last 10 years when we have had millions of immigrants come to America legally, how many people do you think have been deported because they have become wards of the State? In 10 years with millions of legal immigrants, we have had, I understand, 13 people that have been deported. Obviously, the current system is not working.

What the bill of the distinguished Senator from Wyoming says is simply this: When you sign that pledge that you are going to take care of these people until they can take care of themselves, we expect you to live up to your promise. We expect you to use your energy and your assets to see that the person you have sponsored does not become a burden on the taxpayers.

So what the bill does, in essence, is count the sponsor's income and the sponsor's assets as yours for the purpose of your applying for welfare.

It seems to me that we do not have anything to apologize about in giving people the greatest worldly gift you can get, and that is becoming an American. I do not think we ought to have any deviations, period, from this whole deeming issue. If you come to America, you have a sponsor. They say they are going to take care of you. If things go wrong, we ought to go back on their assets.

But this idea that there ought to be some magic things that we are going to exempt—and we have seen all of these real tear-jerkers about, you know, in this particular case, or that particular case—this is a principle where I do not think there ought to be any particular cases.

If people want to come to America, let them come to America, but let them come with their sleeves rolled up ready to go to work. Do not let them come with their hand out. If you want to live off the fruits of somebody else's labor, go somewhere else; do not come to America. But if you want to come here and build your dream and build the American dream and work and struggle and succeed as the grandparents of most of the Members, the parents of most of the Members of this body did, welcome. We have too few people who want to come and work and build their dream.

But I think we pretty well settled this whole deeming issue. I think we ought to get on with it. This is now a good bill. We have spoken. I think we are at the point where people are ready to vote. I think after a half dozen votes on this issue that, "Well, you are exempt from deeming if you are going to church to say a prayer and you trip and you break your back"—I mean, I think we have established the principle. I do not think we have to go on plowing this ground over and over again.

The American people want people to come to work. They do not want people to come to go on welfare. We have a provision in the welfare bill that is even stronger than the deeming provision in this bill. Maybe we could have a vote that says under any circumstances except divine intervention that we stay with the provisions. We could vote on it and be through with it.

Mr. SIMON. Will the Senator from Texas yield?

Mr. GRAMM. I am happy to yield.

Mr. SIMON. My friend talks about the contract you sign. What I want to

do is say the United States, which signs the contract with the sponsor, will live up to its side of the contract. That contract right now is for 3 years for every sponsor. I am for moving to 5 years but doing it prospectively. This bill says to the people who signed the contract that Uncle Sam has changed his mind. He is going to make you responsible for 5 years when you sign for 3 years.

Does the Senator from Texas think that is fair?

Mr. GRAMM. Let me respond by saying that I believe that when we are talking about people coming to America, that is a great deal. I do not think we have to second-guess it by saying that we are going to try to see that after so many years you can get welfare. I personally believe that until a person becomes a citizen, they ought not to be eligible for welfare. I am for a stronger provision than the Senate has adopted. I do not think immigrants should be eligible for welfare until they become citizens and, therefore, under the Constitution must be treated like everybody else, because under the Constitution there can be no differentiation between how they are treated as a natural-born American or naturalized. There is only one difference, and that is you cannot become President.

But here is the point. I think that ought to be the provision. That is not even what we are talking about here. We are talking about something much less, and that is the deeming provision. The point I am making is this:

The point I am making is this. We have voted on this thing a half a dozen times. I wish we could come up with every story or manipulation or hardship that we could get, put it all into one and vote on it and settle it. That is all I wish to do.

Mr. SIMON. First of all, the Senator does not understand the amendment, obviously.

Mr. GRAMM. No, I understand the amendment perfectly.

Mr. SIMON. The Senator then did not respond to my question. The question is whether Uncle Sam is going to live up to his contract. We say to the sponsors you are a sponsor for 3 years. Now we come back with this legislation and say, sorry, we are changing the contract. You thought you signed up for 3 years. We are going to make it 5 years.

I think that is wrong.

Mr. GRAMM. Would the Senator, if he wants to change the provision, change it to say that immigrants are not eligible for welfare or public assistance until they become citizens?

Mr. SIMON. We already have a provision in here for 5 years. That is not the issue. The issue is, are we going to go back, on this amendment, retroactively and say to sponsors, sorry, Uncle Sam is not going to live up to his word; we are changing your contract from 3 years to 5 years.

I think I know the Senator from Texas well enough—and, incidentally, he has had a lot more amendments on this floor than the Senator from Illinois over the years.

Mr. GRAMM. I do not think so today.

Mr. SIMON. Not today.

Mr. GRAMM. I object to amendments I am not participating in today.

Mr. SIMON. I am not complaining about the Senator from Texas offering too many amendments. But the question on this amendment—

Mr. GRAMM. Reclaiming my time, Mr. President. Let me just make a point on the deeming issue. The only point I wanted to make is this. We have had a half a dozen votes on it. The outcome has been the same each time, and each time we have had a new amendment we have had some new sob story where we picked out a little blue-eyed girl 3 years old or younger or something.

I am just saying I would like to settle the issue. I think the Senate has decided on the deeming issue, and I think the decision that we have made is you ought not to be able to come to America as an immigrant to go on welfare. We are having to go about that in different ways through different bills. My point is I do not know what the seventh or eighth or ninth amendment is going to do. I hope we will defeat these amendments decisively and get on with passing a bill that the American public wants.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I wish to say to Senator GRAMM, first, I am totally, fully aware of the Senator's commitment to legal immigration, and I have personally told the Senator that I saw his speech in the Chamber which had some personal aspects of the Senator's views because of his family, because of his wife and her family.

I have told the Senator of mine. Both of mine came over as little kids to Albuquerque from Italy. I was very lucky. I always say the only good thing about the farm programs of Italy at the turn of the century was they were so awful that kids like my folks could not make a living and so they sent them to America.

That is true. In my dad's family were six kids, and they had enough acreage, why, for 50 years before that they could all make a living. But as bureaucracies grow, they had a farm policy, and they could not make a nickel. So thank God for bad farm policy in Italy. That is why I am here.

From our earliest days, we did not intend that aliens be public charges. This is not today. This is America when we accepted millions that made America great. We had a philosophy that the public money would not be used for aliens.

Now, that is not a mean, harsh policy. It is a reality. And I am telling you what has happened. If it was a reality of the philosophy of America in the early days, what has happened to it today is that nobody paid attention to the programs that they were applying for, so that Medicaid has, it is estimated, up to $3 billion—it could be that high—being paid to people who are aliens. That is $3 billion of public charge when we probably never really intended it, for all of these did not come in after deeming periods. Everybody knew the deeming periods and all that were irrelevant.

Why did they know that? The Senator just stated it. Nothing happened to them if they violated them. I had them on the witness stand. I asked INS, "Could you enforce these?" "No, we cannot enforce them." I said, "Do you think there are only 13?" There are 1.2 million aliens on one program—1.2 million people. I said, "Could you enforce it? Could there be 500 of them that are illegal?" I said, "I think probably there are 600,000 that should not be on there." I think that might be so.

So I do not think this is an issue of changing the contract. In fact, this is a whole new concept about deeming the resources of a sponsor liable for an alien before the citizens of America under taxes pay for it. And it is pretty patent to me that to say everything stays just like it is for the past is just not fair to the American people.

We are talking about it is unfair to some certain patrons. We are still saying—this bill is very generous because what it says is, if a sponsor does not have the money, they are back on public charge.

Did the Senator know that?

That is different than we were thinking of. That is a generous act on the part of the chairman, saying, well, OK, if the ward does not have any money, then it does not do much good to deem them; they cannot pay for it.

That is pretty generous. That is a whole new act of generosity on the part of America, if that becomes law.

Now, I would say it is fair because if you do not want that new act of generosity, then maybe we will go back to the old one. But you can count on it: Up to the deeming period, we will not pay for you whether your sponsor runs out of money or not because that was the law, albeit never enforced.

So I think there are things on both sides of that scale of fairness, and, frankly, from my standpoint, I have been through so many efforts to cut back programs that Americans get angry at us about that are programs for Americans that I thought we had to come here as budgeteers—the Senator worked at it with me, I say to the senior Senator from Texas. We are over here saying, look, we cannot afford education money, we cannot afford this. Why, here we have $3 billion maybe, $1 to $3 billion in Medicaid going to aliens. And I am not sure the

public even knows that. Where should we save first? It seems to me we should save by passing this bill. That is what I think.

I yield the floor.

Mr. SIMPSON. I thank the Senator and Senator GRAMM.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. I thank the Chair.

Let me review where we are and where the leader would like us to be. We have the Simon amendment and two Graham amendments, Senator GRAHAM of Florida, and Senator FEINSTEIN will modify her amendment. Senator KYL and she have resolved any difficulty there. We will take that.

We would like to proceed with debate and try to have votes stacked around 7 or 7:30, if we could proceed with gusto, and I will try to do that, too. It is very difficult. But that would be the pattern, if there is further debate. And I concur with Senator GRAMM. It is about deeming, and we have addressed that last night and we will address it again today.

Just remember one thing. We did not like this before. A few years ago, we voted to extend deeming from 3 to 5 years for SSI, and we did that to achieve savings for an extension of unemployment benefits. We did not ask the sponsors. We just extended the deeming period, and we have done that in the past.

I think those would be my final remarks on that. I wonder if we might—unless there is some further discussion of that amendment, if we might set that aside and go to Senator GRAHAM.

Mr. GRAHAM. Mr. President, I wish to speak in support of the amendment of the Senator from Illinois.

Mr. SIMPSON. I see.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, we had a lot of rhetoric, expressions of what we might have fantasized reality was, what we thought it might be; words like "we expect you to live up to your promise." All of those are patriotic, soaring statements, which have little to do with the reality of the amendment that the Senator from Illinois has offered.

What is the reality today, of the requirement of sponsors to their legal alien sponsoree, who is in the United States? As the Senator from Illinois has pointed out, we Members of Congress have looked at all the programs that we might wish to require deeming to apply to, that is to require the sponsor's income to be added to the alien's income in determining the alien's eligibility for programs. What have we decided? We have decided we will require deeming for SSI, supplemental Social Security income, which primarily affects older aliens; we will require deeming for food stamps; and we will require deeming for aid to families with dependent children.

We could have passed deeming for Medicaid, we could have passed deeming for college Pell grants and guaranteed Federal loans, we could have passed deeming for weatherization and heating for low-income people, we could have passed deeming for any one of the hundreds of programs the Federal Government has that requires some form of means testing in order to be eligible. But we decided thus far not to do so, but to limit it to those three programs. As the Senator from Illinois has pointed out, in two of those three programs the deeming period is 3 years, not the 5 years that is being suggested here today.

But I think even more powerful is the fact that this Congress has known for a long, long time that the courts have held the current application, the affidavit signed by the sponsor, to be legally unenforceable. Let me read a paragraph from a letter from the office of the Commissioner of INS on the issue of what is the enforceability of these affidavits that sponsors sign. To quote from the letter:

> In at least three States, however, courts have held that an affidavit of support does not impose on the person who signs it a legally enforceable obligation to reimburse public agencies and provide public assistance to an alien.

The letter then cites a case, San Diego County versus Viarea, from the California court, a 1969 opinion; the Attorney General versus Binder, an opinion from the State of our Presiding Officer, from 1959; California Department of Mental Hygiene versus Reynault, a case from 1958; another case from New York dated 1959.

The letter goes on to state,

> The Michigan Supreme Court has also held that Michigan public assistance agencies may not consider the income of a person who executed an affidavit of support to be an alien's income in determining the alien's eligibility for State public assistance programs.

That is a 1987 Michigan case, despite the fact that this income deeming is permitted in determining eligibility for food stamps.

Finally, the Missouri Court of Appeals has held that an affidavit of support does not create an express or implied contract for the payment of child support on behalf of a child adopted by a former spouse. That is a 1992 opinion.

Mr. President, I cite these cases, not with the spirit of support but of the cold reality that this is the state of the law. So a person who has sponsored an alien to come into the United States today has had the legal expectation of the unenforceability of that affidavit and this Congress has, at least since 1958, been aware that courts were ruling thus and has not, until the action of the Senator from Wyoming, taken steps to make these affidavits enforceable.

So the consequence of applying this new standard retroactively is going to be to substantially change the expectation of both the legal alien and the legal alien's sponsor, because now we are about to say that an affidavit which the courts have consistently ruled to be unenforceable, we are going to breathe life into that affidavit and we are going to expand that affidavit to cover an indeterminate number of programs for which there is some Federal financial involvement.

Mr. President, I do not disagree with the thrust of the idea that we ought to be making these affidavits financially responsible, that we ought to make them documents which have some legal enforceability. I am concerned about the reach that we are about to apply to the number of programs, but that is for another debate. But I think it is patently unfair to now say we are going to retroactively go back and make affidavits that have been unenforceable, enforceable, and expand them to an indeterminate number of programs.

The argument for doing so, for reaching back retroactively, is that, "We have two people who can pay. We have one person who can pay who is the sponsor. We have the other person who can pay who is the Federal taxpayer. It is better to force the sponsor to pay even if we do it in derogation of the understandings when the sponsor signed the affidavit, than it is to continue to ask the Federal taxpayer to pay." I suggest that is a false analysis of what is really going to happen. What is really going to happen is not that the sponsor is going to pay retroactively, because I do not think we can legally breathe life into a currently unenforceable affidavit. And I do not think the Federal taxpayer is the party that is at final risk.

I suggest what is really going to happen is what the National Conference of State Legislators has said. What really is going to happen is what the National Association of Counties has said. What is really going to happen is what the National League of Cities has said. What is really going to happen is what the National Association of Public Hospitals and Health Systems has said. What is really going to happen is what Catholic Charities USA has said. And that is that there is going to be a massive transfer of responsibility to the communities and States, and they will be asked to pick up these costs.

The most dramatic example of that is going to be in the area of health care. In the field of health care, we have the anomaly that, by Federal law, public hospitals are required to treat anybody with an emergency condition. By laws that we passed, they are prohibited from asking a person seeking emergency assistance, what is your income? What is your financial capability? So we are going to be encouraging people to get sick enough to come in and use the emergency rooms at the local hospital and then, with no one to pay and

with the Federal Government no longer picking up part of the cost through Medicaid, they will become a massive burden on those hospitals and on the communities which support those hospitals.

The further irony of this is, this is going to be occurring in communities which are already paying a substantial burden because of the Federal Government's failure to enforce its immigration laws and to have provided adequately for the impact of these large populations. I know it well in my own State, which is one of the States that is particularly at risk under this proposal. Dade County, FL, Miami, has had one of the fastest if not the fastest growing urban school systems in America in the last 10 years, primarily because of the massive numbers of nonnative students who have entered that school system. It has stretched the system to the breaking point.

Now we are about to say in this bill that the Federal Government will provide less support to the education system of that and other stressed counties, and that the Federal Government will restrict the funding for individuals who would otherwise be eligible for these programs, retroactively, so that those costs will now become an additional burden of those already overburdened communities.

I think, Mr. President, in the fundamental spirit of fairness to all concerned, and specifically to those communities that have already paid a heavy price, that it is only fair and proper that we make this change of rules be prospective. Let us apply it to those people who come from the enactment of this bill forward, who come with the understanding that they are signing an affidavit, if they are a sponsor, that will be legally enforceable; that they will know if they are coming as a legal alien what they are going to be able to expect once they arrive here.

I think it is patently unfair to change the rule for thousands of people who are already here and then to have us, essentially, transfer this financial responsibility to the communities in which they happen to have chosen to live.

So, Mr. President, I urge in the strongest terms the support of the amendment of the Senator from Illinois, because without his amendment, I think this legislation carries with it the fatal flaw of fundamental unfairness.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER (Mr. SHELBY). The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I think we have perhaps completed the debate on that amendment and we might set that aside and proceed to—my friend from Massachusetts is not here.

Is there a second Graham amendment? Does the Senator from Florida have any idea as to the time involved in the presentation of this amendment? May I inquire, Mr. President, of the Senator from Florida if he has any idea where we are, because so many people are involved—apparently there is an Olympics banquet, many awards banquets. Many people have asked for a window. I am perfectly willing to stand right here until midnight and finish this bill. I would do that. If we can get an idea of time, that would be very helpful.

Mr. GRAHAM. Mr. President, in response to the question of the Senator from Wyoming, the time to present this amendment, which is amendment No. 3764, will be approximately 15 to 20 minutes.

Mr. SIMPSON. I thank the Senator from Florida.

Mr. GRAHAM. Mr. President, I ask unanimous consent that the pending amendment of the Senator from Illinois be set aside.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The amendment is temporarily set aside. The Senator from Florida is recognized.

AMENDMENT NO. 3764 TO AMENDMENT NO. 3743

(Purpose: To limit the deeming provisions for purposes of determining eligibility of legal aliens for Medicaid, and for other purposes)

Mr. GRAHAM. Mr. President, I call up amendment No. 3764.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Florida [Mr. GRAHAM] proposes an amendment numbered 3764 to amendment No. 3743.

Mr. GRAHAM. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 201, strike lines 1 through 4 and insert the following:

(3) CERTAIN SERVICES AND ASSISTANCE.—The requirements of subsection (a) shall not apply to—

(A) any services or assistance described in subsection 201(a)(1)(A)(vii); and

(B) in the case of an eligible alien (as described in section 201(f)(1))—

(i) any care or services provided to an alien for an emergency medical condition, as defined in section 1903(v)(3) of the Social Security Act; and

(ii) any public health assistance for immunizations and immunizable diseases, and for the testing and treatment of communicable diseases.

(4) MEDICAL SERVICES FOR LEGAL IMMIGRANTS.—

(A) IN GENERAL.—Notwithstanding any other provision of law, for purposes of determining the eligibility for medical assistance under title XIX of the Social Security Act (other than services for which an exception is provided under paragraph (3)(B))—

(i) the requirements of subsection (a) shall not apply to an alien lawfully admitted to the United States before the date of the enactment of this Act; and

(ii) for an alien who has entered the United States on or after the date of enactment of this Act, the income and resources described in subsection (b) shall be deemed to be the income of the alien for a period of two years beginning on the day such alien was first lawfully in the United States.

Mr. GRAHAM. Mr. President, the underlying bill, S. 1664, for the first time would deny to legal immigrants—legal immigrants—access to Medicaid through newly federally imposed or mandated deeming requirements. This prohibition, as the discussion of the amendment of the Senator from Illinois has indicated, will apply both prospectively, to persons who arrive after this bill is enacted, and retroactively, to legal aliens who are already in the country.

My amendment changes the deeming period for Medicaid to 2 years. It eliminates the retrospective nature of this provision, and it would apply these provisions to future immigrants and provide for an exemption for emergency care and public health.

So to restate what the amendment does, the amendment changes the deeming period for Medicaid to 2 years. Second, it eliminates the retroactive nature of the legislation in the same way that the amendment of the Senator from Illinois would do to all of the deemed programs. It would apply these provisions prospectively to future legal aliens, and it would provide an exemption for emergency care and for public health.

This amendment is supported by the National Conference of State Legislators. It is supported by the National Association of Counties. It is supported by the National League of Cities. It is supported by the United States Conference of Mayors. It is supported by the National Association of Public Hospitals. It is supported by the American Public Health Association. It is supported by the National Association of Community Health Centers. It is supported by Interfaith, by the Catholic Charities USA and the U.S. Catholic Conference. It is supported by the Council of Jewish Federations, the Lutheran Immigration and Refugee Services and the Evangelical Lutheran Church of America.

Mr. President, I offer this amendment today which I consider to be a substantial improvement of this bill. It is a substantial improvement by recognizing the fact that health services are different from other benefits that a legal alien might seek.

While I strongly support the idea that sponsors should be required to provide housing, transportation, food, cash assistance to legal aliens who they have sponsored, legal aliens and the sponsor would be unable to provide for themselves, for whatever reason, reasonable access to the health care which unpredictable illness and debilitating disease or injury might impose.

Unlike cash assistance, housing or food, health care must be provided by a

qualified professional, tailored to the specific diagnostic and treatment needs. Ultimately, no amount of hard work and personal responsibility can protect an immigrant or anyone else from illness or injury.

My proposal would be to deem Medicaid for 2 years. That is, for the first 2 years that the legal alien is in the United States, the income of the sponsor will be deemed to be that of the alien.

This is a reasonable compromise with what I hope will have bipartisan support. It would not exempt Medicaid from deeming altogether. Instead, it would create a 2-year deeming period for the Medicaid Program alone.

As a result, this amendment eliminates the magnet, the draw or incentive to come to the United States in order to receive medical care, especially since an immigrant cannot plan to get sick 2 years in advance.

However, it does recognize that in the long run, health care is different from other benefits. This amendment also recognizes and attempts to alleviate the tremendous other burdens, cost shifts, unfunded mandates and public health problems which potentially could be caused by S. 1664.

What are some of these potential problems?

First, cost shifting. The Medicaid provisions in S. 1664 are currently nothing more than a cost shift to States, local governmental units and our Nation's hospital system. Simply put, if people are sick and cannot afford to pay for coverage for some of the most disabling conditions, someone will absorb the cost.

The question is whether the Federal Government will pay a portion of that cost, or will such costs be shifted entirely to those States and local governments and hospitals where legal aliens will seek those services?

As the National Conference of State Legislatures, the National Association of Counties and National League of Cities wrote in an April 24, 1996, letter:

> Without Medicaid eligibility, many legal immigrants will have no access to health care. Legal immigrants will be forced to turn to state indigent health care programs, public hospitals, and emergency rooms for assistance or avoid treatment altogether. This will in turn endanger the public health and increase the cost of providing health care to everyone. Furthermore, without Medicaid reimbursement, public hospitals and clinics in States and localities would incur increased unreimbursed costs for treating legal immigrants.

The National Association of Public Hospitals, in their April 12, 1996, letter added:

> The [National Association of Public Hospitals] opposes a deeming requirement for Medicaid. It will lead to an increase in the number of uninsured patients and exacerbate an already tremendous burden of uncompensated care on public hospitals. * * *

The Congressional Budget Office estimates that the effect of this bill's current provision will be to reduce Federal reimbursement for such Medicaid costs by $2.7 billion. This is nothing more than a massive cost shifting to the States and local governments in which these legal aliens reside.

The bill's deeming provisions, in addition to being nothing more than a huge cost-shift to State and local governments, will also impose an administrative burden and a huge unfunded mandate on State Medicaid programs. In light of a series of calls throughout the year by the Nation's Governors, the administration and this Congress have been asked to provide States with greater flexibility to more efficiently administer their Medicaid programs. This provision is incredibly ironic and in sharp contrast to everything that we have been discussing in Medicaid policy over the last 2 years.

For a Medicaid case worker, who already has to learn the complex requirements of the Medicaid program, he or she now must also learn immigration law. As a study by the National Conference of State Legislatures notes, this would require an extensive citizenship verification made for all applicants to the Medicaid Program.

According to the Conference of State Legislatures:

> These [deeming] mandates will require States to verify citizenship status, immigration status, sponsoring status, and length of time in the U.S. in each eligibility determination for a deemed Federal program. They will also require State and local governments to implement and maintain costly data information systems.

In addition to all these costs, States will have infrastructure training and ongoing implementation costs associated with the staff time needed to make these complicated deeming calculations. The result will be a tremendously costly and bureaucratic unfunded mandate on State Medicaid programs.

This bill also threatens our Nation's public health. Residents of communities where legal aliens live would face an increased health risk from communicable diseases under this provision of the bill because immigrants would be ineligible for Medicaid and other public health programs designated to provide early treatment to prevent communicable disease outbreaks.

Such policies have historically and consistently had horrendous results. For example, in 1977, Orange County, TX, instituted a policy that required people to prove legal status or be reported to the Immigration and Naturalization Service when requesting service at any county health facility.

As noted by El Paso County Judge Pat O'Rourke, in a letter dated September 24, 1986:

> . . . within eighteen months, the county experienced a 57 percent increase in extrapulmonary tuberculosis, a 47 percent increase in salmonella, a 14 percent increase in infectious hepatitis, a 53 percent increase in rubella and a 153 percent increase in syphilis.

The judge cites a 1978 report by the Task Force on Public General Hospitals of the American Public Health Association in saying:

> Hence, what was a simple condition requiring a relatively small expense became a large matter adversely affecting all taxpayers.

In an analysis of the potential health impacts of S. 1664, the bill before us this evening, conducted by Dr. Richard Brown, the president of the American Public Health Association and director of the University of California at Los Angeles Center for Health Policy Research, Dr. Brown states:

> In a study of tuberculosis patients in Los Angeles, more than 80 percent learned of their disease when they sought treatment for a symptom or other health condition, not because they sought a TB screening. Yet [S. 1664] would make it more difficult for immigrants to seek diagnosis and treatment because their access to health care would be sharply reduced, permitting this debilitating and often deadly disease to spread throughout the community. When an infected person becomes seriously ill with tuberculosis, the costs of treating these true emergencies will be borne by everyone, especially taxpayers.

Dr. Brown concludes:

> Tuberculosis and other communicable diseases do not respect distinctions between citizens and non-citizens, legal residents and people who are not here lawfully. The key to controlling an outbreak of tuberculosis, hepatitis, sexually transmitted diseases, or other communicable diseases is early identification of the source of the infection and immediate intervention to treat all infected persons. Because these bills will discourage immigrants from seeking treatment, they will endanger the health of everyone in the community.

In the interest of our Nation's public health, why, Mr. President, why would we wish to take such an unnecessary risk?

In addition, the Medicaid deeming provisions, by creating a obstacle to preventive health services, will result in certain cases of immigrants resorting to emergency room care. Health care costs will thus be more expensive.

This would further strain the already overburdened and underfunded emergency and trauma care facilities across the country, particularly in our Nation's urban centers. Without reimbursements, such hospitals will be forced to consider shutting their emergency room doors for all residents of the county, affecting all residents, immigrants or otherwise.

For example, Jackson Memorial Hospital in Miami estimates that its uncompensated care costs for fiscal year 1995 for undocumented immigrants was $45.8 million. To repeat, for 1995, in that one public hospital, Jackson Memorial in Miami, the cost in uncompensated care for undocumented aliens was $45.8 million. An additional $60 million in uncompensated care costs

was attributed by Jackson Memorial Hospital to legal aliens in the community. However, they currently do receive some reimbursement for care to legal aliens through private health care plans and Medicaid. Without the Medicaid payments, total uncompensated costs will grow and require the local community to either raise its taxes or consider reducing hospital services.

In addition, by reducing access of pregnant immigrant women to prenatal care and nutrition support programs, the health of the U.S.-citizen infants will be threatened. The National Academy of Sciences' Institute of Medicine estimates that for every $1 spent on prenatal care, there is a $3 savings in future medical care for low birthweight babies. Denying prenatal and well-baby care to an immigrant only threatens the life of her U.S.-citizen child. Mr. President, that makes absolutely no sense. In fact, it is neither cost effective nor in the interest of public health.

Another concern raised by Catholic Charities USA is the potential for increased abortions as a result of S. 1664.

To quote from the Catholic Charities U.S.A.,

> The most immediate threat of the Medicaid deeming provision is the pressure on poor pregnant women to end their pregnancies inexpensively through abortion rather than to carry them to term. A legal immigrant who becomes pregnant and does not have the means to obtain health care will be able to finance a $250 abortion at a local clinic much more easily than either she or her sponsor can pay for prenatal care or put down a $1,000 deposit at a hospital for labor and delivery.

In summary, as currently drafted, S. 1664 would have the following negative consequences: It shifts costs to States, local governments, and hospitals. It imposes an administrative unfunded mandate on State medicaid programs. It threatens the Nation's or the public's health. It is not cost effective and it may lead to an increase in abortions.

My amendment would help address these problems. Therefore, it is supported by the National Conference of State Legislatures, the National Association of Counties, the National League of Cities, U.S. Conference of Mayors, the National Association of Public Hospitals, the American Public Health Association, the National Association of Community Health Centers, InterHealth, Catholic Charities U.S.A., and the U.S. Catholic Conference, the Council of Jewish Federations, Lutheran Immigration and Refugee Services, and Evangelical Lutheran Church of America.

Mr. President, I ask unanimous consent to have printed in the RECORD immediately after my remarks statements by several of these organizations in support of this amendment.

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

(See exhibit 1.)

Mr. GRAHAM. Mr. President, I close by saying that I regret we have had to consider so many amendments that related specifically to the provisions in this bill that will apply retroactively and prospectively the income of a sponsor to the income of a legal alien—I emphasize legal alien—for purposes determining eligibility for means-tested programs.

Mr. President, if you represent the concerns of the millions of Americans who are represented by these organizations, if you understand the pragmatic reality of what we are about to do both to individuals and to the communities in which they live, and to the taxpayers in the communities and States in which you live, you would understand why there have been so many amendments offered on this subject.

I believe that the amendment which I have offered is a reasoned middle ground. By setting a 2-year deeming provision it would give us assurance that no one would come to this country with a specific condition—whether that be pregnancy or a known medical infirmity—in order to receive U.S. taxpayer-financed medical service. Very few people are prophetic enough to know what their condition is going to be 24 months from now. By providing that this will be prospective, all persons who come into this country from this point forward, from the enactment of this bill forward, will know under what conditions they will be entering this country.

By exempting those programs that affect the public health and relate to emergency care, we will be recognizing the fact that those steps are not just for the benefit of the individual but they are for the benefit of the broad public with its interest in continuing to have access to emergency facilities and to be saved from having unintended access to communicable diseases.

Mr. President, I believe this is a constructive amendment which deals with serious issues within this legislation. I urge its adoption.

EXHIBIT 1

NATIONAL CONFERENCE OF STATE LEGISLATURES, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL LEAGUE OF CITIES

April 24, 1996.

DEAR SENATOR: The National Conference of State Legislatures (NCSL), the National Association of Counties, (NCAo), and the National League of Cities (NLC) are very concerned about unfunded mandates in S. 1664, the Immigration Control and Financial Responsibility Act of 1996 that would be an administrative burden on all states and localities. We urge you to support a number of amendments that will be offered on the Senate floor to mitigate the impact of these mandates on, and cost shifts to, states and localities.

S. 1664 would extend "deeming" from three programs (AFDC, SSI and Food Stamps) to all federal means-tested programs, including foster care, adoption assistance, school lunch, WIC and approximately fifty others. As you know, "deeming" is attributing a sponsor's income to the immigrant when determining program eligibility. It is unclear what "all federal means-tested programs" means. Various definitions of the phrase "federal means-tested programs" would include a range of between 50–80 programs. Furthermore, regardless of the size of their immigrant populations, this mandate will require all states to verify citizenships status, immigration status, sponsorship status, sponsor's income and length of time in the U.S. in each eligibility determination for "all federal means-tested programs." NCSL estimates that implementing deeming restrictions for just ten of these programs will cost states approximately $744 million. Extending deeming mandates to over 50 programs garners little federal savings and should be eliminated as part of the Congressional commitment to eliminating cost shifts to state and local budgets and taxpayers.

Therefore, we urge you to support Senator Bob Graham's effort to raise a point of order against S. 1664 based on its violation of P.L. 104–4, the Unfunded Mandates Act of 1995. This is a critical test of your commitment to preventing cost-shifts to, and unfunded administrative burdens on, states and localities. We also urge you to support subsequent amendments that will reduce the scope of the deeming provisions and limit the administrative burden on states and localities. These include:

Senator Graham's amendment giving deeming mandate exemption to: 1) programs where deeming costs more to implement than it saves in state or local spending; or 2) programs that the federal government does not pay for the administrative cost of implementing deeming. This ensures that new deeming mandates are cost effective and are not unfunded mandates.

Senator Graham's amendment substituting a clear and concrete list of programs to be deemed for the vague language in S. 1664 requiring deeming for "all federal means-tested programs." This amendment ensures that Congress, and not the courts, will decide which programs are deemed.

Senator Kennedy's amendment conforming Senate deeming exemptions to those accepted by the House in H.R. 2202.

In addition, we urge you to support other amendments that would temper the unfunded mandates in S. 1664 and relieve the administrative burden on states and localities. We are especially concerned about the impact of extending the deeming requirements to the Medicaid program. Without Medicaid eligibility, many legal immigrants will not have access to health care. Legal immigrants will be forced to turn to state indigent health care programs, public hospitals, and emergency rooms for assistance or avoid treatment altogether. This will in turn endanger the public health and increase the cost of providing health care to everyone. Furthermore, without Medicaid reimbursement, public hospitals and clinics and states and localities would incur increased unreimbursed costs for treating legal immigrants. We support the following compromise amendment to preserve some Medicaid eligibility for legal sponsored immigrants.

Senator Graham's amendment to limit Medicaid deeming to two years.

We strongly support amendments to exempt the most vulnerable legal immigrant populations from deeming requirements. We urge you to support the following amendments that will preserve a minimal amount

of federal program eligibility for the neediest legal immigrants and protect states and localities from bearing the cost of these services.

Senator Kennedy's amendment exempting children and pre-natal and post-partum care from Medicaid deeming restrictions.

Senator Simon's amendment exempting immigrants disabled after arrival from deeming restrictions.

Senator Leahy's amendment exempting immigrant children from nutrition program deeming.

Finally, we firmly believe that deeming restrictions are incompatible with our responsibility to protect abused and neglected children. Courts will decide to remove children from unsafe homes regardless of their sponsorship status and state and local officials must protect them. Deeming for foster care and adoption services will shift massive administrative costs to states and localities and force them to fund 100% of thee benefits. We urge you to support the following amendments to protect states and localities from this cost shift.

Senator Murray's amendment exempting immigrant children from foster care and adoption deeming restrictions.

Senator Wellstone's amendment exempting battered spouses and children from deeming restrictions.

We appreciate your consideration of our concerns and urge you to protect states and localities from the unfunded mandates in S. 1664.

Sincerely,

JAMES J. LACK,
New York Senate,
President, NCSL.
DOUGLAS R. BOVIN,
Commissioner, Delta County, MI,
President, NACo.
GREGORY S. LASHUTKA,
Mayor, Columbus, OH,
President, NLC.

CATHOLIC CHARITIES USA SUPPORTS THE ELIMINATION OF THE MEDICAID "DEEMING" REQUIREMENT INCLUDED IN THE IMMIGRATION REFORM BILL

S. 269 currently requires that the income and resources of a legal immigrant's sponsor and the sponsor's spouse be "deemed" to the income of the legal immigrant when determining the immigrant's eligibility for all means-tested federal public assistance programs, including Medicaid. The deeming period would be a minimum of 10 years (or until citizenship).

Catholic Charities USA supports the elimination of the Medicaid deeming requirement for two main reasons. First, requiring deeming for the Medicaid program ignores the dichotomy between medical services and other need-based assistance that Congress has followed since the inception of Medicaid. For over 30 years, Congress has treated Medicaid benefits for legal immigrants in a fundamentally different fashion than other federal benefits programs. Historically, Congress has never required deeming for Medicaid, recognizing that no level of hard work and personal responsibility can protect someone from illness and injury, and that payments for medical care are significantly higher and more unpredictable than payments for other necessities. In addition, although an immigrant's sponsor or other charitable individual may be able to share food and shelter—and even income to a certain extent—a person cannot share his or her medical care. Unlike housing or food, health care must be provided by a qualified professional and must be tailored to a person's specific health needs. In this sense, Medicaid is substantively different than other needs-based assistance. S. 269 would end Congress' longstanding recognition of the special nature of Medicaid.

Second, the Medicaid deeming requirement will lead to an increase in the number of uninsured patients and exacerbate an already tremendous burden of uncompensated care on public hospitals and other providers who treat large numbers of low-income patients. Although the bill would require the sponsor to agree, in a legally enforceable affidavit of support, to financially support the immigrant, many sponsors may nevertheless be unable to finance the health care costs of the immigrants, many sponsors may nevertheless be unable to finance the health care costs of the immigrants they sponsor.

Finally, it should be noted that in order to qualify for Medicaid coverage an individual must not only be very poor but in addition must qualify under one of the vulnerable categories that include pregnant women, children, the elderly, and people with disabilities. Therefore, because of the strict eligibility requirements for the Medicaid program, legal immigrants who do qualify for coverage are very limited in number and extremely vulnerable.

For these reasons, Catholic Charities USA supports the elimination of the deeming requirement for Medicaid. Should the elimination of deeming for Medicaid prove unworkable in the current political context, we would support an amendment to limit Medicaid deeming to the shortest time period possible.

MEDICAID "DEEMING" FOR LEGAL IMMIGRANTS SHOULD BE LIMITED TO TWO YEARS

The Immigration Control and Financial Responsibility Act (S. 1664), which is scheduled for Senate floor action on April 15, proposes harsh new restrictions on immigrants who are in this country legally. The bill denies Medicaid for a minimum of ten years, or until citizenship, for immigrants who have come to this country, worked hard, paid taxes, and in every respect "played by the rules." The bill does this through a mechanism called "deeming."

How Deeming Works: To be eligible for Medicaid, an individual must have sufficiently low income to qualify. Deeming is a process where by a person's income is "deemed" to include not only is or her own income, but also income from other sources. S. 1664 requires a legal immigrant's income to be deemed to include the income of the immigrant's sponsor and the sponsor's spouse. In addition, the immigrant's income is "deemed" to include the value of the sponsor's resources, such as the sponsor's car and home. Although a legal immigrant could well qualify for benefits based on his or her own resources, many immigrants will effectively be denied Medicaid because of their sponsor's income and resources.

Catholic Charities USA opposes Medicaid deeming for the following reasons:

The Risk of Increased Abortions: To most immediate threat of the Medicaid deeming provision is the pressure on poor pregnant women to end their pregnancies inexpensively through abortion rather than carry them to term. A legal immigrant who becomes pregnant and does not have the means to obtain health care will be able to finance a $250 abortion at a local clinic much more easily than either she or her sponsor can pay for prenatal care or put down a $1000 deposit at a hospital for labor and delivery.

Medical Needs are Unpredictable and Impossible to "Share:" If an immigrant cannot provide for him or herself S. 1664 requires that a sponsor provide housing, transportation, food, or even cash assistance in some circumstances. Although Catholic Charities USA opposes these extensions of current law, we acknowledge a distinction between these forms of assistance and the specific area of medical care. Unlike housing or food, health care must be provided by a qualified professional and tailored to a persons's specific diagnostic and treatments needs. Although a citizen may have enough income and resources to qualify as a sponsor, the sometimes expensive and often unpredictable nature of medical care may limit the sponsor's ability to finance a sudden and drastic emergency.

Early Diagnosis and Treatment is Less Expensive Than Emergency Care: Basic preventative and diagnostic services treat conditions inexpensively before they become aggravated. If such services are denied, relatively unthreatening illnesses may turn into emergencies to be treated with much more expansive and expensive means. For example, $3 is saved on average for every $1 spent in prenatal care. Moreover, if a legal immigrant is denied prenatal services, her child may be born with serious conditions that will last an entire lifetime. These children, born to legal immigrants, are citizens who will be eligible for Medicaid.

The Cost of Denying Care is an Unfunded Mandate to be Borne By Local Hospitals and Communities: Public hospitals in local communities are required to treat anyone with emergency conditions. If legal immigrants are denied medical services and forced to let their illnesses deteriorate, local hospitals eventually will be required to treat them as emergencies. Since public hospitals are funded by local taxpayers, this policy represents an enormous cost-shift from the federal government onto state and local entities. Although designed to reduce federal expense, the deeming provision would essentially create an entirely new population of uninsured individuals, force immigrants to wait until their conditions become more expensive, and then mandate that local hospitals serve them and pay for this service—all effects that will have real-world financial repercussions for citizens.

Denying Medical Services to Immigrants Endangers Entire Communities: Due to the increased cost to local hospitals, services will degenerate—not only for legal immigrants—but for every person in the community who relies on that hospital for care. If a portion of a hospital's budget is diverted to cover the increased expense of handling emergency conditions, less money will be available to finance services for everyone. Perhaps more importantly, if immigrants are not immunized or treated for communicable diseases, entire communities will be at risk.

Immigrants Currently Finance Benefits for Citizens: Legal immigrants are subject to the same tax laws as citizens. However, as a group, legal immigrants pay more proportionally in taxes than citizens. They also use fewer benefits than citizens. Although some claim immigrants drain resources, legal immigrants actually finance public assistance benefits for citizens. Because of these factors, basic fairness counsels against denying legal immigrants the same safety net security as citizens. Immigrants should be able to rely on support times of need in the same manner as other taxpayers, especially since they have demonstrated that they require such services less often.

Catholic Charities USA favors a reduced deeming period of two years for Medicaid. A two-year deeming period would substantially remove what some view as a "draw" for immigrants entering the country solely to obtain medical services, especially since an immigrant could hardly plan an illness two years in advance. In addition, this compromise would preserve the distinction between medical services and other forms of assistance, recognizing that no amount of hard work and personal responsibility can protect someone from illness and injury. Although opponents may oppose such an amendment because it won't reduce federal spending as much, the effect of a longer period would be an exponential increase in the cost to state and local entities. The bill itself, by setting the deeming period at two years, recognizes that a sponsor's liability should not continue indefinitely. Catholic Charities USA believes a reduced, two year deeming period for Medicaid is a viable compromise that recognizes all of these concerns.

THE HEALTH EFFECTS OF S. 1664 AND H.R. 2202

(By E. Richard Brown, Ph.D)

S. 1664 and H.R. 2202 threaten the health of immigrants and of the larger community. They threaten the health of immigrants and the larger community by making it more difficult to control the spread of serious communicable diseases and making it more likely that such diseases would spread through the community, threaten the health of U.S.-citizen infants by reducing the access of pregnant immigrant women to prenatal care and nutrition support programs; and threaten the health of immigrants by reducing management of chronic illnesses and early intervention to prevent health problems from developing into more serious ones, resulting in more disability and higher medical costs both among immigrants and their U.S.-citizen children.

PROVISIONS OF S. 1664 AND H.R. 2202

Public health care services and publicly funded community-based services are essential to control the progression and spread of disease among low-income persons and communities. These services are essential because a high proportion of low-income immigrants do not receive health insurance through employment, despite their high rates of labor force participation. Because of their low incomes, they cannot afford to purchase health insurance in the private marketplace. Although uninsured immigrants pay a considerably higher proportion of their incomes out-of-pocket for medical services than do persons with insurance, they often cannot afford an adequate level of medical care without the assistance of public programs and publicly subsidized health services.

S. 1664 and H.R. 2202 would impose such onerous financial requirements on legal immigrants that they effectively exclude millions of legally resident children and adult immigrants from receiving any health services or nutrition supplements. These bills also prohibit undocumented immigrants from receiving all but emergency medical care from any public agency or from community-based health services, such as migrant health centers and community health centers. These bills will reduce access to cost-effective primary care and prevention and force immigrants to use expensive emergency and hospital services—at increased cost to taxpayers and poorer health outcomes for immigrants and the larger community.

Legal immigrants

Legal immigrants would become deportable if they participate in Medicaid, virtually any state health insurance or health care program that is means-tested, or any local means-tested services for more than 12 months during their first five years (seven years in the House bill) in the United States. This provision would strongly deter most legal immigrants from enrolling in Medicaid or otherwise obtaining health services on a sliding fee-scale from a local health department or any community health center, migrant health center, or other community-based health service which receives any federal, state or local government funds. Receiving any combination of such benefits for a total of more than 12 months would make the immigrant ineligible for citizenship.

Furthermore, to determine eligibility for such services or programs, the sponsor's income (and the income of the sponsor's spouse) would be "deemed" available to the immigrant. The bills would require that the sponsor's income be combined with the immigrant's income until the immigrant had worked for 40 quarters (at least 10 years) in which he/she earned enough to pay taxes or until he/she became a citizen. This provision would make most sponsored legal immigrants ineligible for such benefits, even if they maintain a separate household with substantial combined expenses or do not have access to their sponsor's income.

These provisions make more stringent the conditions under which legal immigrants may receive these public benefits, lengthening the time during which they are potentially deportable for receiving benefits, reducing the conditions under which they may legitimately receive them, and extending the "deeming" process to more programs and for a longer period of time.

Undocumented immigrants

Undocumented immigrant women would be barred from receiving prenatal and postpartum care under Medicaid. States may provide prenatal and postpartum care to undocumented immigrant women who have continuously resided in the United States for at least three years (the House bill excludes pregnancy care altogether). The bills would allow undocumented immigrants to receive immunizations and be tested and treated for serious communicable diseases. Because these provisions apply to any services provided or funded by federal, state or local government, they prohibit most community-based health services, such as migrant health centers and community health centers, from providing primary or preventive care to undocumented immigrants.

Undocumented immigrants currently are not eligible for any means-tested health programs except *emergency* medical services, including childbirth services (funded by Medicaid), immunizations, and nutrition programs for pregnant women and children. These bills extend this prohibition to prenatal and postpartum care, and they extend to nearly all publicly funded programs and services the prohibitions on providing non-emergency care that formerly were restricted to Medicaid.

EFFECTS ON HEALTH

These bills would maek it more difficult for low-income immigrants, whether they are here legally or not, to obtain preventive or porimary health care. By denying access to cost-effective health services that can prevent or limit illness, this legislation would increase the use of emergency rooms and hospitals at greater cost to taxpayers and cause more disability among immigrants.

Prenatal care and birth outcomes

The provisions in these bills will result in an increased number of low birthweight and higher death rates among U.S.-citizen infants. The expanded "deeming" provisions would prevent many legal immigrant women who are pregnant and needy from qualifying for Medicaid, and the expanded threats of deportation would discourage other needy legal immigrant women from applying for Medicaid. The bills also would prohibit pregnancy-related health services to most undocumented immigrant women.

Denying inexpensive prenatal care to many pregnant women will increase the health risks to the women and their U.S.-citizen infants, all at great cost to federal and state taxpayers. The National Academy of Sciences' Institute of Medicine estimates that every $1 spent on prenatal care saves $3 that otherwise would be spent on medical care for low birthweight infants. A recent study by the California Department of Health Services found that Medi-Cal hospital costs for low birthweight babies averaged $32,800, thirteen times higher than those of non-low birthweight babies ($2,560). With no prenatal care, the expected hospital medical costs for a baby born to a Mexican-American woman with no prenatal care are 60% higher than if she had gotten adequate prenatal care, or $1,360 higher per birth. The American-born infants of immigrant mothers automatically would be U.S. citizens, entitling them to medical care paid for by Medicaid. These added medical costs may well exceed any savings due to reduced Medicaid eligibility among immigrant pregnant women.

Management of chronic illness

These bills would prohibit undocumented and many legal immigrants from using local health department clinics or community-based clinics, such as migrant or community health centers, for other than emergency care or diagnosis and treatment for a communicable disease. High blood pressure, diabetes, asthma, and many other chronic illnesses can be managed effectively by regular medical care, which includes monitoring of the condition, teaching the patient appropriate self-management, and provision of necessary medication. When diabetes goes untreated, it results in diabetic foot ulcers, blindness, and many other complications. Uncontrolled high blood pressure causes heart attacks, strokes, and kidney failure, all of which lead to expensive emergency hospital admissions. In the absence of regular care, people with these controllable diseases will present repeatedly to hospitals in severe distress, resulting in emergency and intensive care for a much higher cost than periodic visits and maintenance medication. Primary care and prevention are cost-effective alternatives to use of emergency rooms, specialty clinics, and hospitalization—and they preserve and improve the person's functional status. As with pre- and postnatal care, the costs of increased use of emergency and hospital services are likely to offset any savings due to reduced use of primary and preventive care.

Communicable diseases

These bills would make it more difficult for undocumented immigrants or legal immigrants to obtain care for communicable diseases. Although they explicitly permit undocumented immigrants to be diagnosed and treated for communicable diseases, public health services throughout the country are

being restructured to eliminate dedicated clinics for tuberculosis, sexually transmitted diseases, and other cummunicable diseases. Instead diagnosis, treatment, and management of these health problems are being integrated into primary care, which would be denied to undocumented immigrants and most legal immigrants alike who cannot afford to pay the full cost of these services. Without access to primary care, immigrants would have few options to receive medical attention for persistent illnesses. Coughs that do not go away, fevers that do not subside, and rashes and lesions that do not heal may be due to communicable diseases such as tuberculosis, hepatitis, meningitis, or a sexually transmitted disease.

Tuberculosis is prevalent among legal, as well as undocumented, immigrants from Asia and Latin America. It is easily spread if those who are infected are not diagnosed and treated. In a recent study of tuberculosis patients in Los Angeles, more than 80% learned of their disease when they sought treatment for a symptom or other health condition, not because they sought tuberculosis screening. Yet these bills would make it more difficult for immigrants to seek diagnosis and treatment because their access to health care would be sharply reduced, permitting this debilitating and often deadly disease to spread throughout the community. When an infected person becomes seriously ill with tuberculosis, the costs of treating these true emergencies will be borne by everyone, especially taxpayers. The California Department of Health Services estimates that it costs $150 to provide preventive therapy to a tuberculosis-infected patient, but it costs 100 times as much for a tuberculosis patient who must be hospitalized—and more than 600 times as much if the patient has developed a drug-resistant variety of tuberculosis.

Tuberculosis and other communicable diseases do not respect distinctions between citizens and non-citizens, legal residents and people who are not here lawfully. The key to controlling an outbreak of tuberculosis, hepatitis, sexually transmitted diseases, or other communicable diseases is early identification of the source of infection and immediate intervention to treat all infected persons. Because these bills will discourage immigrants from seeking treatment, they will endanger the health of everyone in the community.

ADMINISTRATIVE COSTS

S. 1664 and H.R. 2202 would impose substantial administrative burdens on health care services to check clients' immigration status and obtain information necessary to "deeming." These administrative costs include interviewing clients and obtaining the information from them, verifying the accuracy of information, training of staff, and record keeping and processing. The administrative burden includes obtaining information about the client's immigration status, date on which the person entered the country, whether the immigrant has a sponsor, whether the immigrant has worked for 40 quarters during which they earned enough to have a tax liability, and the income and resources of the immigrant, the sponsor, and the sponsor's spouse. These administrative costs must be borne by the program or service provider, except for anti-fraud investigators in hospitals.

SUMMARY

1664 and H.R. 2202 will:

Reduce access of legal immigrants and undocumented immigrants to primary care and preventive health services and increase immigrants' use of emergency and hospital services;

Result in poorer health outcomes for immigrants and their U.S.-citizen infants;

Increase the larger community's risk of contracting communicable diseases;

Increase expenditures on emergency and hospital services, offsetting savings due to reduced use of preventive and primary care; and

Increase administrative costs for publicly funded health care providers.

Mr. SIMPSON. Mr. President, may we set aside this amendment and go directly to the amendment of Senator FEINSTEIN so she might modify a previous amendment?

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

The pending amendment No. 3764 is set aside.

AMENDMENT NO. 3777, AS MODIFIED

Mrs. FEINSTEIN. I thank the Senator from Wyoming. Mr. President, I send a modification to amendment 3777 to the desk.

The amendment (No. 3777), as modified, is as follows:

Beginning on page 10, strike line 18 and all that follows through line 13 on page 11 and insert the following:

SEC. 108. CONSTRUCTION OF PHYSICAL BARRIERS, DEPLOYMENT OF TECHNOLOGY AND IMPROVEMENTS TO ROADS IN THE BORDER AREA NEAR SAN DIEGO, CALIFORNIA.

There are authorized to be appropriated funds of $12 million for the construction, expansion, improvement or deployment of triple-fencing in addition to that currently under construction, where such triple-fencing is determined by the Immigration & Naturalization Service (INS) to be safe and effective, and in addition, bollard style concrete columns, all weather roads, low light television systems, lighting, sensors and other technologies along the international land border between the United States and Mexico south of San Diego, California, for the purpose of detecting and deterring unlawful entry across the border. Amounts appropriated under this section are authorized to remain available until expended. The INS, while constructing the additional fencing, shall incorporate the necessary safety features into the design of the fence system to insure the well-being of Border Patrol agents deployed within or in near proximity to these additional barriers.

Mrs. FEINSTEIN. Mr. President, earlier I sent an amendment to the desk on behalf of Senator BOXER and myself which relates to the triple fencing of the Southwest border, particularly in the vicinity of San Diego and Mexico. This is an amendment to that amendment which has been worked out with Senator KYL and which I believe, hopefully will be acceptable to both sides. Senator KYL and I have discussed this. We have also discussed it with Doris Meissner, the INS Commissioner. We have worked out language to which INS now agrees.

Essentially, the language would authorize the appropriation of $12 million for the construction, expansion, improvement, and deployment of triple fencing. In addition, that currently under construction where such triple fencing is determined by the INS to be safe and effective, and in addition, bollard-style concrete columns, all weather roads, low-light television systems, lighting sensors and other technologies along the international land border between the United States and Mexico south of San Diego, CA, for the purpose of detecting and deterring unlawful entry across the border.

I believe this amendment in full is acceptable to both sides. Commissioner Meissner has also agreed to send a letter to Representative HUNTER which would State that the INS is in the process of testing triple fencing, will continue that testing, and is prepared to add to it where it has proven to be effective and safe.

Mr. President, I ask unanimous consent to vitiate the yeas and nays.

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

Mr. SIMPSON. Mr. President, let me commend the Senator from California for the fine work that she has done here in conjunction with the Senator from Arizona, Senator KYL. Both of you committed to the same objective, both of you from States heavily affected, both of you more aware of these things than any of us in this Chamber.

I insist in these remarks of all these past months that if there are people that understand illegal immigration any better than the people of Texas, California, Florida, and Illinois—although not on the border of our country but yet one of the large States with a large number of formally undocumented persons; that I think has been corrected; but a large and sometimes vexing population. I think you have resolved that to the betterment of all.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3777), as modified, was agreed to.

Mr. SIMPSON. Mr. President, I believe now that the status of matters is that we have two Simon amendments that we will deal with.

Mr. SIMON. We have dealt with them.

AMENDMENT NO. 3764

Mr. SIMPSON. We have not quite finished dealing with them. I had a comment or two to make.

Mr. President, with regard to Senator GRAHAM's remarks and his amendment, I hope—and I will not be long—we have heard in that amendment the revisitation of an old theme. The issue is very simple. As we hear the continual discussion about taxpayers and what is going to happen to taxpayers—taxpayers this, taxpayers that—I have a thought for you. I will tell you who should pay for the legal immigrant: the sponsor who promised to pay for the legal immigrant.

This is not mystery land. This is extraordinary. How can we keep coming

back to the same theme when the issue is so basic?

If you are a legal immigrant to the United States, this is such a basic theme that I do not know why it needs to be repeated again and again and again. But I hope it will be dealt with in the same fashion again and again and again, because it is this: When the legal immigrant comes to the United States, the consular officer, the people involved in the decision, and the sponsor agrees that that person will not become a public charge. That was the law in 1882. We have made a mockery of that law through administrative law judge decisions and court decisions through the years, where it is not just the "steak and the tooth," as my friend from Illinois referred to, there is no steak and no teeth in it.

And so, one of the most expensive welfare programs for the United States taxpayers is Medicaid. Everybody knows it. The figures are huge. Senator DOMENICI knows it. He covered it the other day. They are huge, and we all know that. We know the burden on the States.

So all we are saying is the sponsor, the person who made the move to bring in the legal immigrant, is going to be responsible, and all of that person's assets are going to be deemed for the assets of the legal immigrant. So it does not matter what type of extraordinary situation you want to describe to us all, and all of them will be genuinely and authentically touching, they will move us, maybe to tears. I am not being sarcastic. Those things are real. They will be veterans, they will be children, they will be disabled, they will be sick, and all we are saying is that the sponsor will pay first, which is exactly what they promised to do. And so, if the sponsor, having been hit too hard, is pressed to bankruptcy, is pressed to destruction, is pressed wherever one would be pressed, then we step in, the U.S.A., the old taxpayers step into the game —but not until the sponsor has suffered to a degree where they cannot pony up the bucks that they promised to pay.

If the sponsor has the financial resources to pay for the medical care needed by an immigrant, why on God's earth should the U.S. taxpayers pay for it? That is the real question. That is one that is easy to debate.

Does any Senator in this Chamber believe that the taxpayers of this country would agree to admit to our country an immigrant if they believed that the immigrant would impose major medical costs on the taxpayers, and that the immigrant sponsor would not be providing the support that they promised to pay? Now, that is where we are. That is where we have been. We can argue on into the night and get the same result, I think, that we got last night and will get tomorrow—the issue being, regardless of the tragic nature of this situation, whatever it is, the sponsor pays.

Then if you are saying, "But if the sponsor cannot pay," we have already taken care of that. If the sponsor cannot pay—goes bankrupt, dies, or whatever—the Government of the United States of America, the taxpayers, will pick up the slack; but not until the sponsor has had the slack drawn out of them—not to the point so they cannot live or become public charges themselves, but that is what this is about.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, I wish to slightly, again, correct the RECORD. I know the Senator from Wyoming feels passionately about his position. His position just happens to be at variance with the facts.

I will cite and read this and ask if the Senator would disagree that these are the words in the United States Code 42, section 1382(j). This happens to be one of the three areas in which this Congress, at its election, has decided to specifically require that the income of the sponsor be added to that of the income of the legal alien for the purposes of determining eligibility for benefits. This happens to be the program of Supplemental Security Income. Here is what the law says:

> For the purposes of determining eligibility for and the amount of benefits under this subchapter for an individual who is an alien, the income and resources of any person who, as a sponsor of such individual's entry into the United States, executed an affidavit of support, or similar agreement, with respect to such individual, and the income and resources of the sponsor spouse shall be deemed to be the income and resources of the individual for a period of 3 years after the individual's entry into the United States.

That is quite clear. That is what the obligation of the sponsor was. There is similar clarity of language to be found under the provisions relating to Aid to Families with Dependent Children and food stamps. So if a person wanted to know, what is my legal obligation when I sign a sponsorship affidavit, they could go to the law books of the United States and read, with clarity, what those programs happen to be.

My friend from Wyoming, the reality is that this Congress, until tonight, has not chosen to place Medicaid as one of those programs for which such deeming is required. By failing to do so, and by doing so for these three distinct programs, I think a very clear implication has been created that we did not intend, that there be deeming of the sponsor's income for the purposes of eligibility for Medicaid.

I believe that the kinds of arguments that are made by responsible organizations, such as the Association of Public Hospitals, is why this Congress, up until tonight, has not deemed it appropriate to deem the income of the sponsor to the legal alien for the purposes of Medicaid.

If that argument was so persuasive in the past, why have we not added Medicaid to the list of responsibilities in the past?

Mr. President, I believe—the rhetoric aside—that the facts are that there is clarity as to what the sponsor's obligation is today. No. 2, that we are about to change that responsibility and make those changes retroactive, applying to literally hundreds of thousands of people. And, in the case of Medicaid, in my judgment, we are about to adopt legislation that would have a range of negative effects, from increasing the threat to the public health of communicable diseases, to endangering the already fragile financial status of some of our most important American hospitals, to increasing the likelihood that a poor, pregnant woman would choose abortion rather than deliver a full-term child.

And so, Mr. President, I believe that both the amendment offered by the Senator from Illinois and, immodestly, the amendment I have presented to the Senate represent the kind of public policy that is consistent with the reality of our history of the treatment of legal aliens—again, I underscore legal aliens—and should be continued by the adoption of the amendments that will be before the Senate shortly.

Thank you.

The PRESIDING OFFICER. Is there further debate?

MODIFICATION TO AMENDMENT NO. 3866

Mr. SIMPSON. Mr. President, I have a unanimous-consent request cleared with the minority.

Mr. President, I ask unanimous consent to make two minor technical corrections to two provisions of amendment No. 3866 to the bill, S. 1664.

The first correction corrects a printing error, by which a provision belonging in one section of the amendment No. 3866 was inadvertently placed in a different section.

The second correction is a minor change in the wording.

These two corrections have been cleared on both sides, and I ask unanimous consent that they be accepted.

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

The modification follows:

(1) Subsection (c) of section 201 of S. 1664, (relating to social security benefits), as amended by amendment no. 3866, is further amended to read as follows:

(c) SOCIAL SECURITY BENEFITS.—(1) Section 202 of the Social Security Act (42 U.S.C. 402) is amended by adding at the end the following new subsection:

"Limitation on Payments to Aliens

"(y)(1) Notwithstanding any other provision of law and except as provided in paragraph (2), no monthly benefit under this title shall be payable to any alien in the United States for any month during which such alien is not lawfully present in the United States as determined by the Attorney General.

"(2) Paragraph (1) shall not apply in any case where entitlement to such benefit is

based on an application filed before the date of the enactment of this subsection.".

(2) Nothing in this subsection (c) shall affect any obligation or liability of any individual or employer under title 21 of subtitle C of the Internal Revenue Code.

(3) No more than 18 months following enactment of this Act, the Comptroller General is directed to conduct and complete a study of whether, and to what extent, individuals who are not authorized to work in the United States are qualifying for Old Age, Survivors, and Disability Insurance (OASDI) benefits based on their earnings record.

(2) In section 214(b)(2) of the Housing and Community Development Act of 1980, as added by section 222 of S. 1664 (relating to prorating of financial assistance), as added by amendment no. 3866—

(A) strike "eligibility of one or more" and insert "ineligibility of one or more"; and

(B) strike "has not been affirmatively" and insert "has been affirmatively".

(3) In the last sentence of section 214(d)(1)(A) of the Housing and Community Development Act of 1980, as added by section 224 of S. 1664 (relating to verification of immigration status and eligibility for financial assistance), as added by amendment no. 3866, insert after "Housing and Urban Development" the following: "or the agency administering assistance covered by this section".

Mr. SIMPSON. Mr. President, I think we can go forward. We now, so that our colleagues will be aware, are in a position to vote on three amendments. We will likely do that in a short period of time.

The Feinstein amendment has been resolved.

There is a Simon amendment on disability deeming, a Simon amendment on retroactivity deeming, and the Graham amendment that we have just been debating with regard to 2-year deeming.

We have many of our colleagues who apparently are involved with the Olympic activities tonight passing on the torch, and some other activity.

There is a Gramm amendment on the Border Patrol and a Hutchison amendment on Border Patrol. Those will be accepted. There is a Robb amendment which will be accepted.

I inquire of the Senator from Florida if he has any further amendments. At one time there was a list. I wonder if there is any further amendment other than the pending amendment from the Senator from Florida.

Mr. GRAHAM. Yes. I have one other amendment that relates to the impact on State and local communities of unfunded mandates. I understand that there may be a desire to withhold further votes after the three that are currently stacked. If that is the case, I would be pleased to offer my next amendment tomorrow morning.

Mr. SIMPSON. Mr. President, I thank our remarkable staff. And Elizabeth certainly is one of the most remarkable. I think we can get a vote here in the next few minutes on three amendments which are 15 minutes in original time and 10 on the second two with a lock-in of tomorrow to take care of the rest of the amendments on this bill. We may proceed a bit tonight with the debate. That will be resolved shortly.

But the Senator from Florida has one rather sweeping amendment on which we will need further debate, will we not; more than 15 minutes perhaps?

Mr. GRAHAM. I anticipate it will require more than 15 minutes.

Mr. SIMPSON. I see. I would probably have that much on the other side.

Then I have one with Senator KENNEDY and share with my colleagues that I do have a place holder amendment. It is my intention, unless anyone responds to this, not at this time but tomorrow—you will recall that Senator MOYNIHAN placed an amendment at the time of the welfare bill with regard to the Social Security system having a study, that they should begin to do something in that agency to determine how to make that card more tamper resistant. It was cosponsored by Senator DOLE. It passed unanimously here. That would be an amendment that I have the ability to enter unless it is exceedingly contentious. I intend to do so because it certainly is one that is not strange to us, and the date of its original passage was—so that the staff may be aware of the measure, that was in the CONGRESSIONAL RECORD of September 8, 1995, page S12915, directing the Commissioner to develop—this is not something that is immediate—to be done in a year, and a study and a report will come back. There is nothing sinister with regard to it, but it is important to consider that.

We have an amendment of Senator ROBB, and apparently an objection to that amendment from that side of the aisle. I hope that might be resolved.

Let me go forward and accept the Gramm amendment, the Hutchison amendment, and if you have those, I will send them to the desk.

AMENDMENT NO. 3948 TO AMENDMENT NO. 3743

(Purpose: To express the sense of the Congress regarding the critical role of interior Border Patrol stations in the agency's enforcement mission)

On behalf of Senators GRAMM and HUTCHISON, I send an amendment to the desk.

The PRESIDING OFFICER. Without objection, the pending amendment will be set aside, and the clerk will report.

The bill clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON], for Mr. GRAMM, for himself, Mrs. HUTCHISON, and Mr. DOMENICI, proposes an amendment numbered 3948 to amendment No. 3743.

Mr. SIMPSON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the end, insert the following:

SEC. . FINDINGS RELATED TO THE ROLE OF INTERIOR BORDER PATROL STATIONS.

The Congress makes the following findings:

(1) The Immigration and Naturalization Service has drafted a preliminary plan for the removal of 200 Border Patrol agents from interior stations and the transfer of these agents to the Southwest border.

(2) The INS has stated that it intends to carry out this transfer without disrupting service and support to the communities in which interior stations are located.

(3) Briefings conducted by INS personnel in communities with interior Border Patrol stations have revealed that Border Patrol agents at interior stations, particularly those located in Southwest border States, perform valuable law enforcement functions that cannot be performed by other INS personnel.

(4) The transfer of 200 Border Patrol agents from interior stations to the Southwest border, which would not increase the total number of law enforcement personnel at INS, would cost the federal government approximately $12,000,000.

(5) The cost to the federal government of hiring new criminal investigators and other personnel for interior stations is likely to be greater than the cost of retaining Border Patrol agents at interior stations.

(6) The first recommendation of the report by the National Task Force on Immigration was to increase the number of Border Patrol agents at the interior stations.

(7) Therefore, it is the sense of the Congress that—

(A) the U.S. Border Patrol plays a key role in apprehending and deporting undocumented aliens throughout the United States;

(B) interior Border Patrol stations play a unique and critical role in the agency's enforcement mission and serve as an invaluable second line of defense in controlling illegal immigration and its penetration to the interior of our country;

(C) a permanent redeployment of Border Patrol agents from interior stations is not the most cost-effective way to meet enforcement needs along the Southwest border, and should only be done where new Border Patrol agents cannot practicably be assigned to meet enforcement needs along the Southwest border; and

(D) the INS should hire, train and assign new staff based on a strong Border Patrol presence both on the Southwest border and in interior stations that support border enforcement.

Mr. SIMPSON. This amendment has been cleared by both sides of the aisle. It has to do with the Border Patrol, and I urge its adoption.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. May I make an inquiry? Is this the amendment that says, in effect, that if Border Patrol personnel are relocated from the interior assignment to the assignment in a border position, that there has to be some coordination with the law enforcement agencies in the communities from which the personnel are being relocated?

Mr. SIMPSON. Mr. President, that would be the Hutchison amendment, not this amendment.

Mr. GRAHAM. That will be next, the Hutchison amendment?

Mr. SIMPSON. Yes. The one that is before the body is the sense of the Congress regarding the critical role of the

interior Border Patrol saying that it plays a key role in apprehending and deporting undocumented aliens and plays a critical role in the agency's enforcement mission and serves as a valuable second line of defense. Redeployment of Border Patrol agents at interior stations would not be cost-effective, and it is unnecessary in view of plans to nearly double the Border Patrol agents over the next 5 years, and INS should hire, train, and assign new staff based on a strong Border Patrol presence, both on the Southwest border and interior stations that support border enforcement.

Mr. GRAHAM. Mr. President, I am not going to object to either of these amendments, but I would like to raise the concern that currently there is a great deal of apprehension by interior law enforcement, that is, law enforcement that is not directly on the Nation's border, at the level of support being provided by INS and the Border Patrol.

I might state that I recently met with a group of law enforcement leaders from the central part of my State who stated that the common practice was that for the first 6 to 9 months of the year, if they had an illegal alien in detention, the Border Patrol or appropriate other INS officials would come and take custody of that individual. During the last 3 to 6 months of the fiscal year depending on the status of the budget of the INS, nobody would show up, and therefore the law enforcement officials were in the position of either making a judgment to release the individual or to continue them in detention at their expense and oftentimes on a questionable legal basis for continued detention.

I raise this phenomenon to say I hope that as the INS and the Border Patrol look at the redeployment of resources that this legislation is going to call for it is more than just a coordination with local law enforcement but, rather, that there is an affirmative effort made to assure that the capability to assume responsibility for and detain illegal aliens wherever they are determined in the United States is a high priority of the agencies.

I thank the Chair.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. SIMPSON. Mr. President, perhaps we could go ahead—since there was no objection to that amendment, I certainly withhold the other one because it does address what the Senator from Florida is saying. So I urge adoption of the pending amendment.

The PRESIDING OFFICER. Without objection the amendment is agreed to.

The amendment (No. 3948) was agreed to.

NUTRITION PROGRAMS AND IMMIGRATION

Mr. LEAHY. Mr. President, yesterday the Senate agreed to include an amendment which I submitted to the immigration bill. This amendment addresses the serious problem of adding to the administrative load of the already overburdened nutrition programs.

I met a couple of weeks ago with the Vermont School Food Service Association and they expressed tremendous concern over the additional workload this bill would add to their schools. Marlene Senecal, Connie Bellevance, and Sue Steinhurst of the American School Food Service Association urged me to take action as did Jo Busha, the State director of child nutrition programs.

For the school lunch and breakfast programs the ASFSA estimated that 14,881 new staff would have to be hired nationwide to handle the additional paperwork of verifying citizenship status for each child and working with the INS.

If the average salary of new staff is $25,000 to $30,000 a year we are talking about a huge burden for schools—at least $370 million per year.

The magnitude of this unfunded mandate imposed on schools could drive thousands of schools off the school lunch and breakfast program.

The National Conference of State Legislatures are also concerned that the bill, as written, places a huge unfunded mandate on local schools, local governments, and State agencies.

This bill also inflicts complex sponsor deeming procedures regarding legal immigrants in most Federal programs, including child nutrition programs, and WIC.

"Deeming", the practice of counting a sponsor's income as that of an immigrant's when calculating eligibility for Federal programs, would add unnecessary bureaucratic burdens on local and State administrators, schools, child care providers, and WIC clinics.

Those already burdened will be forced to spend more time filling out forms and less time providing for the poor and disadvantaged.

States like Vermont, with very few immigrants, will still be affected by the additional administrative burden.

Also, denying these benefits to pregnant immigrant women will lead to increased costs for taxpayers. It is estimated that for every dollar WIC spends on pregnant women $3 is saved in future Medicaid costs. We will end up paying far more through Medicaid to take care of children with low birth rates.

Regardless of the citizenship status of these mothers, their children will be U.S. citizens and eligible for means tested programs.

And, ironically, States with large native American populations who benefit from the food distribution program on Indian reservations would have been forced to verify the citizenship of their native American citizens.

The American School Food Service Association, the National Conference of State Legislatures, and others, are very concerned about the additional mandates and administrative duties that would have been imposed upon schools and States by the "deeming" requirements and the immigrant determination process as they affect child nutrition programs.

Most soup kitchen and food bank programs are run by volunteers. Requiring volunteers to do alien status checks and income verification with sponsoring families would be nearly impossible, but hiring staff for this purpose would use donated funds in ways not intended by those making the donations.

School lunch and breakfast programs are run by local schools who struggle with increasing administrative and overhead costs. Requiring them to closely monitor immigrant status and sponsor incomes would have burdened them greatly according to the American School Food Service Association. Fifty million children attend school each school day in the United States.

Similar arguments can be raised for other child nutrition programs such as the WIC Program.

My amendment also corrected what I believe are some drafting errors in the bill and makes additional improvements.

First, on page 180, ineligible aliens are disqualified from receiving public assistance except for certain programs such as those under the National School Lunch Act, the Child Nutrition Act, and other assistance such as soup kitchens if they are not means tested.

This language omits several programs such as the commodity supplemental food program which is an alternative to WIC in many areas of the country.

There is no reason I can think of for pregnant women getting WIC benefits to be treated differently from pregnant women getting the same benefits under the Commodity Supplemental Food Program which was the precursor to WIC, and is still operated in about 30 areas around the Nation.

Also, the soup kitchen program, the food bank program and the emergency food assistance program could be considered to be means tested so they would not be exempt either.

These programs provide emergency food assistance to families and I doubt if anyone intended to treat them differently from the nutrition programs already exempted.

HARKIN-BYRD-DASCHLE AMENDMENT

Mr. BYRD. Mr. President, I am pleased to have joined with my colleagues, Senators HARKIN and DASCHLE, in sponsoring an amendment to this bill which requires the Attorney General to ensure that every State has at least 10 full-time active duty agents from the Immigration and Naturalization Service. Currently, West Virginia

is one of only three States that does not have a permanent INS presence. Our amendment rectifies that problem.

As the debate on this bill has shown, the Senate is determined to strengthen our current laws with respect to immigration, particularly illegal immigration. But whatever we pass, whatever new laws we fashion to combat the serious problem of illegal immigration, they will mean little if we are not also willing to provide the tools and support to enforce those laws.

Mr. President, In America today, illegal immigration is not simply a California problem, or a Texas problem, or a New York problem. On the contrary, it is a national problem that impacts on every one of the 50 States. Obviously, my State of West Virginia does not suffer the consequences associated with illegal immigration to the same degree as do other States. But I believe that if we are to have a coherent national policy, a policy based on stopping the hiring of illegal aliens and swiftly deporting those who are here illegally, then every State must be brought into our enforcement efforts. And that means providing every State, not just some States, with the law enforcement tools they need.

Clearly, every State needs a minimum INS presence to meet basic needs. By providing each State with its own INS office, the Justice Department will, I believe, save taxpayer dollars by reducing not only travel time for those agents who must now come from other areas, but also jail time per illegal alien, since a permanent INS presence would substantially speed up deportation proceedings.

Moreover, there is a growing need to assist legal immigrants and to speed up document processing. How are employers—who will be mandated under this bill to aggressively work to deter the hiring of illegal aliens—going to receive the administrative help they need without the assistance of local INS personnel?

Mr. President, this amendment makes sense, good common sense. It is a modest proposal that I believe will send a clear message that we are serious in our commitment to enforcing our immigration laws. Consequently, I am pleased to have sponsored the amendment, and equally pleased that the Senate has included it in the current bill.

Mr. SIMPSON. And now I have a unanimous-consent request to propose.

I ask unanimous consent that votes occur on or in relation to the following amendments at 7:15 p.m., with 2 minutes equally divided for debate between each vote: Simon amendment No. 3810, Simon amendment No. 3813, Graham amendment No. 3764.

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

Mr. SIMPSON. Now, with that having been accomplished, we will I think be able to accommodate you, all of our colleagues, by finding out tonight and wrapping up everything so that we will finish this measure tomorrow. That will be I think attainable from what I see at the table, and I think my colleague from Massachusetts will agree. And we will then proceed at 7:15.

Mr. President, I ask unanimous consent that 60 minutes of Senator DASCHLE's time be allotted for Senator GRAHAM and 60 minutes of Senator DOLE's time be allotted to myself.

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

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. If I may ask the Senator from Wyoming, as I understand it, that would leave the Graham, Chafee and SIMPSON amendments remaining for consideration on tomorrow. Is that the Senator's understanding? That would be at least my understanding. If we are missing something, some Member out there has a measure that we have not mentioned, we hope at the time of the vote they will mention it. We are not urging other Senators to add more to the list. But that is at least my understanding. I will be glad to hear from others if that is not correct.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. I might have more than one amendment tomorrow.

Mr. SIMPSON. Mr. President, we can all have more than one amendment. I hope the Senator from Florida will assist us in buttoning this down. If there is another amendment or two other amendments, let us button it down and get it to rest. We do have a Robb amendment, I say to the Senator from Massachusetts, which has an objection on that side of the aisle.

Mr. KENNEDY. I understand the Robb amendment has been withdrawn.

Mr. SIMPSON. Withdrawn?

Mr. KENNEDY. Withdrawn.

Mr. SIMPSON. There is a Hutchison amendment which has been questioned by the Senator from Florida. There is a Simpson-Kennedy amendment with regard to verification. And then there is a place holder amendment which I intend to present, the Moynihan-Dole amendment, which passed unanimously in September, to allow the Social Security Administration to begin, nothing more, a study to determine how in the future we are to make that system more tamper resistant. It is not anything that goes into place. It is a report. And those who were involved at the time will recall.

That is what I have. That is the extent of it.

Mr. KENNEDY. Since we have another moment then, is it the intention, after we dispose of this, to at least make a request that only those amendments which have been outlined now be in order for tomorrow? And that it would at least be our attempt during the evening time to try and get some time understandings with those——

Mr. SIMPSON. That is being done at the present time, all of that.

Mr. KENNEDY. The leader will be out here, I am sure, shortly, but we would start then early and try and move this through in the course of the day.

Mr. SIMPSON. This matter will be concluded. The staffs on both sides of the aisle are working to present that to us in a few moments, to tighten and button down a complete agreement on time agreements and unanimous consent.

Mr. KENNEDY. The leader will outline the plan for the rest of the evening. Is it the Senator's understanding that those three amendments will be the final voting amendments for the evening?

Mr. SIMPSON. I think that would be the case. The leader is not here, but I think conjecture would have it be so.

Mr. KENNEDY. We will wait on that issue until the leader makes a final definitive decision. I thank the Chair.

Mr. SIMPSON. I thank my colleagues.

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. SIMPSON. 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. SIMPSON. Mr. President, let me ask unanimous consent, in the voting to take place at 7:15, that the first vote at 7:15 be 15 minutes and the subsequent votes 10 minutes each.

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

Mr. SIMPSON. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

VOTE ON AMENDMENT 3810

The PRESIDING OFFICER. The question is on agreeing to the amendment, No. 3810. The clerk will call the roll.

The assistant legislative clerk called the roll.

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

The result was announced, yeas 30, nays 69, as follows:

[Rollcall Vote No. 102 Leg.]

YEAS—30

Akaka	Dodd	Hollings
Breaux	Dorgan	Inouye
Bumpers	Feingold	Jeffords
Conrad	Graham	Kennedy
Daschle	Harkin	Kerrey

Kerry	Mikulski	Rockefeller
Lautenberg	Moseley-Braun	Sarbanes
Leahy	Moynihan	Simon
Levin	Murray	Wellstone
Lieberman	Pell	Wyden

NAYS—69

Abraham	Domenici	Lugar
Ashcroft	Exon	Mack
Baucus	Faircloth	McCain
Bennett	Feinstein	McConnell
Biden	Ford	Murkowski
Bingaman	Frist	Nickles
Bond	Glenn	Nunn
Boxer	Gorton	Pressler
Bradley	Gramm	Pryor
Brown	Grams	Reid
Bryan	Grassley	Robb
Burns	Gregg	Roth
Byrd	Hatch	Santorum
Campbell	Hatfield	Shelby
Chafee	Heflin	Simpson
Coats	Helms	Smith
Cochran	Hutchison	Snowe
Cohen	Inhofe	Specter
Coverdell	Johnston	Stevens
Craig	Kempthorne	Thomas
D'Amato	Kohl	Thompson
DeWine	Kyl	Thurmond
Dole	Lott	Warner

NOT VOTING—1

Kassebaum

The amendment (No. 3810) was rejected.

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

Mr. KEMPTHORNE. Mr. President, I move to lay the motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3813

The PRESIDING OFFICER. The question before the Senate now is Simon amendment No. 3813. There are 2 minutes to be divided equally between the sides.

Mr. SIMON. Mr. President, this is a relatively simple amendment. If anything, this area is simple. If you are a sponsor of someone coming in, you sign up for 3 years. The Simpson bill says we go to 5 years. I am for that prospectively. I do not believe it is right for Uncle Sam to rewrite the contract and say, "You signed up for 3 years, now you are responsible for 5 years." That is what happens without my amendment.

I favor the 5 years prospectively, but I think if Uncle Sam signs a deal, Uncle Sam should be responsible. He should not change a contract. That is true for a used car dealer. It certainly ought to be true for Uncle Sam.

Mr. SIMPSON. It is true that individuals already in the country will not be the beneficiaries of new legally enforceable sponsor agreements that will be required after enactment. It is also true that some of those, those who have been here less than 5 years, will nevertheless be subject to at least a portion of the minimum 5-year deeming period.

I remind my colleagues, however, that no immigrant is admitted to the United States if the immigrant does not provide adequate assurance to the consular officer and commissioner and the immigration inspector that he or she is not likely to become a public charge. In effect, that is a promise to the American people that they will not become a burden to the taxpayers, under any circumstance.

Mr. SIMON. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER (Mr. SANTORUM). The question occurs on agreeing to amendment No. 3813. The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

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

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

The result was announced—yeas 36, nays 63, as follows:

[Rollcall Vote No. 103 Leg.]

YEAS—36

Akaka	Heflin	Mikulski
Boxer	Hollings	Moseley-Braun
Breaux	Inouye	Moynihan
Chafee	Johnston	Murray
Conrad	Kennedy	Pell
Daschle	Kerrey	Pryor
DeWine	Kerry	Rockefeller
Dodd	Lautenberg	Sarbanes
Feinstein	Leahy	Simon
Glenn	Levin	Specter
Graham	Lieberman	Wellstone
Hatfield	Mack	Wyden

NAYS—63

Abraham	Domenici	Lott
Ashcroft	Dorgan	Lugar
Baucus	Exon	McCain
Bennett	Faircloth	McConnell
Biden	Feingold	Murkowski
Bingaman	Ford	Nickles
Bond	Frist	Nunn
Bradley	Gorton	Pressler
Brown	Gramm	Reid
Bryan	Grams	Robb
Bumpers	Grassley	Roth
Burns	Gregg	Santorum
Byrd	Harkin	Shelby
Campbell	Hatch	Simpson
Coats	Helms	Smith
Cochran	Hutchison	Snowe
Cohen	Inhofe	Stevens
Coverdell	Jeffords	Thomas
Craig	Kempthorne	Thompson
D'Amato	Kohl	Thurmond
Dole	Kyl	Warner

NOT VOTING—1

Kassebaum

So the amendment (No. 3813) was rejected.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3764

The PRESIDING OFFICER (Mr. SANTORUM). Under the previous order, the question occurs on amendment No. 3764 offered by the Senator from Florida, Senator GRAHAM.

Mr. KENNEDY. Mr. President, the Senator would like to speak.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GRAHAM. Mr. President, the amendment, which will next be voted on, would do three things: One, it will say that the application of deeming to Medicaid will be only for a period of 2 years. Second, it will exempt emergency care and public health services. Third, it will apply prospectively.

Mr. President, this amendment is supported by groups, which range from the Catholic Conference to the League of Cities. They support it for a set of common reasons. They understand that the public health will be at risk if we deny Medicaid to this population of legal aliens, and that there will be a massive cost shift to the communities in which hospitals, which are obligated to provide medical services that will now no longer be reimbursed in part by Medicaid, are located. Catholic Charities is concerned about an increase in abortion, as poor pregnant women would find it economically necessary to seek an abortion rather than pay the cost of a delivery.

For all of those reasons, I urge adoption of this amendment.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. SIMPSON. Mr. President, this amendment, like so many others before, would reduce the sponsor's responsibility for their immigrant relatives they bring to the United States on the basis that they will not become a public charge. This amendment would nearly eliminate deeming for Medicaid, the most costly and expensive of all of the welfare programs. Medicaid deeming would be limited to 2 years.

The sponsors who promised to provide the needed assistance should pay the health care assistance, as long as they have the assets to do so. Otherwise, the taxpayers pick up the tab.

The PRESIDING OFFICER. Does the Senator request the yeas and nays?

Mr. SIMPSON. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The clerk will call the roll.

The legislative clerk called the roll.

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

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

The result was announced—yeas 22, nays 77, as follows:

[Rollcall Vote No. 104 Leg.]

YEAS—22

Akaka	Feingold	Hollings
Boxer	Ford	Kennedy
Daschle	Graham	Kohl
Dodd	Hatfield	Lautenberg

Lieberman	Murray	Simon
Mikulski	Pell	Wyden
Moseley-Braun	Rockefeller	
Moynihan	Sarbanes	

NAYS—77

Abraham	Dorgan	Lott
Ashcroft	Exon	Lugar
Baucus	Faircloth	Mack
Bennett	Feinstein	McCain
Biden	Frist	McConnell
Bingaman	Glenn	Murkowski
Bond	Gorton	Nickles
Bradley	Gramm	Nunn
Breaux	Grams	Pressler
Brown	Grassley	Pryor
Bryan	Gregg	Reid
Bumpers	Harkin	Robb
Burns	Hatch	Roth
Byrd	Heflin	Santorum
Campbell	Helms	Shelby
Chafee	Hutchison	Simpson
Coats	Inhofe	Smith
Cochran	Inouye	Snowe
Cohen	Jeffords	Specter
Conrad	Johnston	Stevens
Coverdell	Kempthorne	Thomas
Craig	Kerrey	Thompson
D'Amato	Kerry	Thurmond
DeWine	Kyl	Warner
Dole	Leahy	Wellstone
Domenici	Levin	

NOT VOTING—1

Kassebaum

The amendment (No. 3764) was rejected.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader.

UNANIMOUS-CONSENT AGREEMENT

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate resumes S. 1664 on Thursday, May 2, the following amendments be the only amendments remaining in order: Senator GRAHAM of Florida, Senator GRAHAM of Florida, Senator CHAFEE, Senator SIMPSON, and Senator DEWINE.

I further ask that following the debate on the above-listed amendments, the Senate proceed to vote on in relation to those amendments, with the votes occurring in the order in which they were debated, and there be 2 minutes equally divided for debate between each vote.

I further ask that following the disposition of the amendments or points of order, the Senate proceed for 30 minutes of debate only to be equally divided between Senator SIMPSON and Senator KENNEDY, and following that time the Senate proceed to vote on Simpson Amendment No. 3743, as amended, to be followed by a cloture vote on the bill; and if cloture is invoked, the Senate proceed immediately to advance S. 1644 to third reading and proceed to the House companion bill, H.R. 2022; that all after the enacting clause be stricken, the text of S. 1644 be inserted, the bill be advanced to third reading and final passage occur, all without further action or debate.

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

Mr. KENNEDY. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Senator BYRD evidently notified the leadership that he wanted to be able to address the Senate before the final vote on the bill.

Mr. DOLE. Mr. President, I also ask that Senator BYRD have whatever time he wishes under his control prior to the vote.

Mr. GRAHAM. Mr. President, reserving the right to object, it is my intention to offer a point of order prior to the vote on the Dole-Simpson amendment. Is that provided for?

Mr. DOLE. Yes. In fact, I said, "or points of order."

Mr. GRAHAM. All right.

Mr. DOLE. There could be more than one, so we did not designate any names.

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

Mr. DOLE. I might also indicate to my colleagues and perhaps the managers that between 10 and 12 they could sort of stack the votes, whatever works out. We could have a series of votes at noon. Otherwise, whatever the managers desire.

PRESIDIO PROPERTIES ADMINISTRATION ACT

The Senate resumed consideration of the bill.

Mr. DOLE. Mr. President, I now ask unanimous consent that the Senate turn to the consideration of Calendar No. 300, H.R. 1296, regarding Presidio properties, and the bill be considered in the following fashion:

That amendments numbered 3571 and 3572 be withdrawn and all other amendments and motions other than the Murkowski substitute and the committee substitute be withdrawn, and the committee-reported substitute be modified to reflect the adoption of the Murkowski substitute, as modified, to reflect the deletion of title XVI, Sterling Forest, and title XX, Utah Wilderness, and containing the text of amendment numbered 3572, with Lost Creek land exchange modified to reflect the text I now send to the desk, and the committee substitute, as amended, be immediately agreed to, the bill be advanced to third reading and passed, and the motion to reconsider be laid upon the table, all without any intervening action or debate.

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

The modification to the Murkowski substitute amendment No. 3564 is as follows:

Delete title XVI and title XX of amendment No. 3564 and insert the following new title:

TITLE I—MISCELLANEOUS

SECTION 101. LOST CREEK LAND EXCHANGE.

The Secretary of Agriculture shall submit a plan to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the House of Representatives detailing the terms and conditions for the exchange of certain lands and interests in land owned by the R-Y Timber, Inc., its successors and assigns or affiliates located in the Lost Creek area and other areas of the Deerlodge National Forest, Montana.

TITLE —VANCOUVER NATIONAL HISTORIC RESERVE

SEC. 01. VANCOUVER NATIONAL HISTORIC RESERVE.

(a) ESTABLISHMENT.—There is established the Vancouver National Historic Reserve in the State of Washington (referred to in this section as the "Reserve", consisting of the area described in the report entitled "Vancouver National Historic Reserve Feasibility Study and Environmental Assessment" published by the Vancouver Historical Study Commission and dated April 1993 as authorized by Public Law 101-523 (referred to in this section as the Vancouver Historic Reserve Report").

(b) ADMINISTRATION.—The Reserve shall be administered in accordance with;

(1) the Vancouver Historic Reserve Report (including the specific findings and recommendations contained in the report); and

(2) the Memorandum of Agreement between the Secretary of Interior, acting through the Director of the National Park Service, and the City of Vancouver, Washington, dated November 14, 1994.

(c) NO LIMITATION ON FAA AUTHORITY.—The establishment of the Reserve shall not limit;

(1) the authority of the Federal Aviation Administration over air traffic control, or aviation activities at Pearson Airpark; or

(2) limit operations and airspace in the vicinity of Portland International Airport.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

The bill (H.R. 1296), as amended, was passed.

Mr. MURKOWSKI. Mr. President, I strongly support the passage of this important environmental legislation. Taken together, these measures represent the most significant and important conservation package to come before the Senate in over a decade. They will preserve and protect for future generations important natural resource and historic treasures of this country as well as providing critically needed management authorities.

For the most part, the measures contained in this package have languished on the Senate floor due to holds and delaying tactics from Senators. I want to congratulate the majority leader, Senator DOLE, for his successful efforts to end the seemingly endless parade of obstacles to the passage of this legislation. Had we less rhetoric and a modicum of rational assistance from the administration, we might have accomplished this far earlier. We all observed the administration's game plan and the willingness of the media to cater to it, including attaching the minimum wage package to the parks legislation.

Mr. President. I will not go into lengthy detail on the various measures that are finally being released, but I do

want to highlight some of them at this time.

Title I of this measure deals with the Presidio of San Francisco. By itself, this title is an important and critically needed measure that should have been enacted months ago. With the closure of the Presidio, the National Park Service was facing an almost impossible drain on its limited funds to maintain a unique and important resource. The legislation establishes a mechanism whereby the Presidio will be preserved and maintained for future generations, the National Park Service will be able to focus on interpretation and the visitor experience, and the site will be self-supporting. I appreciate the willingness of the two Senators from California to work with me and the committee in crafting this novel approach.

Title II contains 25 miscellaneous amendments and boundary changes. Some of these measures were reported from the committee over a year ago. They affect areas from the Atlantic to the Pacific and provide essential authorities that the administration needs for proper and effective management.

The remaining 34 titles include the establishment of new areas, such as the Tall Grass Prairie National Preserve, which will preserve one of the last portions of the prairie that symbolized the West. Both Senator DOLE and Senator KASSEBAUM deserve credit for the efforts to secure passage of that measure, but it too had been held up by the other side. Among those titles is the Snowbasin Land Exchange, which is critical for the Winter Olympics. Apparently the administration is only concerned with getting through November and was prepared to let that measure languish with the other measures. The title also includes the Selma to Montgomery National Historic Trail, an important measure that will commemorate a significant part of the civil rights movement.

The Taos Pueblo Land Transfer title would transfer 764 acres of land within the Wheeler Peak Wilderness in New Mexico to the Secretary of the Interior to be held in trust for Pueblo de Taos Indians. This tract is surrounded on three sides by Pueblo lands and is an important area for use in their religious ceremonies. The Pueblo would use the lands for traditional purposes, but the lands would otherwise be managed to protect its wilderness character. Both Senator DOMENICI and Senator DOLE were instrumental in moving that measure and I appreciate their support.

The Rocky Mountain National Visitor Center, sponsored by Senators CAMPBELL and BROWN addresses a critical need at Rocky Mountain National Park through a creative public-private partnership to provide a visitor center for the park. Rocky Mountain National Park is the most popular tourist attraction in the State of Colorado, drawing over 3 million visitors every year, but has not had a visitor center.

Mr. President. All these measures are important and all should have passed on their own merits long ago. These measures are important to the environment, essential to the National Park System, and will be of lasting benefit to future generations. As I stated earlier, they represent the single largest conservation package to come before the Senate in over a decade.

This Senator at least wants to express his gratitude to the majority leader, Senator DOLE, for being able to free at least this group of hostages from the political games. He will probably not receive the credit he is due, but if we can enact the Presidio and the other measures included in this package, it will be as a result of his efforts and his leadership and I thank him.

Mr. DOLE. Mr. President, the legislation before us today contains several issues of priority for several States. Today, we are prepared to go forward with a number of items concerning parks and public lands issues across this country and I am pleased to support this package.

I would like to thank Senator MURKOWSKI for including provisions critical to Kansas and California. I am pleased that the Presidio legislation is included in this package. This critical provision will allow for the innovative preservation of the Presidio, one of our Nation's true treasures. This bill also includes the establishment of the Tall Grass Prairie National Preserve in Kansas.

More so than any other legislation, this package represents the interests and priorities of individual States. States like Kansas and California want these initiatives accomplished—not battered about by outsiders and Washington bureaucrats who think they know best. National forests; land conveyances, visitor centers, land exchanges and historic parks—these are all issues of importance to the various interest involved and should no longer be delayed. I urge the President to support this package.

PRESIDIO

Mr. President, this bill provides for the administration of the Presidio in California. I am pleased to join with my colleagues to pass this legislation which will provide for an exciting future for the Presidio.

The Presidio is a treasured resource of this country. The legislation before us today provides for national recognition of the Presidio. I believe Senator MURKOWKI has sought a balance between the interests of the trust charged with preserving this resource and the interests of the National Park Service. In my view, the Presidio trust will ensure an important partnership between the local community and this property.

This trust, established within the Department of the Interior, will manage the renovation and leasing of the specific Presidio properties. The revenues generated from these leases will then offset the costs of maintaining the Presidio as a national park, reducing the need for Federal funding. Through this innovative approach to managing one of our Nation's finest landmarks, we can ensure the preservation of the Presidio while also providing significant opportunities to the local community.

The unique history of the Presidio's operation as a military post dates back to 1776. Its designation as a national historic landmark in 1962 recognized the importance of the post in many military operations. After the Army closed the post, the National Park Service took over the Presidio. When comparing our limited resources against the number of national parks and historic sites, it is apparent that we must find new ways to manage and preserve such important resources.

ESTABLISHMENT OF THE TALL GRASS PRAIRIE NATIONAL PRESERVE IN KANSAS

For several years there have been attempts to create a National Tall Grass Prairie Preserve on nearly 11,000 acres in Kansas, known as the Z-Bar Ranch. Proposals for this preserve have faced valid opposition from concerned citizens and landowners in the area. Any involvement by the Federal Government generates concerns, but this legislation provides for involvement by the Federal Government.

Senator KASSEBAUM has worked to bring all parties together to discuss the establishment of a prairie park and strike a balance with this legislation. I have always supported Senator KASSEBAUM's efforts to encourage private participation in the establishment of a national prairie preserve in Kansas.

The Z-Bar Ranch is currently owned by a private trust, but establishing Z-Bar as a national preserve requires legislation. Under this legislation, the Federal Government is limited to ownership of a maximum of 180 acres of the Z-Bar Ranch. The Federal Government would be authorized to purchase or accept a donation of this portion of land.

The current owners of the ranch have offered to donate the core area of land to the Federal Government. This will minimize the cost of establishing the preserve. In my view, a compromise which includes minimal Federal ownership and continued local input sets this proposal apart from other efforts.

The Tall Grass Prairie is a vital part of the natural environment and heritage of the high plains. Those who have visited the Flint Hills of Kansas appreciate the beauty of this prairie. Senator KASSEBAUM's work in creating a partnership between public and private sectors will help preserve the history of the Midwest. With a private/public partnership, we can officially recognize the Tall Grass Prairie while limiting

the involvement of the Federal Government. I commend Senator KASSEBAUM for her hard work on this innovative legislation and her efforts to recognize this important Kansas landmark.

I again commend Senator MURKOWSKI and Senator CAMPBELL for their work on this important piece of legislation. I know that earlier the administration expressed some concerns about the Presidio legislation, I think in reviewing the bill before us they will find their concerns were addressed by the committee. I commend the community of San Francisco and people of California for recognizing this important resource and working to develop an approach that will allow generations to come to enjoy this historic and unique landmark.

Mr. MCCAIN. Mr. President, I want to thank Senator MURKOWSKI for all of his hard work on the Energy Committee and on the many difficult public lands issues he must deal with.

As my colleagues are aware, I have had serious concerns about legislation requiring rather than authorizing agency heads to acquire land and to construct particular buildings, thereby incurring costs to the Federal taxpayer.

Usually, such Federal acquisition and construction activities are authorized by Congress. Once authorized, administrative procedures are in place to ensure that the project is necessary and is undertaken in the order of its relative priority. The final decision of whether to go forward is traditionally left to the discretion of the Secretary based on merit and priorities.

When the Presidio bill first came to the floor, I expressed my concerns about several titles containing acquisition and construction mandates. In order not to hold up the bill unnecessarily, I canvassed the affected agencies to determine if they opposed any of these mandates. The purpose of this inquiry was so that I did not have to insist on changing bill mandates to authorizations if the administration intended to undertake the activity even if not congressionally mandated.

The Department of the Interior objected to one requirement dealing with a land acquisition in the Corinth, MS. The bill requires the National Park Service to acquire land in the vicinity of the Corinth battlefield, and requires the Secretary to construct, operate, and maintain an interpretive center on the property.

I had intended to offer an amendment to change the acquisition mandate to a traditional authorization so that the applicable needs assessment and prioritization procedures could be applied, but I have been assured by the chairman of the Senate Energy Committee that he will address my concern in the conference committee.

Mr. MURKOWSKI. Senator MCCAIN is correct. I understand his concern about the mandate on the Corinth battlefield title, and I will address it in the conference report.

Mr. MCCAIN. I thank the Senator. I would also like to add that the Senators from Mississippi have made a strong argument that the visitor center is necessary. I trust and expect that the Secretary will fully consider their views in administering the authorization.

Furthermore, I know it is the intent of the Senator from Mississippi to subject the authorization to appropriations.

Mr. LOTT. Senator MCCAIN is correct. It has always been my intention that the acquisition and construction be subject to appropriations, and that this project be undertaken in the order of its relative priority.

Mr. CAMPBELL. Mr. President, I would like to congratulate all of the Members and their staff who have worked so hard on collaborating on this omnibus package. In particular, I would like to thank my good friend, the majority leader from Kansas, for his persistent efforts to shepherd this bill into law. He has done a great service for many of us, and the bill's final passage is a testament to his strength and tenacity as a leader.

I would like to say a few words about a couple of the bills, that have specific meaning to me.

The Presidio bill, the flagship of this package, offers a unique, creative, and innovative approach to provide for the long-term protection and preservation of one of our Nation's greatest cultural, historical, and natural treasures. Many people have been waiting a long time for this bill. I know the Senators from California and Congresswoman PELOSI have put a great deal of time and energy into this legislation, as have the staff from the Energy Committee and personal offices. In our efforts to try to reach consensus on all levels, we have managed to craft a bill that will provide enough balance and flexibility to incorporate all points of view.

Mr. President, I also would like to discuss several bills within the omnibus package that are of particular interest to me and my home State of Colorado. These bills deserve distinction in their own right, being crafted with years of collaborative hard work and dedication. I would like to make brief comments on each of them, and once again send my congratulations to all those who have worked so hard on these important bills.

The Rocky Mountain National Park Visitor Center title provides the authority for the National Park Service to use appropriated and donated funds to operate a visitor center outside of the boundary of Rocky Mountain National Park. The Park Service has been in need of a visitor's center at the eastern entrance to Rocky for many years now, but due to fiscal constraints, they have been unable to get adequate appropriations. Thanks to a generous private-public partnership proposal, the Park Service has an opportunity to provide a visitor service outside of the park boundaries. This legislation simply allows the Park Service to enter into this type of partnership with private individuals. I would particularly like to applaud the individuals in Estes Park, whose innovative work, generous contributions, and persevering dedication have made this idea a reality.

This type of private-public opportunity is exactly what the Federal Government should be taking advantage of these days, and I am encouraged by the proposal for this visitor center that has been put forth. This center would help the thousands of visitors that come to the park each year, and would save the Government millions in taxpayer dollars.

The Cache La Poudre title, sponsored by the distinguished senior Senator from Colorado, designates approximately 35,000 acres between the cities of Fort Collins and Greeley, CO, as the Cache La Poudre River National Water Heritage Area. The headwaters of the streams that flow into this river tell the story of water development and river basin management in the Westward expansion of the United States. This historical area holds a special meaning for Coloradans, and we feel that it deserves national recognition as a heritage area. In addition to the designation, this title helps establish a local commission to develop and implement a long-term management plan for the area.

This bill holds great distinction for me, for I have been working on it for many years with my good friend and colleague, Senator BROWN from Colorado. The good Senator has been working hard to get this bill enacted into law, and each revision of the bill has been a more worthy product than the last. There are always a couple of bills that hold special meaning for us personally, and the Cache La Poudre is a good example of one that the senior Senator from Colorado has a particular interest in. It would be a great honor to have this bill enacted into law before my friend retires this year.

The Giplin County Land Exchange title represents the best type of land exchange possible. It is a simple, straightforward land exchange bill that will convey 300 acres of Bureau of Land Management lands in Gilpin County, CO, for the acquisition of 8,733 acres of equal value within the State.

The bill seeks to address a site-specific land management problem that is a result of the scattered mining claims of the 1800's. The Federal selected lands for conveyance are contained within 133 scattered parcels near the communities of Black Hawk and Central City, most of which are less than one acre in

size. These lands would be exchanged to the cities of Black Hawk and Central City to help alleviate a shortage of residential lots.

In return for these selected lands, the Federal Government will receive approximately 8,773 acres of offered lands, which are anticipated to be of approximately equal dollar value to the selected lands. These lands are in three separate locations, described as follows:

Circle C Church Camp: This 40-acre parcel is located within Rocky Mountain National Park along its eastern boundaries, and lies approximately 5 miles south of the well known community of Estes Park. This acquisition can provide additional public camping sites and address a current shortage of employee housing in the popular national park.

Quilan Ranches tract: This 3,993-acre parcel is located in Conejos County, in southern Colorado. This land has excellent elk winter range and other wildlife habitat, and borders State lands, which are managed for wildlife protection.

Bonham Ranch—Cucharas Canyon: This 4,700-acre ranch will augment existing BLM land holdings in the beautiful Cucharas Canyon, identified as an AREA of Critical Environmental Concern [ACEC]. This ranch has superb wildlife habitat, winter range, riparian areas, raptor nesting and fledgling areas, as well as numerous riparian areas, rator nesting and fledgling areas.

Any equalization funds remaining from this exchange will be dedicated to the purchase of land and water rights, pursuant to Colorado water law, for the Blanca Wetlands Management Area, near Alamosa, CO.

It is clear that the merits of this bill are numerous. Moreover, the bill is noncontroversial, and while it may not have dramatic consequence for people outside of the State of Colorado, it represents a tremendous opportunity for citizens in my State. Due to the time-sensitive and fragile nature of the various components of this bill, I am delighted that the Senate has acted as expeditiously as possible.

In addition, for the past 5 years now, I have been supporting legislation that seeks to bring some common sense and reason to the administration of Forest Service ski area permits. The ski fees title will take the most convoluted, subjective, and bizarre formula for calculating ski fees, developed by the Forest Service, and replace it with a simple, user friendly formula in which the ski areas will be able to figure out their fees with very little effort.

The current formula utilized by the Forest Service is encompassed in 40 pages and contains hundreds of definitions, rulings, and policies. It is simply Government bureaucracy at its worst. For the ski industry, this formula is a monstrous burden, and with the expansion and diversification of many ski resorts, this burden grows increasingly more complex each year. I am pleased that this title will offer some clarity and common sense to the ski resorts of my home State.

Mr. President, the Grand Lake Cemetery title simply directs the Secretary of the Interior to authorize a permit for the town of Grand Lake, CO, to permanently maintain their 5-acre cemetery, which happens to fall within the boundaries of Rocky Mountain National Park. This cemetery has been in use by the town since 1892, and continues to carry strong emotional and sentimental attachments for the residents.

Currently, the cemetery is operated under a temporary special use permit, which is set to expire this year. By granting permanent maintenance authority to the town, this title creates lasting stability to this longstanding issue. It is completely noncontroversial, and widely supported by both the community and the Park Service.

Finally, Mr. President, the last title in this package that I would like to address is another bill that holds special meaning for me. I have been working on this legislation for many years now, and I am pleased to see that this title has seven different cosponsors from both sides of the aisle. The Old Spanish Trail title will designate the Old Spanish Trail and the Northern Branch of the Old Spanish Trail for study for potential addition to the National Trails System as a National Historic Trail.

The Old Spanish Trail has rightly been called "the longest, crookedest, most arduous pack mule route in the history of America." It is that, and more. The Old Spanish Trail tells a dramatic story that spans two centuries of recorded history and originated in prehistoric times. This trail witnessed use by Ute and Navajo Indians, Spaniards, Mexicans, and American trappers, explorers, and settlers, including the Mormons. Its heyday spans the development of the West, from the native on foot to the mounted Spaniard to the coming of the transcontinental railroad. Few routes, if any, pass through as much relatively pristine country. It is time to recognize and celebrate our common heritage, and I am thrilled to have this included in the package passed.

These bills may not mean a whole lot to many Members in this Chamber, but they mean a great deal to my constituents and me. I again commend my colleagues for their hard work, and strongly support passage of this important legislative package this evening.

Mrs. BOXER. Mr. President, I would like to ask the distinguished chairman of the committee a question regarding the duties and authorities of the trust as outlined in section 104(b) of the Presidio trust legislation.

Section 104(b) provides that "Federal laws and regulations governing procurement by Federal Agencies shall not apply to the trust." However, the same section of the bill states that the Presidio trust "shall establish and promulgate procedures applicable to the trust's procurement of goods and services" that just "conform to laws and regulations related to Federal Government contracts governing working conditions and wage scales including the provisions of 40 U.S.C. Sec. 276a–276a6 (Davis Bacon Act)."

Can I ask the chairman if this language means that contractors and subcontractors who contract to do work at the Presidio on behalf of the trust will be required to comply with prevailing wage provisions in all construction contracts and subcontracts?

Mr. MURKOWSKI. I would like to tell my friend, Senator BOXER, that yes, she is correct.

Mr. BENNETT. Mr. President, I rise to express my strong support to the efforts of Chairman MURKOWSKI to move this package of bills. I would like to add my thoughts as well, as to what some have called the demise of the Utah wilderness bill.

I am disappointed that the Senate failed to break the filibuster of the Utah wilderness bill. I would have liked to have had the Senate continue to debate the bill because I believe that, given the opportunity, we could have convinced those of my colleagues who had doubts about this bill to support it. I am also a realist and I understand that in this Chamber, if one does not have the votes to invoke cloture, it is difficult to move any piece of legislation.

I want my constituents, the people of Utah, to know of my appreciation for their tremendous support over the last 14 months. Despite what a small, but very vocal minority would have the Senate believe, the people of Utah wanted a sensible, balanced wilderness bill. S. 884 achieved that balanced approach and it was supported widely across the State of Utah. I believe that a letter in support of our bill signed by over 300 elected officials in Utah is a good indicator that it has strong public support. A rigorous public comment process, involving thousands of written comments, personal testimony, and over 40 public hearings assisted the Utah delegation in drafting this bill. It was a thorough, well-thought-out process and it was open to plenty of criticism from the other side.

I, particularly, want to express my tremendous appreciation to those county commissioners from the rural Utah counties who would have been most impacted by wilderness designation. These faithful and dedicated public servants have devoted thousands of hours to develop the county proposals. Despite the fact that S. 884 included 1.1 million acres more than the counties recommended as wilderness, these individuals recognized the need to bring

the 20-year debate to closure. The county commissioners have invested thousands of dollars, and sacrificed their personal time to come to Washington to enlighten my colleagues about the wilderness issue.

There are dozens of names that deserve to be mentioned, but I would like to give particular credit to Commissioner Louise Liston of Garfield County, Commissioner Lana Moon of Millard County, Commissioners Bill Redd and Ty Lewis of San Juan County, Commissioners Randy Johnson and Kent Peterson of Emery County. I would also be remiss if I failed to mention Commissioners Joe Judd of Kane County and Teryl Hunsaker of Tooele County. As always, the fine commissioners of Washington County, Gayle Aldred, Jerry B. Lewis, and Russ Gallian were instrumental in providing expertise. There are dozens of other faithful commissioners and I apologize that I cannot mention them all by name.

The Utah wilderness issue is not dead. On the contrary, it is very much alive and very much unresolved. It will come again before the Senate, and at some point we will be forced to finally deal with the issue. It is my hope that next time, my colleagues will give greater consideration to the $10 million of taxpayers' money and the 20 years of BLM expertise that went into providing the basis for our recommendation.

Again, while I am disappointed that Utah wilderness will not be included in this package, there is a silver lining in this cloud. Mr. President, as you know, Utah is preparing to host the 2002 Winter Olympics. Last fall, Senator HATCH and I introduced the Snowbasin Land Exchange, which would authorize the Forest Service to enter into a land exchange with the Snowbasin ski resort to exchange 1,320 acres of Forest Service land around Snowbasin for over 4,000 acres throughout the Wasatch Front. It is an equal value exchange, and a win-win situation for both parties. Not only for the Olympics, but for other reasons as well.

For example, in Utah open space in some areas is at a premium. As our population swells each year as thousands of people from other States like California and New Jersey come to Utah because of our quality of life, our precious open spaces along the Wasatch Front are rapidly disappearing. As part of this exchange, the Forest Service will acquire lands along the Bonneville Shoreline Trail which is one of the most heavily used recreational trails in northern Utah. The people of Weber County will benefit as the critical wildlife habitat along the benches above Ogden is preserved along with the open spaces. Development will be prevented from encroaching upon these areas. Again, it is a win-win situation arranged for through this exchange.

Unfortunately, the Snowbasin exchange was caught up in the politics of the day and for various reasons, this legislation had the brakes put on it by the Clinton administration. Snowbasin and the Utah delegation proceeded through months of negotiations with the Forest Service and finally reached agreements on virtually every one of the administration's concerns. This legislation is necessary for the successful implementation of the 2002 Winter Olympics and I know that my colleagues are as concerned as I am that this legislation is implemented so Snowbasin may proceed to prepare for the men's and women's downhill. We all want a successful Olympic event. This legislation is included as part of the chairman's package and I am pleased that we can finally act upon this bill.

Again, Mr President, I thank the chairman for his willingness to move this package and I encourage my colleagues to support it. I thank the Chair.

NICODEMUS NATIONAL HISTORIC SITE AND THE NEW BEDFORD NATIONAL HISTORIC LANDMARK

Mr. DOLE. Mr. President, I ask unanimous consent that immediately following the disposition of H.R. 2202, the immigration bill, the Senate proceed to an original bill (S. 1720), which I now send to the desk; that the bill be advanced to third reading and the vote occur on passage immediately, without further action or debate, following the vote on H.R. 2202.

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

Mr. DOLE. I ask unanimous consent that it be in order for me to ask for the yeas and nays on passage of the bill at this time.

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

Mr. DOLE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. DOLE. That vote will occur then tomorrow after the immigration bill.

IMMIGRATION CONTROL AND FINANCIAL RESPONSIBILITY ACT OF 1996

The Senate continued with the consideration of the bill.

Mr. DOLE. Mr. President, I would now ask that we resume immigration. I understand there are a couple of amendments Senators can dispose of.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

AMENDMENT NOS. 3949 AND 3950, EN BLOC

Mr. KENNEDY. I send to the desk two amendments to S. 1664 at the request of Senator SIMPSON and myself that have been cleared on both sides, and ask unanimous consent they be considered en bloc and adopted.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows.

The Senator from Massachusetts [Mr. KENNEDY], for Mr. BRYAN, proposes an amendment numbered 3949.

The Senator from Massachusetts [Mr. KENNEDY], for Mrs. HUTCHISON, proposes an amendment numbered 3950.

The amendments are as follows:

AMENDMENT NO. 3949

(Purpose: To prevent certain aliens from participating in the family unity program)

At the appropriate place in the matter proposed to be inserted by the amendment, insert the following:

SEC. . EXCLUSION OF CERTAIN ALIENS FROM FAMILY UNITY PROGRAMS.

Section 301(e) of the Immigration Act of 1990 (8 U.S.C. 1255a note) is amended to read as follows:

"(e) EXCEPTION FOR CERTAIN ALIENS.—An aliens is not eligible for a new grant or extension of benefits of this section if the Attorney General finds that the alien—

"(1) has been convicted of a felony or 3 or more misdemeanors in the United States.

"(2) is described in section 243(h)(2) of the Immigration and Nationality Act, or

"(3) has committed an act of juvenile delinquency which if committed by an adult would be classified as—

"(A) a felony crime of violence that has an element the use or attempted use of physical force against the person of another; or

"(B) a felony offense that by its nature involves a substantial risk that physical force against the person of another may be used in the course of committing the offense.".

AMENDMENT NO. 3950

(Purpose: To preserve law enforcement functions and capabilities in the interior of States)

At the appropriate place, insert the following section:

SEC. . The Immigration and Naturalization Service shall, when redeploying Border Patrol personnel from interior stations, coordinate with and act in conjunction with State and local law enforcement agencies to ensure that such redeployment does not degrade or compromise the law enforcement capabilities and functions currently performed at interior Border Patrol stations.

The PRESIDING OFFICER. There being no objection, the amendments are considered read and agreed to.

The amendments (Nos. 3949 and 3950) were agreed to.

Mr. KENNEDY. I thank the Chair. For Senator SIMPSON and myself, we thank all the Members for their attention during the course of the debate and for all of the cooperation that was given to Senator SIMPSON and myself. We made good progress. The end is in sight. These are important matters that still must be addressed tomorrow, but we will start at 10 o'clock. We know which amendments are out there. We hope those who are going to offer those amendments will make themselves available at the earliest possible

times for the convenience of all Senators. We look forward to the conclusion of the bill. We thank all Members for their cooperation and attention today.

The PRESIDING OFFICER. The majority leader.

MORNING BUSINESS

Mr. DOLE. Mr. President, I now ask there be a period for the transaction of morning business with Senators permitted to speak for up to 5 minutes each.

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

VIOLENCE IN LIBERIA

Mr. PELL. Mr. President, I am distressed at the latest outbreak of violence in Liberia. Yesterday, young gang members fired upon the U.S. Embassy, prompting the marines to return fire. Fortunately, no Americans were injured. Since this exchange, the situation in Monrovia has calmed down and the State Department has called this an isolated incident. Nevertheless, this spasm of violence demonstrates the intractability of the conflict in Liberia and the need for a diplomatic solution.

I believe the United States should remain committed to securing a peaceful solution in Liberia. I applaud the work of Assistant Secretary of State for African Affairs, George Moose, and Deputy Assistant Secretary of State William Twaddell. Their diplomatic efforts to implement a cease-fire are important to U.S. national interests. In addition, I commend the administration's response of providing $30 million in logistical assistance to the West African Peacekeeping force, ECOMOG. Such assistance is necessary to keep ECOMOG actively engaged in the on-the-ground peace process.

Mr. President, I call upon the various warlords to respect the cease-fire and to pursue a peaceful solution. In addition, it is important to remind the warlords that an attempt by any faction to seize power by force or to undo the Abuja Accords will receive a strong American response.

While the ultimate resolution of the crisis remains the responsibility of the Liberians, the United States has an important role to play. The United States is the most influential foreign power in Liberia. The United States must remain committed to seeking peace in Liberia. An engaged United States can help a Liberia that wants peace.

FCC'S PAGING FREEZE

Mr. PRESSLER. Mr. President, on February 8, 1996, the Federal Communications Commission issued a notice of proposed rulemaking which proposed to fundamentally change the way in which paging systems are licensed. The FCC adopted a freeze on the filing of paging applications, which immediately brought about many harmful effects. I promptly expressed my concerns to the FCC about its actions and asked Chairman Hundt to do something about the freeze in a letter dated March, 15, 1996.

I am glad to say that on April 23, 1996, the FCC issued an order demonstrating it had listened to my concerns and the concerns of the industry with regard to the paging freeze. The FCC has modified the freeze so that existing paging carriers can apply to expand their systems by putting transmitters within 40 miles of stations they already are operating, so long as these stations were licensed before the freeze. The FCC also has decided against retroactively applying the freeze and will now process all applications which were filed before the February 8 freeze date.

These are two very important steps towards mitigating the harmful impact of the freeze, and I wish to congratulate the FCC on its response. However, it has come to my attention there are some significant shortcomings in the mechanics of the new rules. With minor clarifications, the FCC could eliminate these shortcomings.

In particular, the industry believes—and several Members of Congress agree—75 miles would be a more appropriate zone of expansion as opposed to 40 miles. The increased distance would allow existing paging businesses to accommodate their customers' immediate needs and respond to new requests for paging service as factories, hospitals, and neighborhoods are constructed and the need for paging coverage expands.

Paging companies should be allowed to apply for new transmitters within 75 miles of any transmitter which has been licensed or which will be licensed based on an application filed before the freeze. The point is, many expansion proposals were filed by paging companies more than 1 year ago, and have been delayed at the FCC. These applications reflect expansions that were needed months ago. Indeed, these carriers now are receiving requests for further expansions. If we limit paging companies to a zone 40 miles from transmitters already licensed and operating, the only expansion they may be able to achieve would be adding those locations for which they applied last year. Additional coverage needs in the coming months will go unmet.

Another problem is created by the FCC's proposal to allow anyone to file a competing application against the expansion proposals of existing carriers. The FCC has defended the freeze as a mechanism to prevent filing by speculators and application mills, many of which use the application process to defraud consumers out of their life savings. This is a worthy goal. However, the new rule contains an ironic twist. If anyone can file a competing application against an existing paging carrier's expansion, speculation and fraudulent filings will be encouraged. The application mills that currently are not able to file applications will now target each and every expansion proposal, because it will be their only opportunity to practice their unholy trade. This will allow continued consumer fraud. It also will prevent bona fide paging companies from expanding their coverage, since any expansion proposal which is filed against will be held in abeyance and probably dismissed. This result would nullify the good work of the FCC in modifying the freeze. I strongly suspect it is an unintended result.

To prevent this anomalous result, the FCC can make minor adjustments to its freeze modification order: First, allowing a 75-mile expansion zone; second, allowing the expansion sites to be established within 75 miles of any transmitter granted from an application filed before the freeze; and third, limiting competing applicants to other carriers.

It is vital the FCC take steps to mitigate the harmful effects of the freeze. The paging industry provides service to over 34 million subscribers. Industry members have been encouraged to make considerable investments to improve their services, and have relied in good faith on the FCC's published regulations. Paging services are designed to serve the needs of increasingly mobile customers. To be competitive, these businesses need to provide their service to the customers where and when they need it. If a paging service cannot respond to the needs of its existing and potential customers, it will not survive in this extremely competitive industry.

This competition has spurred technological advances in what can be communicated over a pager. No longer is a pager some simple little box that beeps to let you know you should call your office. Today's pagers are vehicles for communicating written messages. For example, news organizations like Reuters now offer periodic summaries of breaking news stories through pagers. Pagers also provide cost-efficient means of communicating within large factory complexes. Additionally, we must not forget the lifesaving contribution these services make when used by doctors, ambulance crews, and critically ill patients, to summon assistance in the event of an emergency.

The bottom line, Mr. President, is that this technology must be allowed to grow. That was the basis for my letter in March. At the same time, the process must not be so full of loopholes as to allow the unscrupulous to benefit at the expense of consumers. That is the challenge faced by the FCC. It has begun meeting the challenge by modifying its freeze on the filing of paging

applicants. The flaws in its initial proposal should prove easy to address. As chairman of the Senate Committee on Commerce, Science, and Transportation, I stand ready to help this process in any reasonable manner.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, 4 years ago when I commenced these daily reports to the Senate it was my purpose to make a matter of daily record the exact Federal debt as of the close of business the previous day.

In that first report, February 27, 1992, the Federal debt the previous day stood at $3,825,891,293,066.80, as of the close of business. The point is, the Federal debt has since shot further into the stratosphere.

As of yesterday at the close of business, a total of $1,276,157,534,167.42 has been added to the Federal debt since February 26, 1992, meaning that as of the close of business yesterday, Tuesday, April 30, 1996, the Federal debt stood at $5,102,048,827,234.22. On a per capita basis, every man, woman, and child in America owes $19,271.23 as his or her share of the Federal debt.

TRIBUTE TO VICE ADMIRAL JOHN BULKELEY

Mr. WARNER. Mr. President, I rise today to recognize the dedication, public service and patriotism that personified the life of Vice Admiral John Duncan Bulkeley, USN. Admiral Bulkeley, who passed away on April 6, was one of the most highly decorated combat veterans of World War II, and served nearly 60 years of active duty during his career.

A native of New York City, Admiral Bulkeley entered the U.S. Navy after graduating from the Naval Academy at Annapolis, and was commissioned in March of 1934. He began his Navy career as a junior watch officer aboard the cruiser *Indianapolis*. He then spent time on the carrier *Saratoga* and as an engineering officer in Chinese waters aboard the gunboat *Sacramento*, before being given a special assignment in 1941 to help begin a new branch of naval service—patrol torpedo boats.

Lieutenant John Bulkeley's performance as a PT boat squadron leader is legendary. He earned the nickname "Sea Wolf" for his daring raids on the Japanese Navy in the early days of the Pacific war. Most notable among his heroic deeds was Lieutenant Bulkeley's bold rescue of General Douglass MacArthur from the Philippines in 1942. General MacArthur had become surrounded by the Japanese while remaining on the island of Corregidor during the Japanese invasion of the Philippines. Lieutenant Bulkeley's PT squadron broke through a Japanese blockade and carried the general and his family to safety. "Johnny," said MacArthur, "you've taken me out of the jaws of death—and I won't forget it." General MacArthur did not forget, and for his efforts in the early part of the war, John Bulkeley received the highest award this Nation bestows for valor, the Medal of Honor.

The Sea Wolf's career did not end there. In 1942, he spent time stateside recruiting young officers for the PT program, among them a stalwart young man named John F. Kennedy.

Admiral Bulkeley then headed for Europe, where he commanded a group of PT boats that helped clear the way for the D-Day invasion at Utah beach in Normandy. He commanded the destroyer *Endicott* during the invasion of southern France, and sank two German warships—the only German warships sunk in surface-to-surface combat during the entire war in the Mediterranean.

At the end of WWII John Bulkeley was not yet 32 years old, but he had already received every medal for courage that our country awards. Following the war, Bulkeley graduated from the Armed Forces Staff College. He also taught electrical engineering at the Naval Academy and served on the staff of the Joint Chiefs of Staff.

His service did not stop here, however. Admiral Bulkeley commanded a destroyer division in Korean waters during the Korean war; in 1961 he was appointed commander of the Guantanamo Naval base in Cuba, an assignment he received from his old friend President John F. Kennedy; and in 1964 he was assigned as president of the Navy Board of Inspection and Survey, a position which he held for nearly 23 years. Under his active leadership, the INSURV Board was directly responsible for the delivery of combat-ready ships, whether new or coming out of overhaul.

When his remarkable career came to an end, Vice Admiral Bulkeley was one of the most decorated sailors in American history. In addition to receiving the Medal of Honor, Admiral Bulkeley was also presented the Navy Cross, two awards of the Army Distinguished Service Cross, three Distinguished Service Medals, two Silver Stars, two awards of the Legion of Merit, two Purple Hearts, and numerous other decorations and citations for outstanding performance and service to his country.

Vice Admiral Bulkeley was a true American patriot and a superb naval officer who, throughout his naval career, led with courage and integrity. His leadership and performance throughout an intense and demanding period in naval and military history were instrumental in the successful administration of the Navy and outstanding support for naval forces throughout the world. Thanks to his inspirational leadership and selfless dedication to duty, our Navy has remained second to none. He will be sorely missed.

RELATING TO CERTAIN REGULATIONS REGARDING THE OFFICE OF COMPLIANCE

The text of the concurrent resolution (S. Con. Res. 51) to provide for the approval of final regulations that are applicable to employing offices that are not employing offices of the House of Representatives or the Senate, and to covered employees who are not employees of the House of Representatives or the Senate, and that were issued by the Office of Compliance on January 22, 1996, and for other purposes, as agreed to by the Senate on April 15, 1996, is as follows:

S. CON. RES. 51

Resolved by the Senate (the House of Representatives concurring), That the following regulations issued by the Office of Compliance on January 22, 1996, and applicable to employing offices that are not employing offices of the House of Representatives or the Senate, and to covered employees who are not employees of the House of Representatives or the Senate, are hereby approved as follows:

PART 825—FAMILY AND MEDICAL LEAVE

825.1 Purpose and scope.
825.2 [Reserved].

SUBPART A—WHAT IS THE FAMILY AND MEDICAL LEAVE ACT, AND TO WHOM DOES IT APPLY UNDER THE CONGRESSIONAL ACCOUNTABILITY ACT?

825.100 What is the Family and Medical Leave Act?
825.101 What is the purpose of the FMLA?
825.102 When are the FMLA and the CAA effective for covered employees and employing offices?
825.103 How does the FMLA, as made applicable by the CAA, affect leave in progress on, or taken before, the effective date of the CAA?
825.104 What employing offices are covered by the FMLA, as made applicable by the CAA?
825.105 [Reserved].
825.106 How is "joint employment" treated under the FMLA as made applicable by the CAA?
825.107—825.109 [Reserved].
825.110 Which employees are "eligible" to take FMLA leave under these regulations?
825.111 [Reserved].
825.112 Under what kinds of circumstances are employing offices required to grant family or medical leave?
825.113 What do "spouse", "parent", and "son or daughter" mean for purposes of an employee qualifying to take FMLA leave?
825.114 What is a "serious health condition" entitling an employee to FMLA leave?
825.115 What does it mean that "the employee is unable to perform the (functions of the position of the employee"?
825.116 What does it mean that an employee is "needed to care for" a family member?
825.117 For an employee seeking intermittent FMLA leave or leave on a reduced leave schedule, what is meant by "the medical necessity for" such leave?
825.118 What is a "health care provider"?

SUBPART B—WHAT LEAVE IS AN EMPLOYEE ENTITLED TO TAKE UNDER THE FAMILY AND MEDICAL LEAVE ACT, AS MADE APPLICABLE BY THE CONGRESSIONAL ACCOUNTABILITY ACT?

825.200 How much leave may an employee take?
825.201 If leave is taken for the birth of a child, or for placement of a child for adoption or foster care, when must the leave be concluded?
825.202 How much leave may a husband and wife take if they are employed by the same employing office?
825.203 Does FMLA leave have to be taken all at once, or can it be taken in parts?
825.204 May an employing office transfer an employee to an "alternative position" in order to accommodate intermittent leave or a reduced leave schedule?
825.205 How does one determine the amount of leave used where an employee takes leave intermittently or on a reduced leave schedule?
825.206 May an employing office deduct hourly amounts from an employee's salary, when providing unpaid leave under FMLA, as made applicable by the CAA, without affecting the employee's qualification for exemption as an executive, administrative, or professional employee, or when utilizing the fluctuating workweek method for payment of overtime, under the Fair Labor Standards Act?
825.207 Is FMLA leave paid or unpaid?
825.208 Under what circumstances may an employing office designate leave, paid or unpaid, as FMLA leave and, as a result, enable leave to be counted against the employee's total FMLA leave entitlement?
825.209 Is an employee entitled to benefits while using FMLA leave?
825.210 How may employees on FMLA leave pay their share of group health benefit premiums?
825.211 What special health benefits maintenance rules apply to multi-employer health plans?
825.212 What are the consequences of an employee's failure to make timely health plan premium payments?
825.213 May an employing office recover costs it incurred for maintaining "group health plan" or other non-health benefits coverage during FMLA leave?
825.214 What are an employee's rights on returning to work from FMLA leave?
825.215 What is an equivalent position?
825.216 Are there any limitations on an employing office's obligation to reinstate an employee?
825.217 What is a "key employee"?
825.218 What does "substantial and grievous economic injury" mean?
825.219 What are the rights of a key employee?
825.220 How are employees protected who request leave or otherwise assert FMLA rights?

SUBPART C—HOW DO EMPLOYEES LEARN OF THEIR RIGHTS AND OBLIGATIONS UNDER THE FMLA, AS MADE APPLICABLE BY THE CAA, AND WHAT CAN AN EMPLOYING OFFICE REQUIRE OF AN EMPLOYEE?

825.300 [Reserved].
825.301 What notices to employees are required of employing offices under the FMLA as made applicable by the CAA?
825.302 What notice does an employee have to give an employing office when the need for FMLA leave is foreseeable?
825.303 What are the requirements for an employee to furnish notice to an employing office where the need for FMLA leave is not foreseeable?
825.304 What recourse do employing offices have if employees fail to provide the required notice?
825.305 When must an employee provide medical certification to support FMLA leave?
825.306 How much information may be required in medical certifications of a serious health condition?
825.307 What may an employing office do if it questions the adequacy of a medical certification?
825.308 Under what circumstances may an employing office request subsequent recertifications of medical conditions?
825.309 What notice may an employing office require regarding an employee's intent to return to work?
825.310 Under what circumstances may an employing office require that an employee submit a medical certification that the employee is able (or unable) to return to work (i.e., a "fitness-for-duty" report)?
825.311 What happens if an employee fails to satisfy the medical certification and/or recertification requirements?
825.312 Under what circumstances may an employing office refuse to provide FMLA leave or reinstatement to eligible employees?

SUBPART D—WHAT ENFORCEMENT MECHANISMS DOES THE CAA PROVIDE?

825.400 What can employees do who believe that their rights under the FMLA as made applicable by the CAA have been violated?
825.401—825.404 [Reserved].

SUBPART E—[RESERVED]

SUBPART F—WHAT SPECIAL RULES APPLY TO EMPLOYEES OF SCHOOLS?

825.600 To whom do the special rules apply?
825.601 What limitations apply to the taking of intermittent leave or leave on a reduced leave schedule?
825.602 What limitations apply to the taking of leave near the end of an academic term?
825.603 Is all leave taken during "periods of a particular duration" counted against the FMLA leave entitlement?
825.604 What special rules apply to restoration to "an equivalent position"?

SUBPART G—HOW DO OTHER LAWS, EMPLOYING OFFICE PRACTICES, AND COLLECTIVE BARGAINING AGREEMENTS AFFECT EMPLOYEE RIGHTS UNDER THE FMLA AS MADE APPLICABLE BY THE CAA?

825.700 What if an employing office provides more generous benefits than required by FMLA as Made Applicable by the CAA?
825.701 [Reserved].
825.702 How does FMLA affect anti-discrimination laws as applied by section 201 of the CAA?

SUBPART H—DEFINITIONS

825.800 Definitions.
Appendix A to Part 825—[Reserved].
Appendix B to Part 825—Certification of Physician or Practitioner.
Appendix C to Part 825—[Reserved].
Appendix D to Part 825—Prototype Notice: Employing Office Response to Employee Request for Family and Medical Leave.
Appendix E to Part 825—[Reserved].

PART 825—FAMILY AND MEDICAL LEAVE

§ 825.1 Purpose and scope

(a) Section 202 of the Congressional Accountability Act (CAA) (2 U.S.C. 1312) applies the rights and protections of sections 101 through 105 of the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. 2611-2615) to covered employees. (The term "covered employee" is defined in section 101(3) of the CAA (2 U.S.C. 1301(3)). See § 825.800 of these regulations for that definition.) The purpose of this part is to set forth the regulations to carry out the provisions of section 202 of the CAA.

(b) These regulations are issued by the Board of Directors, Office of Compliance, pursuant to sections 202(d) and 304 of the CAA, which direct the Board to promulgate regulations implementing section 202 that are "the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of section 202 of the CAA] except insofar as the Board may determine, for good cause shown . . . that a modification of such regulations would be more effective for the implementation of the rights and protections under this section". The regulations issued by the Board herein are on all matters for which section 202 of the CAA requires regulations to be issued. Specifically, it is the Board's considered judgment, based on the information available to it at the time of the promulgation of these regulations, that, with the exception of regulations adopted and set forth herein, there are no other "substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of section 202 of the CAA]".

(c) In promulgating these regulations, the Board has made certain technical and nomenclature changes to the regulations as promulgated by the Secretary. Such changes are intended to make the provisions adopted accord more naturally to situations in the legislative branch. However, by making these changes, the Board does not intend a substantive difference between these regulations and those of the Secretary from which they are derived. Moreover, such changes, in and of themselves, are not intended to constitute an interpretation of the regulation or of the statutory provisions of the CAA upon which they are based.

§ 825.2 [Reserved]

SUBPART A—WHAT IS THE FAMILY AND MEDICAL LEAVE ACT, AND TO WHOM DOES IT APPLY UNDER THE CONGRESSIONAL ACCOUNTABILITY ACT?

§ 825.100 What is the Family and Medical Leave Act?

(a) The Family and Medical Leave Act of 1993 (FMLA), as made applicable by the Congressional Accountability Act (CAA), allows "eligible" employees of an employing office to take job-protected, unpaid leave, or to substitute appropriate paid leave if the employee has earned or accrued it, for up to a total of 12 workweeks in any 12 months because of the birth of a child and to care for the newborn child, because of the placement of a child with the employee for adoption or foster care, because the employee is needed to care for a family member (child, spouse, or parent) with a serious health condition, or because the employee's own serious health condition makes the employee unable to perform the functions of his or her job (see § 825.306(b)(4)). In certain cases, this leave may be taken on an intermittent basis rather than all at once, or the employee may work a part-time schedule.

(b) An employee on FMLA leave is also entitled to have health benefits maintained while on leave as if the employee had continued to work instead of taking the leave. If an employee was paying all or part of the premium payments prior to leave, the employee would continue to pay his or her share during the leave period. The employing office, or a disbursing or other financial office of the House of Representatives or the Senate may recover its share only if the employee does not return to work for a reason other than the serious health condition of the employee or the employee's immediate family member, or another reason beyond the employee's control.

(c) An employee generally has a right to return to the same position or an equivalent position with equivalent pay, benefits and working conditions at the conclusion of the leave. The taking of FMLA leave cannot result in the loss of any benefit that accrued prior to the start of the leave.

(d) The employing office has a right to 30 days advance notice from the employee where practicable. In addition, the employing office may require an employee to submit certification from a health care provider to substantiate that the leave is due to the serious health condition of the employee or the employee's immediate family member. Failure to comply with these requirements may result in a delay in the start of FMLA leave. Pursuant to a uniformly applied policy, the employing office may also require that an employee present a certification of fitness to return to work when the absence was caused by the employee's serious health condition (see § 825.311(c)). The employing office may delay restoring the employee to employment without such certificate relating to the health condition which caused the employee's absence.

§ 825.101 What is the purpose of the FMLA?

(a) FMLA is intended to allow employees to balance their work and family life by taking reasonable unpaid leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition. The FMLA is intended to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity. It was intended that the FMLA accomplish these purposes in a manner that accommodates the legitimate interests of employers, and in a manner consistent with the Equal Protection Clause of the Fourteenth Amendment in minimizing the potential for employment discrimination on the basis of sex, while promoting equal employment opportunity for men and women.

(b) The enactment of FMLA was predicated on two fundamental concerns "the needs of the American workforce, and the development of high-performance organizations". Increasingly, America's children and elderly are dependent upon family members who must spend long hours at work. When a family emergency arises, requiring workers to attend to seriously-ill children or parents, or to newly-born or adopted infants, or even to their own serious illness, workers need reassurance that they will not be asked to choose between continuing their employment, and meeting their personal and family obligations or tending to vital needs at home.

(c) The FMLA is both intended and expected to benefit employers as well as their employees. A direct correlation exists between stability in the family and productivity in the workplace. FMLA will encourage the development of high-performance organizations. When workers can count on durable links to their workplace they are able to make their own full commitments to their jobs. The record of hearings on family and medical leave indicate the powerful productive advantages of stable workplace relationships, and the comparatively small costs of guaranteeing that those relationships will not be dissolved while workers attend to pressing family health obligations or their own serious illness.

§ 825.102 When are the FMLA and the CAA effective for covered employees and employing offices?

(a) The rights and protection of sections 101 through 105 of the FMLA have applied to certain Senate employees and certain employing offices of the Senate since August 5, 1993 (see section 501 of FMLA).

(b) The rights and protection of sections 101 through 105 of the FMLA have applied to any employee in an employment position and any employment authority of the House of Representatives since August 5, 1993 (see section 502 of FMLA).

(c) The rights and protections of sections 101 through 105 of the FMLA have applied to certain employing offices and covered employees other than those referred to in paragraphs (a) and (b) of this section for certain periods since August 5, 1993 (see, e.g., title V of the FMLA, sections 501 and 502).

(d) The provisions of section 202 of the CAA that apply rights and protections of the FMLA to covered employees are effective on January 23, 1996.

(e) The period prior to the effective date of the application of FMLA rights and protections under the CAA must be considered in determining employee eligibility.

§ 825.103 How does the FMLA, as made applicable by the CAA, affect leave in progress on, or taken before, the effective date of the CAA?

(a) An eligible employee's right to take FMLA leave began on the date that the rights and protections of the FMLA first went into effect for the employing office and employee (see § 825.102(a)). Any leave taken prior to the date on which the rights and protections of the FMLA first became effective for the employing office from which the leave was taken may not be counted for purposes of the FMLA as made applicable by the CAA. If leave qualifying as FMLA leave was underway prior to the effective date of the FMLA for the employing office from which the leave was taken and continued after the FMLA's effective date for that office, only that portion of leave taken on or after the FMLA's effective date may be counted against the employee's leave entitlement under the FMLA, as made applicable by the CAA.

(b) If an employing office-approved leave is underway when the application of the FMLA by the CAA takes effect, no further notice would be required of the employee unless the employee requests an extension of the leave. For leave which commenced on the effective date or shortly thereafter, such notice must have been given which was practicable, considering the foreseeability of the need for leave and the effective date.

(c) Starting on January 23, 1996, an employee is entitled to FMLA leave under these regulations if the reason for the leave is qualifying under the FMLA, as made applicable by the CAA, even if the event occasioning the need for leave (e.g., the birth of a child) occurred before such date (so long as any other requirements are satisfied).

§ 825.104 What employing offices are covered by the FMLA, as made applicable by the CAA?

(a) The FMLA, as made applicable by the CAA, covers all employing offices. As used in the CAA, the term "employing office" means—

(1) the personal office of a Member of the House of Representatives or of a Senator;

(2) a committee of the House of Representatives or the Senate or a joint committee;

(3) any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or

(4) the Capitol Guide Board, the Capitol Police Board, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Compliance, and the Office of Technology Assessment.

(b) [Reserved].

(c) Separate entities will be deemed to be parts of a single employer for purposes of the FMLA, as made applicable by the CAA, if they meet the "integrated employer" test. A determination of whether or not separate entities are an integrated employer is not determined by the application of any single criterion, but rather the entire relationship is to be reviewed in its totality. Factors considered in determining whether two or more entities are an integrated employer include:

(i) Common management;

(ii) Interrelation between operations;

(iii) Centralized control of labor relations; and

(iv) Degree of common financial control.

§ 825.105 [Reserved]

§ 825.106 How is "joint employment" treated under the FMLA as made applicable by the CAA?

(a) Where two or more employing offices exercise some control over the work or working conditions of the employee, the employing offices may be joint employers under FMLA, as made applicable by the CAA. Where the employee performs work which simultaneously benefits two or more employing offices, or works for two or more employing offices at different times during the

workweek, a joint employment relationship generally will be considered to exist in situations such as:

(1) Where there is an arrangement between employing offices to share an employee's services or to interchange employees;

(2) Where one employing office acts directly or indirectly in the interest of the other employing office in relation to the employee; or

(3) Where the employing offices are not completely disassociated with respect to the employee's employment and may be deemed to share control of the employee, directly or indirectly, because one employing office controls, is controlled by, or is under common control with the other employing office.

(b) A determination of whether or not a joint employment relationship exists is not determined by the application of any single criterion, but rather the entire relationship is to be viewed in its totality. For example, joint employment will ordinarily be found to exist when—

(1) an employee, who is employed by an employing office other than the personal office of a Member of the House of Representatives or of a Senator, is under the actual direction and control of the Member of the House of Representatives or Senator; or

(2) two or more employing offices employ an individual to work on common issues or other matters for both or all of them.

(c) When employing offices employ a covered employee jointly, they may designate one of themselves to be the primary employing office, and the other or others to be the secondary employing office(s). Such a designation shall be made by written notice to the covered employee.

(d) If an employing office is designated a primary employing office pursuant to paragraph (c) of this section, only that employing office is responsible for giving required notices to the covered employee, providing FMLA leave, and maintenance of health benefits. Job restoration is the primary responsibility of the primary employing office, and the secondary employing office(s) may, subject to the limitations in §825.216, be responsible for accepting the employee returning from FMLA leave.

(e) If employing offices employ an employee jointly, but fail to designate a primary employing office pursuant to paragraph (c) of this section, then all of these employing offices shall be jointly and severally liable for giving required notices to the employee, for providing FMLA leave, for assuring that health benefits are maintained, and for job restoration. The employee may give notice of need for FMLA leave, as described in §§ 825.302 and 825.303, to whichever of these employing offices the employee chooses. If the employee makes a written request for restoration to one of these employing offices, that employing office shall be primarily responsible for job restoration, and the other employing office(s) may, subject to the limitations in §825.216, be responsible for accepting the employee returning from FMLA leave.

§825.107 [Reserved]

§825.108 [Reserved]

§825.109 [Reserved]

§825.110 Which employees are "eligible" to take FMLA leave under these regulations?

(a) An "eligible employee" under these regulations means a covered employee who has been employed in any employing office for 12 months and for at least 1,250 hours of employment during the previous 12 months.

(b) The 12 months an employee must have been employed by any employing office need not be consecutive months. If an employee worked for two or more employing offices sequentially, the time worked will be aggregated to determine whether it equals 12 months. If an employee is maintained on the payroll for any part of a week, including any periods of paid or unpaid leave (sick, vacation) during which other benefits or compensation are provided by the employer (e.g., workers' compensation, group health plan benefits, etc.), the week counts as a week of employment. For purposes of determining whether intermittent/occasional/casual employment qualifies as "at least 12 months", 52 weeks is deemed to be equal to 12 months.

(c) If an employee was employed by two or more employing offices, either sequentially or concurrently, the hours of service will be aggregated to determine whether the minimum of 1,250 hours has been reached. Whether an employee has worked the minimum 1,250 hours of service is determined according to the principles established under the Fair Labor Standards Act (FLSA), as applied by section 203 of the CAA (2 U.S.C. 1313), for determining compensable hours of work. The determining factor is the number of hours an employee has worked for one or more employing offices. The determination is not limited by methods of record-keeping, or by compensation agreements that do not accurately reflect all of the hours an employee has worked for or been in service to the employing office. Any accurate accounting of actual hours worked may be used. For this purpose, full-time teachers (see §825.800 for definition) of an elementary or secondary school system, or institution of higher education, or other educational establishment or institution are deemed to meet the 1,250 hour test. An employing office must be able to clearly demonstrate that such an employee did not work 1,250 hours during the previous 12 months in order to claim that the employee is not "eligible" for FMLA leave.

(d) The determinations of whether an employee has worked for any employing office for at least 1,250 hours in the previous 12 months and has been employed by any employing office for a total of at least 12 months must be made as of the date leave commences. The "previous 12 months" means the 12 months immediately preceding the commencement of the leave. If an employee notifies the employing office of need for FMLA leave before the employee meets these eligibility criteria, the employing office must either confirm the employee's eligibility based upon a projection that the employee will be eligible on the date leave would commence or must advise the employee when the eligibility requirement is met. If the employing office confirms eligibility at the time the notice for leave is received, the employing office may not subsequently challenge the employee's eligibility. In the latter case, if the employing office does not advise the employee whether the employee is eligible as soon as practicable (i.e., two business days absent extenuating circumstances) after the date employee eligibility is determined, the employee will have satisfied the notice requirements and the notice of leave is considered current and outstanding until the employing office does advise. If the employing office fails to advise the employee whether the employee is eligible prior to the date the requested leave is to commence, the employee will be deemed eligible. The employing office may not, then, deny the leave. Where the employee does not give notice of the need for leave more than two business days prior to commencing leave, the employee will be deemed to be eligible if the employing office fails to advise the employee that the employee is not eligible within two business days of receiving the employee's notice.

(e) The period prior to the effective date of the application of FMLA rights and protections under the CAA must be considered in determining employee's eligibility.

(f) [Reserved].

§825.111 [Reserved]

§825.112 Under what kinds of circumstances are employing offices required to grant family or medical leave?

(a) Employing offices are required to grant leave to eligible employees:

(1) For birth of a son or daughter, and to care for the newborn child;

(2) For placement with the employee of a son or daughter for adoption or foster care;

(3) To care for the employee's spouse, son, daughter, or parent with a serious health condition; and

(4) Because of a serious health condition that makes the employee unable to perform the functions of the employee's job.

(b) The right to take leave under FMLA as made applicable by the CAA applies equally to male and female employees. A father, as well as a mother, can take family leave for the birth, placement for adoption or foster care of a child.

(c) Circumstances may require that FMLA leave begin before the actual date of birth of a child. An expectant mother may take FMLA leave pursuant to paragraph (a)(4) of this section before the birth of the child for prenatal care or if her condition makes her unable to work.

(d) Employing offices are required to grant FMLA leave pursuant to paragraph (a)(2) of this section before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed. For example, the employee may be required to attend counseling sessions, appear in court, consult with his or her attorney or the doctor(s) representing the birth parent, or submit to a physical examination. The source of an adopted child (e.g., whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for leave for this purpose.

(e) Foster care is 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

(f) In situations where the employer/employee relationship has been interrupted, such as an employee who has been on layoff, the employee must be recalled or otherwise be re-employed before being eligible for FMLA leave. Under such circumstances, an eligible employee is immediately entitled to further FMLA leave for a qualifying reason.

(g) FMLA leave is available for treatment for substance abuse provided the conditions of §825.114 are met. However, treatment for substance abuse does not prevent an employing office from taking employment action against an employee. The employing office may not take action against the employee because the employee has exercised his or her right to take FMLA leave for treatment.

However, if the employing office has an established policy, applied in a non-discriminatory manner that has been communicated to all employees, that provides under certain circumstances an employee may be terminated for substance abuse, pursuant to that policy the employee may be terminated whether or not the employee is presently taking FMLA leave. An employee may also take FMLA leave to care for an immediate family member who is receiving treatment for substance abuse. The employing office may not take action against an employee who is providing care for an immediate family member receiving treatment for substance abuse.

§ 825.113 What do "spouse", "parent", and "son or daughter" mean for purposes of an employee qualifying to take FMLA leave?

(a) Spouse means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.

(b) Parent means a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a son or daughter as defined in (c) below. This term does not include parents "in law".

(c) Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability".

(1) "Incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in three or more of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

(2) "Physical or mental disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. See the Americans with Disabilities Act (ADA), as made applicable by section 201(a)(3) of the CAA (2 U.S.C. 1311(a)(3)).

(3) Persons who are "in loco parentis" include those with day-to-day responsibilities to care for and financially support a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

(d) For purposes of confirmation of family relationship, the employing office may require the employee giving notice of the need for leave to provide reasonable documentation or statement of family relationship. This documentation may take the form of a simple statement from the employee, or a child's birth certificate, a court document, etc. The employing office is entitled to examine documentation such as a birth certificate, etc., but the employee is entitled to the return of the official document submitted for this purpose.

§ 825.114 What is a "serious health condition" entitling an employee to FMLA leave?

(a) For purposes of FMLA, "serious health condition" entitling an employee to FMLA leave means an illness, injury, impairment, or physical or mental condition that involves:

(1) Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (for purposes of this section, defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom), or any subsequent treatment in connection with such inpatient care; or

(2) Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

(i) A period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom) of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(A) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

(B) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

(ii) Any period of incapacity due to pregnancy, or for prenatal care.

(iii) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(A) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(B) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(C) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

(iv) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(v) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

(b) Treatment for purposes of paragraph (a) of this section includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. Under paragraph (a)(2)(i)(B), a regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

(c) Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not "serious health conditions" unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness resulting from stress or allergies may be serious health conditions, but only if all the conditions of this section are met.

(d) Substance abuse may be a serious health condition if the conditions of this section are met. However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. On the other hand, absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

(e) Absences attributable to incapacity under paragraphs (a)(2) (ii) or (iii) qualify for FMLA leave even though the employee or the immediate family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

§ 825.115 What does it mean that "the employee is unable to perform the functions of the position of the employee"?

An employee is "unable to perform the functions of the position" where the health care provider finds that the employee is unable to work at all or is unable to perform any one of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act (ADA), as made applicable by section 201(a)(3) of the CAA (2 U.S.C. 1311(a)(3)). An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment. An employing office has the option, in requiring certification from a health care provider, to provide a statement of the essential functions of the employee's position for the health care provider to review. For purposes of FMLA, the essential functions of the employee's position are to be determined with reference to the position the employee held at the time notice is given or leave commenced, whichever is earlier.

§ 825.116 What does it mean that an employee is "needed to care for" a family member?

(a) The medical certification provision that an employee is "needed to care for" a family member encompasses both physical and psychological care. It includes situations where, for example, because of a serious health condition, the family member is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself or herself to the doctor, etc. The term also includes providing psychological comfort and reassurance which would be beneficial to a child, spouse or parent with a serious health condition who is receiving inpatient or home care.

(b) The term also includes situations where the employee may be needed to fill in for others who are caring for the family member, or to make arrangements for changes in care, such as transfer to a nursing home.

(c) An employee's intermittent leave or a reduced leave schedule necessary to care for a family member includes not only a situation where the family member's condition itself is intermittent, but also where the employee is only needed intermittently "such as where other care is normally available, or care responsibilities are shared with another member of the family or a third party.

§ 825.117 For an employee seeking intermittent FMLA leave or leave on a reduced leave schedule, what is meant by "the medical necessity for" such leave?

For intermittent leave or leave on a reduced leave schedule, there must be a medical need for leave (as distinguished from voluntary treatments and procedures) and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. The treatment regimen and other information described in the certification of a serious health condition (see § 825.306) meets the requirement for certification of the medical necessity of intermittent leave or leave on a reduced leave schedule. Employees needing intermittent FMLA leave or leave on a reduced leave schedule must attempt to schedule their leave so as not to disrupt the employing office's operations. In addition, an employing office may assign an employee to an alternative position with equivalent pay and benefits that better accommodates the employee's intermittent or reduced leave schedule.

§ 825.118 What is a "health care provider"?

(a)(1) The term "health care provider" means:

(i) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or

(ii) Any other person determined by the Office of Compliance to be capable of providing health care services.

(2) In making a determination referred to in subparagraph (1)(ii), and absent good cause shown to do otherwise, the Office of Compliance will follow any determination made by the Secretary of Labor (under section 101(6)(B) of the FMLA, 29 U.S.C. 2611(6)(B)) that a person is capable of providing health care services, provided the Secretary's determination was not made at the request of a person who was then a covered employee.

(b) Others "capable of providing health care services" include only:

(1) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law;

(2) Nurse practitioners, nurse-midwives and clinical social workers who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law;

(3) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employing office that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement.

(4) Any health care provider from whom an employing office or the employing office's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and

(5) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

(c) The phrase "authorized to practice in the State" as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions without supervision by a doctor or other health care provider.

SUBPART B—WHAT LEAVE IS AN EMPLOYEE ENTITLED TO TAKE UNDER THE FAMILY AND MEDICAL LEAVE ACT, AS MADE APPLICABLE BY THE CONGRESSIONAL ACCOUNTABILITY ACT?

§ 825.200 How much leave may an employee take?

(a) An eligible employee's FMLA leave entitlement is limited to a total of 12 workweeks of leave during any 12-month period for any one, or more, of the following reasons:

(1) The birth of the employee's son or daughter, and to care for the newborn child;

(2) The placement with the employee of a son or daughter for adoption or foster care, and to care for the newly placed child;

(3) To care for the employee's spouse, son, daughter, or parent with a serious health condition; and

(4) Because of a serious health condition that makes the employee unable to perform one or more of the essential functions of his or her job.

(b) An employing office is permitted to choose any one of the following methods for determining the "12-month period" in which the 12 weeks of leave entitlement occurs:

(1) The calendar year;

(2) Any fixed 12-month "leave year", such as a fiscal year or a year starting on an employee's "anniversary" date;

(3) The 12-month period measured forward from the date any employee's first FMLA leave begins; or

(4) A "rolling" 12-month period measured backward from the date an employee uses any FMLA leave (except that such measure may not extend back before the date on which the application of FMLA rights and protections first becomes effective for the employing office; see § 825.102).

(c) Under methods in paragraphs (b)(1) and (b)(2) of this section an employee would be entitled to up to 12 weeks of FMLA leave at any time in the fixed 12-month period selected. An employee could, therefore, take 12 weeks of leave at the end of the year and 12 weeks at the beginning of the following year. Under the method in paragraph (b)(3) of this section, an employee would be entitled to 12 weeks of leave during the year beginning on the first date FMLA leave is taken; the next 12-month period would begin the first time FMLA leave is taken after completion of any previous 12-month period. Under the method in paragraph (b)(4) of this section, the "rolling" 12-month period, each time an employee takes FMLA leave the remaining leave entitlement would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months. For example, if an employee has taken eight weeks of leave during the past 12 months, an additional four weeks of leave could be taken. If an employee used four weeks beginning February 1, 1997, four weeks beginning June 1, 1997, and four weeks beginning December 1, 1997, the employee would not be entitled to any additional leave until February 1, 1998. However, beginning on February 1, 1998, the employee would be entitled to four weeks of leave, on June 1 the employee would be entitled to an additional four weeks, etc.

(d)(1) Employing offices will be allowed to choose any one of the alternatives in paragraph (b) of this section provided the alternative chosen is applied consistently and uniformly to all employees. An employing office wishing to change to another alternative is required to give at least 60 days notice to all employees, and the transition must take place in such a way that the employees retain the full benefit of 12 weeks of leave under whichever method affords the greatest benefit to the employee. Under no circumstances may a new method be implemented in order to avoid the CAA's FMLA leave requirements.

(2) [Reserved].

(e) If an employing office fails to select one of the options in paragraph (b) of this section for measuring the 12-month period, the option that provides the most beneficial outcome for the employee will be used. The employing office may subsequently select an option only by providing the 60-day notice to all employees of the option the employing office intends to implement. During the running of the 60-day period any other employee who needs FMLA leave may use the option providing the most beneficial outcome to that employee. At the conclusion of the 60-day period the employing office may implement the selected option.

(f) For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. However, if for some reason the employing office's activity has temporarily ceased and employees generally are not expected to report for work for one or more weeks (e.g., a school closing two weeks for the Christmas/New Year holiday or the summer vacation or an employing office closing the office for repairs), the days the employing office's activities have ceased do not count against the employee's FMLA leave entitlement. Methods for determining an employee's 12-week leave entitlement are also described in § 825.205.

(g)(1) If employing offices jointly employ an employee, and if they designate a primary employer pursuant to § 825.106(c), the primary employer may choose any one of the alternatives in paragraph (b) of this section for measuring the 12-month period, provided

that the alternative chosen is applied consistently and uniformly to all employees of the primary employer including the jointly employed employee.

(2) If employing offices fail to designated a primary employer pursuant to §825.106(c), an employee jointly employed by the employing offices may, by so notifying one of the employing offices, select that employing office to be the primary employer of the employee for purposes of the application of paragraphs (d) and (e) of this section.

§825.201 If leave is taken for the birth of a child, or for placement of a child for adoption or foster care, when must the leave be concluded?

An employee's entitlement to leave for a birth or placement for adoption or foster care expires at the end of the 12-month period beginning on the date of the birth or placement, unless the employing office permits leave to be taken for a longer period. Any such FMLA leave must be concluded within this one-year period.

§825.202 How much leave may a husband and wife take if they are employed by the same employing office?

(a) A husband and wife who are eligible for FMLA leave and are employed by the same employing office may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken—

(1) for birth of the employee's son or daughter or to care for the child after birth;

(2) for placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement; or

(3) to care for the employee's parent with a serious health condition.

(b) This limitation on the total weeks of leave applies to leave taken for the reasons specified in paragraph (a) of this section as long as a husband and wife are employed by the "same employing office". It would apply, for example, even though the spouses are employed at two different work sites of an employing office. On the other hand, if one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full 12 weeks of FMLA leave.

(c) Where the husband and wife both use a portion of the total 12-week FMLA leave entitlement for one of the purposes in paragraph (a) of this section, the husband and wife would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for FMLA leave for a purpose other than those contained in paragraph (a) of this section. For example, if each spouse took 6 weeks of leave to care for a healthy, newborn child, each could use an additional 6 weeks due to his or her own serious health condition or to care for a child with a serious health condition.

§825.203 Does FMLA leave have to be taken all at once, or can it be taken in parts?

(a) FMLA leave may be taken "intermittently or on a reduced leave schedule" under certain circumstances. Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason. A reduced leave schedule is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time.

(b) When leave is taken after the birth or placement of a child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the employing office agrees. Such a schedule reduction might occur, for example, where an employee, with the employing office's agreement, works part-time after the birth of a child, or takes leave in several segments. The employing office's agreement is not required, however, for leave during which the mother has a serious health condition in connection with the birth of her child or if the newborn child has a serious health condition.

(c) Leave may be taken intermittently or on a reduced leave schedule when medically necessary for planned and/or unanticipated medical treatment of a related serious health condition by or under the supervision of a health care provider, or for recovery from treatment or recovery from a serious health condition. It may also be taken to provide care or psychological comfort to an immediate family member with a serious health condition.

(1) Intermittent leave may be taken for a serious health condition which requires treatment by a health care provider periodically, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy. A pregnant employee may take leave intermittently for prenatal examinations or for her own condition, such as for periods of severe morning sickness. An example of an employee taking leave on a reduced leave schedule is an employee who is recovering from a serious health condition and is not strong enough to work a full-time schedule.

(2) Intermittent or reduced schedule leave may be taken for absences where the employee or family member is incapacitated or unable to perform the essential functions of the position because of a chronic serious health condition even if he or she does not receive treatment by a health care provider.

(d) There is no limit on the size of an increment of leave when an employee takes intermittent leave or leave on a reduced leave schedule. However, an employing office may limit leave increments to the shortest period of time that the employing office's payroll system uses to account for absences or use of leave, provided it is one hour or less. For example, an employee might take two hours off for a medical appointment, or might work a reduced day of four hours over a period of several weeks while recuperating from an illness. An employee may not be required to take more FMLA leave than necessary to address the circumstance that precipitated the need for the leave, except as provided in §§825.601 and 825.602.

§825.204 May an employing office transfer an employee to an "alternative position" in order to accommodate intermittent leave or a reduced leave schedule?

(a) If an employee needs intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment for the employee or a family member, including during a period of recovery from a serious health condition, or if the employing office agrees to permit intermittent or reduced schedule leave for the birth of a child or for placement of a child for adoption or foster care, the employing office may require the employee to transfer temporarily, during the period the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. See §825.601 for special rules applicable to instructional employees of schools.

(b) Transfer to an alternative position may require compliance with any applicable collective bargaining agreement and any applicable law (such as the Americans with Disabilities Act, as made applicable by the CAA). Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced leave.

(c) The alternative position must have equivalent pay and benefits. An alternative position for these purposes does not have to have equivalent duties. The employing office may increase the pay and benefits of an existing alternative position, so as to make them equivalent to the pay and benefits of the employee's regular job. The employing office may also transfer the employee to a part-time job with the same hourly rate of pay and benefits, provided the employee is not required to take more leave than is medically necessary. For example, an employee desiring to take leave in increments of four hours per day could be transferred to a half-time job, or could remain in the employee's same job on a part-time schedule, paying the same hourly rate as the employee's previous job and enjoying the same benefits. The employing office may not eliminate benefits which otherwise would not be provided to part-time employees; however, an employing office may proportionately reduce benefits such as vacation leave where an employing office's normal practice is to base such benefits on the number of hours worked.

(d) An employing office may not transfer the employee to an alternative position in order to discourage the employee from taking leave or otherwise work a hardship on the employee. For example, a white collar employee may not be assigned to perform laborer's work; an employee working the day shift may not be reassigned to the graveyard shift; an employee working in the headquarters facility may not be reassigned to a branch a significant distance away from the employee's normal job location. Any such attempt on the part of the employing office to make such a transfer will be held to be contrary to the prohibited-acts provisions of the FMLA, as made applicable by the CAA.

(e) When an employee who is taking leave intermittently or on a reduced leave schedule and has been transferred to an alternative position no longer needs to continue on leave and is able to return to full-time work, the employee must be placed in the same or equivalent job as the job he/she left when the leave commenced. An employee may not be required to take more leave than necessary to address the circumstance that precipitated the need for leave.

§825.205 How does one determine the amount of leave used where an employee takes leave intermittently or on a reduced leave schedule?

(a) If an employee takes leave on an intermittent or reduced leave schedule, only the amount of leave actually taken may be counted toward the 12 weeks of leave to which an employee is entitled. For example, if an employee who normally works five days a week takes off one day, the employee would use ⅕ of a week of FMLA leave. Similarly, if a full-time employee who normally works 8-hour days works 4-hour days under a reduced leave schedule, the employee would use ½ week of FMLA leave each week.

(b) Where an employee normally works a part-time schedule or variable hours, the amount of leave to which an employee is entitled is determined on a pro rata or proportional basis by comparing the new schedule

with the employee's normal schedule. For example, if an employee who normally works 30 hours per week works only 20 hours a week under a reduced leave schedule, the employee's ten hours of leave would constitute one-third of a week of FMLA leave for each week the employee works the reduced leave schedule.

(c) If an employing office has made a permanent or long-term change in the employee's schedule (for reasons other than FMLA, and prior to the notice of need for FMLA leave), the hours worked under the new schedule are to be used for making this calculation.

(d) If an employee's schedule varies from week to week, a weekly average of the hours worked over the 12 weeks prior to the beginning of the leave period would be used for calculating the employee's normal workweek.

§ 825.206 May an employing office deduct hourly amounts from an employee's salary, when providing unpaid leave under FMLA, as made applicable by the CAA, without affecting the employee's qualification for exemption as an executive, administrative, or professional employee, or when utilizing the fluctuating workweek method for payment of overtime, under the Fair Labor Standards Act?

(a) Leave taken under FMLA, as made applicable by the CAA, may be unpaid. If an employee is otherwise exempt from minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA), as made applicable by the CAA, as a salaried executive, administrative, or professional employee (under regulations issued by the Board, at part 541), providing unpaid FMLA-qualifying leave to such an employee will not cause the employee to lose the FLSA exemption. This means that under regulations currently in effect, where an employee meets the specified duties test, is paid on a salary basis, and is paid a salary of at least the amount specified in the regulations, the employing office may make deductions from the employee's salary for any hours taken as intermittent or reduced FMLA leave within a workweek, without affecting the exempt status of the employee. The fact that an employing office provides FMLA leave, whether paid or unpaid, or maintains any records regarding FMLA leave, will not be relevant to the determination whether an employee is exempt within the meaning of the Board's regulations at part 541.

(b) For an employee paid in accordance with a fluctuating workweek method of payment for overtime, where permitted by section 203 of the CAA (2 U.S.C. 1313), the employing office, during the period in which intermittent or reduced schedule FMLA leave is scheduled to be taken, may compensate an employee on an hourly basis and pay only for the hours the employee works, including time and one-half the employee's regular rate for overtime hours. The change to payment on an hourly basis would include the entire period during which the employee is taking intermittent leave, including weeks in which no leave is taken. The hourly rate shall be determined by dividing the employee's weekly salary by the employee's normal or average schedule of hours worked during weeks in which FMLA leave is not being taken. If an employing office chooses to follow this exception from the fluctuating workweek method of payment, the employing office must do so uniformly, with respect to all employees paid on a fluctuating workweek basis for whom FMLA leave is taken on an intermittent or reduced leave schedule basis. If an employing office does not elect to convert the employee's compensation to hourly pay, no deduction may be taken for FMLA leave absences. Once the need for intermittent or reduced scheduled leave is over, the employee may be restored to payment on a fluctuating workweek basis.

(c) This special exception to the "salary basis" requirements of the FLSA exemption or fluctuating workweek payment requirements applies only to employees of employing offices who are eligible for FMLA leave, and to leave which qualifies as (one of the four types of) FMLA leave. Hourly or other deductions which are not in accordance with the Board's regulations at part 541 or with a permissible fluctuating workweek method of payment for overtime may not be taken, for example, where the employee has not worked long enough to be eligible for FMLA leave without potentially affecting the employee's eligibility for exemption. Nor may deductions which are not permitted by the Board's regulations at part 541 or by a permissible fluctuating workweek method of payment for overtime be taken from such an employee's salary for any leave which does not qualify as FMLA leave, for example, deductions from an employee's pay for leave required under an employing office's policy or practice for a reason which does not qualify as FMLA leave, e.g., leave to care for a grandparent or for a medical condition which does not qualify as a serious health condition; or for leave which is more generous than provided by FMLA as made applicable by the CAA, such as leave in excess of 12 weeks in a year. The employing office may comply with the employing office's own policy/practice under these circumstances and maintain the employee's eligibility for exemption or for the fluctuating workweek method of pay by not taking hourly deductions from the employee's pay, in accordance with FLSA requirements, or may take such deductions, treating the employee as an "hourly" employee and pay overtime premium pay for hours worked over 40 in a workweek.

§ 825.207 Is FMLA leave paid or unpaid?

(a) Generally, FMLA leave is unpaid. However, under the circumstances described in this section, FMLA, as made applicable by the CAA, permits an eligible employee to choose to substitute paid leave for FMLA leave. If an employee does not choose to substitute accrued paid leave, the employing office may require the employee to substitute accrued paid leave for FMLA leave.

(b) Where an employee has earned or accrued paid vacation, personal or family leave, that paid leave may be substituted for all or part of any (otherwise) unpaid FMLA leave relating to birth, placement of a child for adoption or foster care, or care for a spouse, child or parent who has a serious health condition. The term "family leave" as used in FMLA refers to paid leave provided by the employing office covering the particular circumstances for which the employee seeks leave for either the birth of a child and to care for such child, placement of a child for adoption or foster care, or care for a spouse, child or parent with a serious health condition. For example, if the employing office's leave plan allows use of family leave to care for a child but not for a parent, the employing office is not required to allow accrued family leave to be substituted for FMLA leave used to care for a parent.

(c) Substitution of paid accrued vacation, personal, or medical/sick leave may be made for any (otherwise) unpaid FMLA leave needed to care for a family member or the employee's own serious health condition. Substitution of paid sick/medical leave may be elected to the extent the circumstances meet the employing office's usual requirements for the use of sick/medical leave. An employing office is not required to allow substitution of paid sick or medical leave for unpaid FMLA leave "in any situation" where the employing office's uniform policy would not normally allow such paid leave. An employee, therefore, has a right to substitute paid medical/sick leave to care for a seriously ill family member only if the employing office's leave plan allows paid leave to be used for that purpose. Similarly, an employee does not have a right to substitute paid medical/sick leave for a serious health condition which is not covered by the employing office's leave plan.

(d)(1) Disability leave for the birth of a child would be considered FMLA leave for a serious health condition and counted in the 12 weeks of leave permitted under FMLA as made applicable by the CAA. Because the leave pursuant to a temporary disability benefit plan is not unpaid, the provision for substitution of paid leave is inapplicable. However, the employing office may designate the leave as FMLA leave and count the leave as running concurrently for purposes of both the benefit plan and the FMLA leave entitlement. If the requirements to qualify for payments pursuant to the employing office's temporary disability plan are more stringent than those of FMLA as made applicable by the CAA, the employee must meet the more stringent requirements of the plan, or may choose not to meet the requirements of the plan and instead receive no payments from the plan and use unpaid FMLA leave or substitute available accrued paid leave.

(2) The FMLA as made applicable by the CAA provides that a serious health condition may result from injury to the employee "on or off" the job. If the employing office designates the leave as FMLA leave in accordance with § 825.208, the employee's FMLA 12-week leave entitlement may run concurrently with a workers' compensation absence when the injury is one that meets the criteria for a serious health condition. As the workers' compensation absence is not unpaid leave, the provision for substitution of the employee's accrued paid leave is not applicable. However, if the health care provider treating the employee for the workers' compensation injury certifies the employee is able to return to a "light duty job" but is unable to return to the same or equivalent job, the employee may decline the employing office's offer of a "light duty job". As a result the employee may lose workers' compensation payments, but is entitled to remain on unpaid FMLA leave until the 12-week entitlement is exhausted. As of the date workers' compensation benefits cease, the substitution provision becomes applicable and either the employee may elect or the employing office may require the use of accrued paid leave. See also §§ 825.210(f), 825.216(d), 825.220(d), 825.307(a)(1) and 825.702(d) (1) and (2) regarding the relationship between workers' compensation absences and FMLA leave.

(e) Paid vacation or personal leave, including leave earned or accrued under plans allowing "paid time off", may be substituted, at either the employee's or the employing office's option, for any qualified FMLA leave. No limitations may be placed by the employing office on substitution of paid vacation or personal leave for these purposes.

(f) If neither the employee nor the employing office elects to substitute paid leave for

unpaid FMLA leave under the above conditions and circumstances, the employee will remain entitled to all the paid leave which is earned or accrued under the terms of the employing office's plan.

(g) If an employee uses paid leave under circumstances which do not qualify as FMLA leave, the leave will not count against the 12 weeks of FMLA leave to which the employee is entitled. For example, paid sick leave used for a medical condition which is not a serious health condition does not count against the 12 weeks of FMLA leave entitlement.

(h) When an employee or employing office elects to substitute paid leave (of any type) for unpaid FMLA leave under circumstances permitted by these regulations, and the employing office's procedural requirements for taking that kind of leave are less stringent than the requirements of FMLA as made applicable by the CAA (e.g., notice or certification requirements), only the less stringent requirements may be imposed. An employee who complies with an employing office's less stringent leave plan requirements in such cases may not have leave for an FMLA purpose delayed or denied on the grounds that the employee has not complied with stricter requirements of FMLA as made applicable by the CAA. However, where accrued paid vacation or personal leave is substituted for unpaid FMLA leave for a serious health condition, an employee may be required to comply with any less stringent medical certification requirements of the employing office's sick leave program. See §§825.302(g), 825.305(e) and 825.306(c).

(i) Compensatory time off, if any is authorized under applicable law, is not a form of accrued paid leave that an employing office may require the employee to substitute for unpaid FMLA leave. The employee may request to use his/her balance of compensatory time for an FMLA reason. If the employing office permits the accrual of compensatory time to be used in compliance with applicable Board regulations, the absence which is paid from the employee's accrued compensatory time "account" may not be counted against the employee's FMLA leave entitlement.

§825.208 Under what circumstances may an employing office designate leave, paid or unpaid, as FMLA leave and, as a result, enable leave to be counted against the employee's total FMLA leave entitlement?

(a) In all circumstances, it is the employing office's responsibility to designate leave, paid or unpaid, as FMLA-qualifying, and to give notice of the designation to the employee as provided in this section. In the case of intermittent leave or leave on a reduced schedule, only one such notice is required unless the circumstances regarding the leave have changed. The employing office's designation decision must be based only on information received from the employee or the employee's spokesperson (e.g., if the employee is incapacitated, the employee's spouse, adult child, parent, doctor, etc., may provide notice to the employing office of the need to take FMLA leave). In any circumstance where the employing office does not have sufficient information about the reason for an employee's use of paid leave, the employing office should inquire further of the employee or the spokesperson to ascertain whether the paid leave is potentially FMLA-qualifying.

(1) An employee giving notice of the need for unpaid FMLA leave must explain the reasons for the needed leave so as to allow the employing office to determine that the leave qualifies under the FMLA, as made applicable by the CAA. If the employee fails to explain the reasons, leave may be denied. In many cases, in explaining the reasons for a request to use paid leave, especially when the need for the leave was unexpected or unforeseen, an employee will provide sufficient information for the employing office to designate the paid leave as FMLA leave. An employee using accrued paid leave, especially vacation or personal leave, may in some cases not spontaneously explain the reasons or their plans for using their accrued leave.

(2) As noted in §825.302(c), an employee giving notice of the need for unpaid FMLA leave does not need to expressly assert rights under the FMLA as made applicable by the CAA or even mention the FMLA to meet his or her obligation to provide notice, though the employee would need to state a qualifying reason for the needed leave. An employee requesting or notifying the employing office of an intent to use accrued paid leave, even if for a purpose covered by FMLA, would not need to assert such right either. However, if an employee requesting to use paid leave for an FMLA-qualifying purpose does not explain the reason for the leave—consistent with the employing office's established policy or practice—and the employing office denies the employee's request, the employee will need to provide sufficient information to establish an FMLA-qualifying reason for the needed leave so that the employing office is aware of the employee's entitlement (i.e., that the leave may not be denied) and, then, may designate that the paid leave be appropriately counted against (substituted for) the employee's 12-week entitlement. Similarly, an employee using accrued paid vacation leave who seeks an extension of unpaid leave for an FMLA-qualifying purpose will need to state the reason. If this is due to an event which occurred during the period of paid leave, the employing office may count the leave used after the FMLA-qualifying event against the employee's 12-week entitlement.

(b)(1) Once the employing office has acquired knowledge that the leave is being taken for an FMLA required reason, the employing office must promptly (within two business days absent extenuating circumstances) notify the employee that the paid leave is designated and will be counted as FMLA leave. If there is a dispute between an employing office and an employee as to whether paid leave qualifies as FMLA leave, it should be resolved through discussions between the employee and the employing office. Such discussions and the decision must be documented.

(2) The employing office's notice to the employee that the leave has been designated as FMLA leave may be orally or in writing. If the notice is oral, it shall be confirmed in writing, no later than the following payday (unless the payday is less than one week after the oral notice, in which case the notice must be no later than the subsequent payday). The written notice may be in any form, including a notation on the employee's pay stub.

(c) If the employing office requires paid leave to be substituted for unpaid leave, or that paid leave taken under an existing leave plan be counted as FMLA leave, this decision must be made by the employing office within two business days of the time the employee gives notice of the need for leave, or, where the employing office does not initially have sufficient information to make a determination, when the employing office determines that the leave qualifies as FMLA leave if this happens later. The employing office's designation must be made before the leave starts, unless the employing office does not have sufficient information as to the employee's reason for taking the leave until after the leave commenced. If the employing office has the requisite knowledge to make a determination that the paid leave is for an FMLA reason at the time the employee either gives notice of the need for leave or commences leave and fails to designate the leave as FMLA leave (and so notify the employee in accordance with paragraph (b)), the employing office may not designate leave as FMLA leave retroactively, and may designate only prospectively as of the date of notification to the employee of the designation. In such circumstances, the employee is subject to the full protections of the FMLA, as made applicable by the CAA, but none of the absence preceding the notice to the employee of the designation may be counted against the employee's 12-week FMLA leave entitlement.

(d) If the employing office learns that leave is for an FMLA purpose after leave has begun, such as when an employee gives notice of the need for an extension of the paid leave with unpaid FMLA leave, the entire or some portion of the paid leave period may be retroactively counted as FMLA leave, to the extent that the leave period qualified as FMLA leave. For example, an employee is granted two weeks paid vacation leave for a skiing trip. In mid-week of the second week, the employee contacts the employing office for an extension of leave as unpaid leave and advises that at the beginning of the second week of paid vacation leave the employee suffered a severe accident requiring hospitalization. The employing office may notify the employee that both the extension and the second week of paid vacation leave (from the date of the injury) is designated as FMLA leave. On the other hand, when the employee takes sick leave that turns into a serious health condition (e.g., bronchitis that turns into bronchial pneumonia) and the employee gives notice of the need for an extension of leave, the entire period of the serious health condition may be counted as FMLA leave.

(e) Employing offices may not designate leave as FMLA leave after the employee has returned to work with two exceptions:

(1) If the employee was absent for an FMLA reason and the employing office did not learn the reason for the absence until the employee's return (e.g., where the employee was absent for only a brief period), the employing office may, upon the employee's return to work, promptly (within two business days of the employee's return to work) designate the leave retroactively with appropriate notice to the employee. If leave is taken for an FMLA reason but the employing office was not aware of the reason, and the employee desires that the leave be counted as FMLA leave, the employee must notify the employing office within two business days of returning to work of the reason for the leave. In the absence of such timely notification by the employee, the employee may not subsequently assert FMLA protections for the absence.

(2) If the employing office knows the reason for the leave but has not been able to confirm that the leave qualifies under FMLA, or where the employing office has requested medical certification which has not yet been received or the parties are in the process of obtaining a second or third medical opinion, the employing office should make a preliminary designation, and so notify the employee, at the time leave begins,

or as soon as the reason for the leave becomes known. Upon receipt of the requisite information from the employee or of the medical certification which confirms the leave is for an FMLA reason, the preliminary designation becomes final. If the medical certifications fail to confirm that the reason for the absence was an FMLA reason, the employing office must withdraw the designation (with written notice to the employee).

(f) If, before beginning employment with an employing office, an employee had been employed by another employing office, the subsequent employing office may count against the employee's FMLA leave entitlement FMLA leave taken from the prior employing office, except that, if the FMLA leave began after the effective date of these regulations (or if the FMLA leave was subject to other applicable requirement under which the employing office was to have designated the leave as FMLA leave), the prior employing office must have properly designated the leave as FMLA under these regulations or other applicable requirement.

§ 825.209 Is an employee entitled to benefits while using FMLA leave?

(a) During any FMLA leave, the employing office must maintain the employee's coverage under the Federal Employees Health Benefits Program or any group health plan (as defined in the Internal Revenue Code of 1986 at 26 U.S.C. 5000(b)(1)) on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period. All employing offices are subject to the requirements of the FMLA, as made applicable by the CAA, to maintain health coverage. The definition of "group health plan" is set forth in § 825.800. For purposes of FMLA, the term "group health plan" shall not include an insurance program providing health coverage under which employees purchase individual policies from insurers provided that—

(1) no contributions are made by the employing office;

(2) participation in the program is completely voluntary for employees;

(3) the sole functions of the employing office with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees, to collect premiums through payroll deductions and to remit them to the insurer;

(4) the employing office receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deduction; and

(5) the premium charged with respect to such coverage does not increase in the event the employment relationship terminates.

(b) The same group health plan benefits provided to an employee prior to taking FMLA leave must be maintained during the FMLA leave. For example, if family member coverage is provided to an employee, family member coverage must be maintained during the FMLA leave. Similarly, benefit coverage during FMLA leave for medical care, surgical care, hospital care, dental care, eye care, mental health counseling, substance abuse treatment, etc., must be maintained during leave if provided in an employing office's group health plan, including a supplement to a group health plan, whether or not provided through a flexible spending account or other component of a cafeteria plan.

(c) If an employing office provides a new health plan or benefits or changes health benefits or plans while an employee is on FMLA leave, the employee is entitled to the new or changed plan/benefits to the same extent as if the employee were not on leave. For example, if an employing office changes a group health plan so that dental care becomes covered under the plan, an employee on FMLA leave must be given the same opportunity as other employees to receive (or obtain) the dental care coverage. Any other plan changes (e.g., in coverage, premiums, deductibles, etc.) which apply to all employees of the workforce would also apply to an employee on FMLA leave.

(d) Notice of any opportunity to change plans or benefits must also be given to an employee on FMLA leave. If the group health plan permits an employee to change from single to family coverage upon the birth of a child or otherwise add new family members, such a change in benefits must be made available while an employee is on FMLA leave. If the employee requests the changed coverage it must be provided by the employing office.

(e) An employee may choose not to retain group health plan coverage during FMLA leave. However, when an employee returns from leave, the employee is entitled to be reinstated on the same terms as prior to taking the leave, including family or dependent coverages, without any qualifying period, physical examination, exclusion of pre-existing conditions, etc. See § 825.212(c).

(f) Except as required by the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) or 5 U.S.C. 8905a, whichever is applicable, and for "key" employees (as discussed below), an employing office's obligation to maintain health benefits during leave (and to restore the employee to the same or equivalent employment) under FMLA ceases if and when the employment relationship would have terminated if the employee had not taken FMLA leave (e.g., if the employee's position is eliminated as part of a nondiscriminatory reduction in force and the employee would not have been transferred to another position); an employee informs the employing office of his or her intent not to return from leave (including before starting the leave if the employing office is so informed before the leave starts); or the employee fails to return from leave or continues on leave after exhausting his or her FMLA leave entitlement in the 12-month period.

(g) If a "key employee" (see § 825.218) does not return from leave when notified by the employing office that substantial or grievous economic injury will result from his or her reinstatement, the employee's entitlement to group health plan benefits continues unless and until the employee advises the employing office that the employee does not desire restoration to employment at the end of the leave period, or FMLA leave entitlement is exhausted, or reinstatement is actually denied.

(h) An employee's entitlement to benefits other than group health benefits during a period of FMLA leave (e.g., holiday pay) is to be determined by the employing office's established policy for providing such benefits when the employee is on other forms of leave (paid or unpaid, as appropriate).

§ 825.210 How may employees on FMLA leave pay their share of group health benefit premiums?

(a) Group health plan benefits must be maintained on the same basis as coverage would have been provided if the employee had been continuously employed during the FMLA leave period. Therefore, any share of group health plan premiums which had been paid by the employee prior to FMLA leave must continue to be paid by the employee during the FMLA leave period. If premiums are raised or lowered, the employee would be required to pay the new premium rates. Maintenance of health insurance policies which are not a part of the employing office's group health plan, as described in § 825.209(a), are the sole responsibility of the employee. The employee and the insurer should make necessary arrangements for payment of premiums during periods of unpaid FMLA leave.

(b) If the FMLA leave is substituted paid leave, the employee's share of premiums must be paid by the method normally used during any paid leave, presumably as a payroll deduction.

(c) If FMLA leave is unpaid, the employing office has a number of options for obtaining payment from the employee. The employing office may require that payment be made to the employing office or to the insurance carrier, but no additional charge may be added to the employee's premium payment for administrative expenses. The employing office may require employees to pay their share of premium payments in any of the following ways:

(1) Payment would be due at the same time as it would be made if by payroll deduction;

(2) Payment would be due on the same schedule as payments are made under COBRA or 5 U.S.C. 8905a, whichever is applicable;

(3) Payment would be prepaid pursuant to a cafeteria plan at the employee's option;

(4) The employing office's existing rules for payment by employees on "leave without pay" would be followed, provided that such rules do not require prepayment (i.e., prior to the commencement of the leave) of the premiums that will become due during a period of unpaid FMLA leave or payment of higher premiums than if the employee had continued to work instead of taking leave; or

(5) Another system voluntarily agreed to between the employing office and the employee, which may include prepayment of premiums (e.g., through increased payroll deductions when the need for the FMLA leave is foreseeable).

(d) The employing office must provide the employee with advance written notice of the terms and conditions under which these payments must be made. (See § 825.301.)

(e) An employing office may not require more of an employee using FMLA leave than the employing office requires of other employees on "leave without pay".

(f) An employee who is receiving payments as a result of a workers' compensation injury must make arrangements with the employing office for payment of group health plan benefits when simultaneously taking unpaid FMLA leave. See paragraph (c) of this section and § 825.207(d)(2).

§ 825.211 What special health benefits maintenance rules apply to multi-employer health plans?

(a) A multi-employer health plan is a plan to which more than one employer is required to contribute, and which is maintained pursuant to one or more collective bargaining agreements between employee organization(s) and the employers.

(b) An employing office under a multi-employer plan must continue to make contributions on behalf of an employee using FMLA leave as though the employee had been continuously employed, unless the plan contains an explicit FMLA provision for maintaining coverage such as through pooled contributions by all employers party to the plan.

(c) During the duration of an employee's FMLA leave, coverage by the group health plan, and benefits provided pursuant to the plan, must be maintained at the level of coverage and benefits which were applicable to the employee at the time FMLA leave commenced.

(d) An employee using FMLA leave cannot be required to use "banked" hours or pay a greater premium than the employee would have been required to pay if the employee had been continuously employed.

(e) As provided in §825.209(f), group health plan coverage must be maintained for an employee on FMLA leave until:

(1) the employee's FMLA leave entitlement is exhausted;

(2) the employing office can show that the employee would have been laid off and the employment relationship terminated; or

(3) the employee provides unequivocal notice of intent not to return to work.

§825.212 What are the consequences of an employee's failure to make timely health plan premium payments?

(a)(1) In the absence of an established employing office policy providing a longer grace period, an employing office's obligations to maintain health insurance coverage cease under FMLA if an employee's premium payment is more than 30 days late. In order to drop the coverage for an employee whose premium payment is late, the employing office must provide written notice to the employee that the payment has not been received. Such notice must be mailed to the employee at least 15 days before coverage is to cease, advising that coverage will be dropped on a specified date at least 15 days after the date of the letter unless the payment has been received by that date. If the employing office has established policies regarding other forms of unpaid leave that provide for the employing office to cease coverage retroactively to the date the unpaid premium payment was due, the employing office may drop the employee from coverage retroactively in accordance with that policy, provided the 15-day notice was given. In the absence of such a policy, coverage for the employee may be terminated at the end of the 30-day grace period, where the required 15-day notice has been provided.

(2) An employing office has no obligation regarding the maintenance of a health insurance policy which is not a "group health plan". See §825.209(a).

(3) All other obligations of an employing office under FMLA would continue; for example, the employing office continues to have an obligation to reinstate an employee upon return from leave.

(b) The employing office may recover the employee's share of any premium payments missed by the employee for any FMLA leave period during which the employing office maintains health coverage by paying the employee's share after the premium payment is missed.

(c) If coverage lapses because an employee has not made required premium payments, upon the employee's return from FMLA leave the employing office must still restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed, including family or dependent coverage. See §825.215(d)(1)–(5). In such case, an employee may not be required to meet any qualification requirements imposed by the plan, including any new preexisting condition waiting period, to wait for an open season, or to pass a medical examination to obtain reinstatement of coverage.

§825.213 May an employing office recover costs it incurred for maintaining "group health plan" or other non-health benefits coverage during FMLA leave?

(a) In addition to the circumstances discussed in §825.212(b), the share of health plan premiums paid by or on behalf of the employing office during a period of unpaid FMLA leave may be recovered from an employee if the employee fails to return to work after the employee's FMLA leave entitlement has been exhausted or expires, unless the reason the employee does not return is due to:

(1) The continuation, recurrence, or onset of a serious health condition of the employee or the employee's family member which would otherwise entitle the employee to leave under FMLA;

(2) Other circumstances beyond the employee's control. Examples of "other circumstances beyond the employee's control" are necessarily broad. They include such situations as where a parent chooses to stay home with a newborn child who has a serious health condition; an employee's spouse is unexpectedly transferred to a job location more than 75 miles from the employee's worksite; a relative or individual other than an immediate family member has a serious health condition and the employee is needed to provide care; the employee is laid off while on leave; or, the employee is a "key employee" who decides not to return to work upon being notified of the employing office's intention to deny restoration because of substantial and grievous economic injury to the employing office's operations and is not reinstated by the employing office. Other circumstances beyond the employee's control would not include a situation where an employee desires to remain with a parent in a distant city even though the parent no longer requires the employee's care, or a parent chooses not to return to work to stay home with a well, newborn child; or

(3) When an employee fails to return to work because of the continuation, recurrence, or onset of a serious health condition, thereby precluding the employing office from recovering its (share of) health benefit premium payments made on the employee's behalf during a period of unpaid FMLA leave, the employing office may require medical certification of the employee's or the family member's serious health condition. Such certification is not required unless requested by the employing office. The employee is required to provide medical certification in a timely manner which, for purposes of this section, is within 30 days from the date of the employing office's request. For purposes of medical certification, the employee may use the optional form developed for this purpose (see §825.306(a) and Appendix B of this part). If the employing office requests medical certification and the employee does not provide such certification in a timely manner (within 30 days), or the reason for not returning to work does not meet the test of other circumstances beyond the employee's control, the employing office may recover 100 percent of the health benefit premiums it paid during the period of unpaid FMLA leave.

(b) Under some circumstances an employing office may elect to maintain other benefits, e.g., life insurance, disability insurance, etc., by paying the employee's (share of) premiums during periods of unpaid FMLA leave. For example, to ensure the employing office can meet its responsibilities to provide equivalent benefits to the employee upon return from unpaid FMLA leave, it may be necessary that premiums be paid continuously to avoid a lapse of coverage. If the employing office elects to maintain such benefits during the leave, at the conclusion of leave, the employing office is entitled to recover only the costs incurred for paying the employee's share of any premiums whether or not the employee returns to work.

(c) An employee who returns to work for at least 30 calendar days is considered to have "returned" to work. An employee who transfers directly from taking FMLA leave to retirement, or who retires during the first 30 days after the employee returns to work, is deemed to have returned to work.

(d) When an employee elects or an employing office requires paid leave to be substituted for FMLA leave, the employing office may not recover its (share of) health insurance or other non-health benefit premiums for any period of FMLA leave covered by paid leave. Because paid leave provided under a plan covering temporary disabilities (including workers' compensation) is not unpaid, recovery of health insurance premiums does not apply to such paid leave.

(e) The amount that self-insured employing offices may recover is limited to only the employing office's share of allowable "premiums" as would be calculated under COBRA, excluding the 2 percent fee for administrative costs.

(f) When an employee fails to return to work, any health and non-health benefit premiums which this section of the regulations permits an employing office to recover are a debt owed by the non-returning employee to the employing office. The existence of this debt caused by the employee's failure to return to work does not alter the employing office's responsibilities for health benefit coverage and, under a self-insurance plan, payment of claims incurred during the period of FMLA leave. To the extent recovery is allowed, the employing office may recover the costs through deduction from any sums due to the employee (e.g., unpaid wages, vacation pay, etc.), provided such deductions do not otherwise violate applicable wage payment or other laws. Alternatively, the employing office may initiate legal action against the employee to recover such costs.

§825.214 What are an employee's rights on returning to work from FMLA leave?

(a) On return from FMLA leave, an employee is entitled to be returned to the same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An employee is entitled to such reinstatement even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence. See also §825.106(e) for the obligations of employing offices that are joint employing offices.

(b) If the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no right to restoration to another position under the FMLA. However, the employing office's obligations may be governed by the Americans with Disabilities Act (ADA), as made applicable by the CAA. See §825.702.

§825.215 What is an equivalent position?

(a) An equivalent position is one that is virtually identical to the employee's former position in terms of pay, benefits and working conditions, including privileges, perquisites and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially

equivalent skill, effort, responsibility, and authority.

(b) If an employee is no longer qualified for the position because of the employee's inability to attend a necessary course, renew a license, fly a minimum number of hours, etc., as a result of the leave, the employee shall be given a reasonable opportunity to fulfill those conditions upon return to work.

(c) Equivalent Pay:

(1) An employee is entitled to any unconditional pay increases which may have occurred during the FMLA leave period, such as cost of living increases. Pay increases conditioned upon seniority, length of service, or work performed would not have to be granted unless it is the employing office's policy or practice to do so with respect to other employees on "leave without pay". In such case, any pay increase would be granted based on the employee's seniority, length of service, work performed, etc., excluding the period of unpaid FMLA leave. An employee is entitled to be restored to a position with the same or equivalent pay premiums, such as a shift differential. If an employee departed from a position averaging ten hours of overtime (and corresponding overtime pay) each week, an employee is ordinarily entitled to such a position on return from FMLA leave.

(2) Many employing offices pay bonuses in different forms to employees for job-related performance such as for perfect attendance, safety (absence of injuries or accidents on the job) and exceeding production goals. Bonuses for perfect attendance and safety do not require performance by the employee but rather contemplate the absence of occurrences. To the extent an employee who takes FMLA leave had met all the requirements for either or both of these bonuses before FMLA leave began, the employee is entitled to continue this entitlement upon return from FMLA leave, that is, the employee may not be disqualified for the bonus(es) for the taking of FMLA leave. See §825.220 (b) and (c). A monthly production bonus, on the other hand, does require performance by the employee. If the employee is on FMLA leave during any part of the period for which the bonus is computed, the employee is entitled to the same consideration for the bonus as other employees on paid or unpaid leave (as appropriate). See paragraph (d)(2) of this section.

(d) Equivalent Benefits. "Benefits" include all benefits provided or made available to employees by an employing office, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employing office through an employee benefit plan.

(1) At the end of an employee's FMLA leave, benefits must be resumed in the same manner and at the same levels as provided when the leave began, and subject to any changes in benefit levels that may have taken place during the period of FMLA leave affecting the entire workforce, unless otherwise elected by the employee. Upon return from FMLA leave, an employee cannot be required to requalify for any benefits the employee enjoyed before FMLA leave began (including family or dependent coverages). For example, if an employee was covered by a life insurance policy before taking leave but is not covered or coverage lapses during the period of unpaid FMLA leave, the employee cannot be required to meet any qualifications, such as taking a physical examination, in order to requalify for life insurance upon return from leave. Accordingly, some employing offices may find it necessary to modify life insurance and other benefits programs in order to restore employees to equivalent benefits upon return from FMLA leave, make arrangements for continued payment of costs to maintain such benefits during unpaid FMLA leave, or pay these costs subject to recovery from the employee on return from leave. See §825.213(b).

(2) An employee may, but is not entitled to, accrue any additional benefits or seniority during unpaid FMLA leave. Benefits accrued at the time leave began, however, (e.g., paid vacation, sick or personal leave to the extent not substituted for FMLA leave) must be available to an employee upon return from leave.

(3) If, while on unpaid FMLA leave, an employee desires to continue life insurance, disability insurance, or other types of benefits for which he or she typically pays, the employing office is required to follow established policies or practices for continuing such benefits for other instances of leave without pay. If the employing office has no established policy, the employee and the employing office are encouraged to agree upon arrangements before FMLA leave begins.

(4) With respect to pension and other retirement plans, any period of unpaid FMLA leave shall not be treated as or counted toward a break in service for purposes of vesting and eligibility to participate. Also, if the plan requires an employee to be employed on a specific date in order to be credited with a year of service for vesting, contributions or participation purposes, an employee on unpaid FMLA leave on that date shall be deemed to have been employed on that date. However, unpaid FMLA leave periods need not be treated as credited service for purposes of benefit accrual, vesting and eligibility to participate.

(5) Employees on unpaid FMLA leave are to be treated as if they continued to work for purposes of changes to benefit plans. They are entitled to changes in benefits plans, except those which may be dependent upon seniority or accrual during the leave period, immediately upon return from leave or to the same extent they would have qualified if no leave had been taken. For example if the benefit plan is predicated on a pre-established number of hours worked each year and the employee does not have sufficient hours as a result of taking unpaid FMLA leave, the benefit is lost. (In this regard, §825.209 addresses health benefits.)

(e) Equivalent Terms and Conditions of Employment. An equivalent position must have substantially similar duties, conditions, responsibilities, privileges and status as the employee's original position.

(1) The employee must be reinstated to the same or a geographically proximate worksite (i.e., one that does not involve a significant increase in commuting time or distance) from where the employee had previously been employed. If the employee's original worksite has been closed, the employee is entitled to the same rights as if the employee had not been on leave when the worksite closed. For example, if an employing office transfers all employees from a closed worksite to a new worksite in a different city, the employee on leave is also entitled to transfer under the same conditions as if he or she had continued to be employed.

(2) The employee is ordinarily entitled to return to the same shift or the same or an equivalent work schedule.

(3) The employee must have the same or an equivalent opportunity for bonuses and other similar discretionary and non-discretionary payments.

(4) FMLA does not prohibit an employing office from accommodating an employee's request to be restored to a different shift, schedule, or position which better suits the employee's personal needs on return from leave, or to offer a promotion to a better position. However, an employee cannot be induced by the employing office to accept a different position against the employee's wishes.

(f) The requirement that an employee be restored to the same or equivalent job with the same or equivalent pay, benefits, and terms and conditions of employment does not extend to de minimis or intangible, unmeasurable aspects of the job. However, restoration to a job slated for lay-off, when the employee's original position is not, would not meet the requirements of an equivalent position.

§825.216 Are there any limitations on an employing office's obligation to reinstate an employee?

(a) An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. An employing office must be able to show that an employee would not otherwise have been employed at the time reinstatement is requested in order to deny restoration to employment. For example:

(1) If an employee is laid off during the course of taking FMLA leave and employment is terminated, the employing office's responsibility to continue FMLA leave, maintain group health plan benefits and restore the employee ceases at the time the employee is laid off, provided the employing office has no continuing obligations under a collective bargaining agreement or otherwise. An employing office would have the burden of proving that an employee would have been laid off during the FMLA leave period and, therefore, would not be entitled to restoration.

(2) If a shift has been eliminated, or overtime has been decreased, an employee would not be entitled to return to work that shift or the original overtime hours upon restoration. However, if a position on, for example, a night shift has been filled by another employee, the employee is entitled to return to the same shift on which employed before taking FMLA leave.

(b) If an employee was hired for a specific term or only to perform work on a discrete project, the employing office has no obligation to restore the employee if the employment term or project is over and the employing office would not otherwise have continued to employ the employee.

(c) In addition to the circumstances explained above, an employing office may deny job restoration to salaried eligible employees ("key employees", as defined in paragraph (c) of §825.217) if such denial is necessary to prevent substantial and grievous economic injury to the operations of the employing office; or may delay restoration to an employee who fails to provide a fitness for duty certificate to return to work under the conditions described in §825.310.

(d) If the employee has been on a workers' compensation absence during which FMLA leave has been taken concurrently, and after 12 weeks of FMLA leave the employee is unable to return to work, the employee no longer has the protections of FMLA and must look to the workers' compensation statute or ADA, as made applicable by the CAA, for any relief or protections.

§ 825.217 What is a "key employee"?

(a) A "key employee" is a salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the employing office within 75 miles of the employee's worksite.

(b) The term "salaried" means paid on a salary basis, within the meaning of the Board's regulations at part 541, implementing section 203 of the CAA (2 U.S.C. 1313) (regarding employees who may qualify as exempt from the minimum wage and overtime requirements of the FLSA, as made applicable by the CAA, as executive, administrative, and professional employees).

(c) A "key employee" must be "among the highest paid 10 percent" of all the employees "both salaried and non-salaried, eligible and ineligible "who are employed by the employing office within 75 miles of the worksite":

(1) In determining which employees are among the highest paid 10 percent, year-to-date earnings are divided by weeks worked by the employee (including weeks in which paid leave was taken). Earnings include wages, premium pay, incentive pay, and non-discretionary and discretionary bonuses. Earnings do not include incentives whose value is determined at some future date, e.g., benefits or perquisites.

(2) The determination of whether a salaried employee is among the highest paid 10 percent shall be made at the time the employee gives notice of the need for leave. No more than 10 percent of the employing office's employees within 75 miles of the worksite may be "key employees".

§ 825.218 What does "substantial and grievous economic injury" mean?

(a) In order to deny restoration to a key employee, an employing office must determine that the restoration of the employee to employment will cause "substantial and grievous economic injury" to the operations of the employing office, not whether the absence of the employee will cause such substantial and grievous injury.

(b) An employing office may take into account its ability to replace on a temporary basis (or temporarily do without) the employee on FMLA leave. If permanent replacement is unavoidable, the cost of then reinstating the employee can be considered in evaluating whether substantial and grievous economic injury will occur from restoration; in other words, the effect on the operations of the employing office of reinstating the employee in an equivalent position.

(c) A precise test cannot be set for the level of hardship or injury to the employing office which must be sustained. If the reinstatement of a "key employee" threatens the economic viability of the employing office, that would constitute "substantial and grievous economic injury". A lesser injury which causes substantial, long-term economic injury would also be sufficient. Minor inconveniences and costs that the employing office would experience in the normal course would certainly not constitute "substantial and grievous economic injury".

(d) FMLA's "substantial and grievous economic injury" standard is different from and more stringent than the "undue hardship" test under the ADA (see, also § 825.702).

§ 825.219 What are the rights of a key employee?

(a) An employing office which believes that reinstatement may be denied to a key employee, must give written notice to the employee at the time the employee gives notice of the need for FMLA leave (or when FMLA leave commences, if earlier) that he or she qualifies as a key employee. At the same time, the employing office must also fully inform the employee of the potential consequences with respect to reinstatement and maintenance of health benefits if the employing office should determine that substantial and grievous economic injury to the employing office's operations will result if the employee is reinstated from FMLA leave. If such notice cannot be given immediately because of the need to determine whether the employee is a key employee, it shall be given as soon as practicable after being notified of a need for leave (or the commencement of leave, if earlier). It is expected that in most circumstances there will be no desire that an employee be denied restoration after FMLA leave and, therefore, there would be no need to provide such notice. However, an employing office who fails to provide such timely notice will lose its right to deny restoration even if substantial and grievous economic injury will result from reinstatement.

(b) As soon as an employing office makes a good faith determination, based on the facts available, that substantial and grievous economic injury to its operations will result if a key employee who has given notice of the need for FMLA leave or is using FMLA leave is reinstated, the employing office shall notify the employee in writing of its determination, that it cannot deny FMLA leave, and that it intends to deny restoration to employment on completion of the FMLA leave. It is anticipated that an employing office will ordinarily be able to give such notice prior to the employee starting leave. The employing office must serve this notice either in person or by certified mail. This notice must explain the basis for the employing office's finding that substantial and grievous economic injury will result, and, if leave has commenced, must provide the employee a reasonable time in which to return to work, taking into account the circumstances, such as the length of the leave and the urgency of the need for the employee to return.

(c) If an employee on leave does not return to work in response to the employing office's notification of intent to deny restoration, the employee continues to be entitled to maintenance of health benefits and the employing office may not recover its cost of health benefit premiums. A key employee's rights under FMLA continue unless and until either the employee gives notice that he or she no longer wishes to return to work, or the employing office actually denies reinstatement at the conclusion of the leave period.

(d) After notice to an employee has been given that substantial and grievous economic injury will result if the employee is reinstated to employment, an employee is still entitled to request reinstatement at the end of the leave period even if the employee did not return to work in response to the employing office's notice. The employing office must then again determine whether there will be substantial and grievous economic injury from reinstatement, based on the facts at that time. If it is determined that substantial and grievous economic injury will result, the employing office shall notify the employee in writing (in person or by certified mail) of the denial of restoration.

§ 825.220 How are employees protected who request leave or otherwise assert FMLA rights?

(a) The FMLA, as made applicable by the CAA, prohibits interference with an employee's rights under the law, and with legal proceedings or inquiries relating to an employee's rights. More specifically, the law contains the following employee protections:

(1) An employing office is prohibited from interfering with, restraining, or denying the exercise of (or attempts to exercise) any rights provided by the FMLA as made applicable by the CAA.

(2) An employing office is prohibited from discharging or in any other way discriminating against any covered employee (whether or not an eligible employee) for opposing or complaining about any unlawful practice under the FMLA as made applicable by the CAA.

(3) All employing offices are prohibited from discharging or in any other way discriminating against any covered employee (whether or not an eligible employee) because that covered employee has—

(i) Filed any charge, or has instituted (or caused to be instituted) any proceeding under or related to the FMLA, as made applicable by the CAA;

(ii) Given, or is about to give, any information in connection with an inquiry or proceeding relating to a right under the FMLA, as made applicable by the CAA;

(iii) Testified, or is about to testify, in any inquiry or proceeding relating to a right under the FMLA, as made applicable by the CAA.

(b) Any violations of the FMLA, as made applicable by the CAA, or of these regulations constitute interfering with, restraining, or denying the exercise of rights provided by the FMLA as made applicable by the CAA. "Interfering with" the exercise of an employee's rights would include, for example, not only refusing to authorize FMLA leave, but discouraging an employee from using such leave. It would also include manipulation by an employing office to avoid responsibilities under FMLA, for example—

(1) [Reserved];

(2) changing the essential functions of the job in order to preclude the taking of leave;

(3) reducing hours available to work in order to avoid employee eligibility.

(c) An employing office is prohibited from discriminating against employees or prospective employees who have used FMLA leave. For example, if an employee on leave without pay would otherwise be entitled to full benefits (other than health benefits), the same benefits would be required to be provided to an employee on unpaid FMLA leave. By the same token, employing offices cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions; nor can FMLA leave be counted under "no fault" attendance policies.

(d) Employees cannot waive, nor may employing offices induce employees to waive, their rights under FMLA. For example, employees (or their collective bargaining representatives) cannot "trade off" the right to take FMLA leave against some other benefit offered by the employing office. This does not prevent an employee's voluntary and uncoerced acceptance (not as a condition of employment) of a "light duty" assignment while recovering from a serious health condition (see § 825.702(d)). In such a circumstance the employee's right to restoration to the same or an equivalent position is available until 12 weeks have passed within the 12-month period, including all FMLA leave taken and the period of "light duty".

(e) Covered employees, and not merely eligible employees, are protected from retaliation for opposing (e.g., file a complaint about) any practice which is unlawful under the FMLA, as made applicable by the CAA.

They are similarly protected if they oppose any practice which they reasonably believe to be a violation of the FMLA, as made applicable by the CAA or regulations.

SUBPART C—HOW DO EMPLOYEES LEARN OF THEIR RIGHTS AND OBLIGATIONS UNDER THE FMLA, AS MADE APPLICABLE BY THE CAA, AND WHAT CAN AN EMPLOYING OFFICE REQUIRE OF AN EMPLOYEE?

§ 825.300 [Reserved]

§ 825.301 What notices to employees are required of employing offices under the FMLA as made applicable by the CAA?

(a)(1) If an employing office has any eligible employees and has any written guidance to employees concerning employee benefits or leave rights, such as in an employee handbook, information concerning both entitlements and employee obligations under the FMLA, as made applicable by the CAA, must be included in the handbook or other document. For example, if an employing office provides an employee handbook to all employees that describes the employing office's policies regarding leave, wages, attendance, and similar matters, the handbook must incorporate information on FMLA rights and responsibilities and the employing office's policies regarding the FMLA, as made applicable by the CAA. Informational publications describing the provisions of the FMLA as made applicable by the CAA are available from the Office of Compliance and may be incorporated in such employing office handbooks or written policies.

(2) If such an employing office does not have written policies, manuals, or handbooks describing employee benefits and leave provisions, the employing office shall provide written guidance to an employee concerning all the employee's rights and obligations under the FMLA as made applicable by the CAA. This notice shall be provided to employees each time notice is given pursuant to paragraph (b), and in accordance with the provisions of that paragraph. Employing offices may duplicate and provide the employee a copy of the FMLA Fact Sheet available from the Office of Compliance to provide such guidance.

(b)(1) The employing office shall also provide the employee with written notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. The written notice must be provided to the employee in a language in which the employee is literate. Such specific notice must include, as appropriate—

(i) that the leave will be counted against the employee's annual FMLA leave entitlement (see § 825.208);

(ii) any requirements for the employee to furnish medical certification of a serious health condition and the consequences of failing to do so (see § 825.305);

(iii) the employee's right to substitute paid leave and whether the employing office will require the substitution of paid leave, and the conditions related to any substitution;

(iv) any requirement for the employee to make any premium payments to maintain health benefits and the arrangements for making such payments (see § 825.210), and the possible consequences of failure to make such payments on a timely basis (i.e., the circumstances under which coverage may lapse);

(v) any requirement for the employee to present a fitness-for-duty certificate to be restored to employment (see § 825.310);

(vi) the employee's status as a "key employee" and the potential consequence that restoration may be denied following FMLA leave, explaining the conditions required for such denial (see § 825.218);

(vii) the employee's right to restoration to the same or an equivalent job upon return from leave (see §§ 825.214 and 825.604); and

(viii) the employee's potential liability for payment of health insurance premiums paid by the employing office during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave (see § 825.213).

(2) The specific notice may include other information—e.g., whether the employing office will require periodic reports of the employee's status and intent to return to work, but is not required to do so. A prototype notice is contained in Appendix D of this part, or may be obtained from the Office of Compliance, which employing offices may adapt for their use to meet these specific notice requirements.

(c) Except as provided in this subparagraph, the written notice required by paragraph (b) (and by subparagraph (a)(2) where applicable) must be provided to the employee no less often than the first time in each six-month period that an employee gives notice of the need for FMLA leave (if FMLA leave is taken during the six-month period). The notice shall be given within a reasonable time after notice of the need for leave is given by the employee—within one or two business days if feasible. If leave has already begun, the notice should be mailed to the employee's address of record.

(1) If the specific information provided by the notice changes with respect to a subsequent period of FMLA leave during the six-month period, the employing office shall, within one or two business days of receipt of the employee's notice of need for leave, provide written notice referencing the prior notice and setting forth any of the information in subparagraph (b) which has changed. For example, if the initial leave period were paid leave and the subsequent leave period would be unpaid leave, the employing office may need to give notice of the arrangements for making premium payments.

(2)(i) Except as provided in subparagraph (ii), if the employing office is requiring medical certification or a "fitness-for-duty" report, written notice of the requirement shall be given with respect to each employee notice of a need for leave.

(ii) Subsequent written notification shall not be required if the initial notice in the six-month period and the employing office handbook or other written documents (if any) describing the employing office's leave policies, clearly provided that certification or a "fitness-for-duty" report would be required (e.g., by stating that certification would be required in all cases, by stating that certification would be required in all cases in which leave of more than a specified number of days is taken, or by stating that a "fitness-for-duty" report would be required in all cases for back injuries for employees in a certain occupation). Where subsequent written notice is not required, at least oral notice shall be provided. (See § 825.305(a).)

(d) Employing offices are also expected to responsively answer questions from employees concerning their rights and responsibilities under the FMLA as made applicable under the CAA.

(e) Employing offices furnishing FMLA-required notices to sensory impaired individuals must also comply with all applicable requirements under law.

(f) If an employing office fails to provide notice in accordance with the provisions of this section, the employing office may not take action against an employee for failure to comply with any provision required to be set forth in the notice.

§ 825.302 What notice does an employee have to give an employing office when the need for FMLA leave is foreseeable?

(a) An employee must provide the employing office at least 30 days advance notice before FMLA leave is to begin if the need for the leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or of a family member. If 30 days notice is not practicable, such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable. For example, an employee's health condition may require leave to commence earlier than anticipated before the birth of a child. Similarly, little opportunity for notice may be given before placement for adoption. Whether the leave is to be continuous or is to be taken intermittently or on a reduced schedule basis, notice need only be given one time, but the employee shall advise the employing office as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown.

(b) "As soon as practicable" means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. For foreseeable leave where it is not possible to give as much as 30 days notice, "as soon as practicable" ordinarily would mean at least verbal notification to the employing office within one or two business days of when the need for leave becomes known to the employee.

(c) An employee shall provide at least verbal notice sufficient to make the employing office aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave. The employee need not expressly assert rights under the FMLA as made applicable by the CAA, or even mention the FMLA, but may only state that leave is needed for an expected birth or adoption, for example. The employing office should inquire further of the employee if it is necessary to have more information about whether FMLA leave is being sought by the employee, and obtain the necessary details of the leave to be taken. In the case of medical conditions, the employing office may find it necessary to inquire further to determine if the leave is because of a serious health condition and may request medical certification to support the need for such leave (see § 825.305).

(d) An employing office may also require an employee to comply with the employing office's usual and customary notice and procedural requirements for requesting leave. For example, an employing office may require that written notice set forth the reasons for the requested leave, the anticipated duration of the leave, and the anticipated start of the leave. However, failure to follow such internal employing office procedures will not permit an employing office to disallow or delay an employee's taking FMLA leave if the employee gives timely verbal or other notice.

(e) When planning medical treatment, the employee must consult with the employing office and make a reasonable effort to schedule the leave so as not to disrupt unduly the employing office's operations, subject to the approval of the health care provider. Employees are ordinarily expected to consult with their employing offices prior to the

scheduling of treatment in order to work out a treatment schedule which best suits the needs of both the employing office and the employee. If an employee who provides notice of the need to take FMLA leave on an intermittent basis for planned medical treatment neglects to consult with the employing office to make a reasonable attempt to arrange the schedule of treatments so as not to unduly disrupt the employing office's operations, the employing office may initiate discussions with the employee and require the employee to attempt to make such arrangements, subject to the approval of the health care provider.

(f) In the case of intermittent leave or leave on a reduced leave schedule which is medically necessary, an employee shall advise the employing office, upon request, of the reasons why the intermittent/reduced leave schedule is necessary and of the schedule for treatment, if applicable. The employee and employing office shall attempt to work out a schedule which meets the employee's needs without unduly disrupting the employing office's operations, subject to the approval of the health care provider.

(g) An employing office may waive employees' FMLA notice requirements. In addition, an employing office may not require compliance with stricter FMLA notice requirements where the provisions of a collective bargaining agreement or applicable leave plan allow less advance notice to the employing office. For example, if an employee (or employing office) elects to substitute paid vacation leave for unpaid FMLA leave (see §825.207), and the employing office's paid vacation leave plan imposes no prior notification requirements for taking such vacation leave, no advance notice may be required for the FMLA leave taken in these circumstances. On the other hand, FMLA notice requirements would apply to a period of unpaid FMLA leave, unless the employing office imposes lesser notice requirements on employees taking leave without pay.

§825.303 What are the requirements for an employee to furnish notice to an employing office where the need for FMLA leave is not foreseeable?

(a) When the approximate timing of the need for leave is not foreseeable, an employee should give notice to the employing office of the need for FMLA leave as soon as practicable under the facts and circumstances of the particular case. It is expected that an employee will give notice to the employing office within no more than one or two working days of learning of the need for leave, except in extraordinary circumstances where such notice is not feasible. In the case of a medical emergency requiring leave because of an employee's own serious health condition or to care for a family member with a serious health condition, written advance notice pursuant to an employing office's internal rules and procedures may not be required when FMLA leave is involved.

(b) The employee should provide notice to the employing office either in person or by telephone, telegraph, facsimile ("fax") machine or other electronic means. Notice may be given by the employee's spokesperson (e.g., spouse, adult family member or other responsible party) if the employee is unable to do so personally. The employee need not expressly assert rights under the FMLA, as made applicable by the CAA, or even mention the FMLA, but may only state that leave is needed. The employing office will be expected to obtain any additional required information through informal means. The employee or spokesperson will be expected to provide more information when it can readily be accomplished as a practical matter, taking into consideration the exigencies of the situation.

§825.304 What recourse do employing offices have if employees fail to provide the required notice?

(a) An employing office may waive employees' FMLA notice obligations or the employing office's own internal rules on leave notice requirements.

(b) If an employee fails to give 30 days notice for foreseeable leave with no reasonable excuse for the delay, the employing office may delay the taking of FMLA leave until at least 30 days after the date the employee provides notice to the employing office of the need for FMLA leave.

(c) In all cases, in order for the onset of an employee's FMLA leave to be delayed due to lack of required notice, it must be clear that the employee had actual notice of the FMLA notice requirements. This condition would be satisfied by the employing office's proper posting, at the worksite where the employee is employed, of the information regarding the FMLA provided (pursuant to section 301(h)(2) of the CAA, 2 U.S.C. 1381(h)(2)) by the Office of Compliance to the employing office in a manner suitable for posting. Furthermore, the need for leave and the approximate date leave would be taken must have been clearly foreseeable to the employee 30 days in advance of the leave. For example, knowledge that an employee would receive a telephone call about the availability of a child for adoption at some unknown point in the future would not be sufficient.

§825.305 When must an employee provide medical certification to support FMLA leave?

(a) An employing office may require that an employee's leave to care for the employee's seriously ill spouse, son, daughter, or parent, or due to the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's position, be supported by a certification issued by the health care provider of the employee or the employee's ill family member. An employing office must give notice of a requirement for medical certification each time a certification is required; such notice must be written notice whenever required by §825.301. An employing office's oral request to an employee to furnish any subsequent medical certification is sufficient.

(b) When the leave is foreseeable and at least 30 days notice has been provided, the employee should provide the medical certification before the leave begins. When this is not possible, the employee must provide the requested certification to the employing office within the time frame requested by the employing office (which must allow at least 15 calendar days after the employing office's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

(c) In most cases, the employing office should request that an employee furnish certification from a health care provider at the time the employee gives notice of the need for leave or within two business days thereafter, or, in the case of unforeseen leave, within two business days after the leave commences. The employing office may request certification at some later date if the employing office later has reason to question the appropriateness of the leave or its duration.

(d) At the time the employing office requests certification, the employing office must also advise an employee of the anticipated consequences of an employee's failure to provide adequate certification. The employing office shall advise an employee whenever the employing office finds a certification incomplete, and provide the employee a reasonable opportunity to cure any such deficiency.

(e) If the employing office's sick or medical leave plan imposes medical certification requirements that are less stringent than the certification requirements of these regulations, and the employee or employing office elects to substitute paid sick, vacation, personal or family leave for unpaid FMLA leave where authorized (see §825.207), only the employing office's less stringent sick leave certification requirements may be imposed.

§825.306 How much information may be required in medical certifications of a serious health condition?

(a) The Office of Compliance has made available an optional form ("Certification of Physician or Practitioner") for employees' (or their family members') use in obtaining medical certification, including second and third opinions, from health care providers that meets FMLA's certification requirements. (See Appendix B to these regulations.) This optional form reflects certification requirements so as to permit the health care provider to furnish appropriate medical information within his or her knowledge.

(b) The Certification of Physician or Practitioner form is modeled closely on Form WH–380, as revised, which was developed by the Department of Labor (see 29 C.F.R. Part 825, Appendix B). The employing office may use the Office of Compliance's form, or Form WH–380, as revised, or another form containing the same basic information; however, no additional information may be required. In all instances the information on the form must relate only to the serious health condition for which the current need for leave exists. The form identifies the health care provider and type of medical practice (including pertinent specialization, if any), makes maximum use of checklist entries for ease in completing the form, and contains required entries for:

(1) A certification as to which part of the definition of "serious health condition" (see §825.114), if any, applies to the patient's condition, and the medical facts which support the certification, including a brief statement as to how the medical facts meet the criteria of the definition.

(2)(i) The approximate date the serious health condition commenced, and its probable duration, including the probable duration of the patient's present incapacity (defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom) if different.

(ii) Whether it will be necessary for the employee to take leave intermittently or to work on a reduced leave schedule basis (i.e., part-time) as a result of the serious health condition (see §825.117 and §825.203), and if so, the probable duration of such schedule.

(iii) If the condition is pregnancy or a chronic condition within the meaning of §825.114(a)(2)(iii), whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity.

(3)(i)(A) If additional treatments will be required for the condition, an estimate of the probable number of such treatments.

(B) If the patient's incapacity will be intermittent, or will require a reduced leave schedule, an estimate of the probable number and interval between such treatments, actual or estimated dates of treatment if known, and period required for recovery if any.

(ii) If any of the treatments referred to in subparagraph (i) will be provided by another provider of health services (e.g., physical therapist), the nature of the treatments.

(iii) If a regimen of continuing treatment by the patient is required under the supervision of the health care provider, a general description of the regimen (see §825.114(b)).

(4) If medical leave is required for the employee's absence from work because of the employee's own condition (including absences due to pregnancy or a chronic condition), whether the employee—

(i) is unable to perform work of any kind;

(ii) is unable to perform any one or more of the essential functions of the employee's position, including a statement of the essential functions the employee is unable to perform (see §825.115), based on either information provided on a statement from the employing office of the essential functions of the position or, if not provided, discussion with the employee about the employee's job functions; or

(iii) must be absent from work for treatment.

(5)(i) If leave is required to care for a family member of the employee with a serious health condition, whether the patient requires assistance for basic medical or personal needs or safety, or for transportation; or if not, whether the employee's presence to provide psychological comfort would be beneficial to the patient or assist in the patient's recovery. The employee is required to indicate on the form the care he or she will provide and an estimate of the time period.

(ii) If the employee's family member will need care only intermittently or on a reduced leave schedule basis (i.e., part-time), the probable duration of the need.

(c) If the employing office's sick or medical leave plan requires less information to be furnished in medical certifications than the certification requirements of these regulations, and the employee or employing office elects to substitute paid sick, vacation, personal or family leave for unpaid FMLA leave where authorized (see §825.207), only the employing office's lesser sick leave certification requirements may be imposed.

§825.307 What may an employing office do if it questions the adequacy of a medical certification?

(a) If an employee submits a complete certification signed by the health care provider, the employing office may not request additional information from the employee's health care provider. However, a health care provider representing the employing office may contact the employee's health care provider, with the employee's permission, for purposes of clarification and authenticity of the medical certification.

(1) If an employee is on FMLA leave running concurrently with a workers' compensation absence, and the provisions of the workers' compensation statute permit the employing office or the employing office's representative to have direct contact with the employee's workers' compensation health care provider, the employing office may follow the workers' compensation provisions.

(2) An employing office that has reason to doubt the validity of a medical certification may require the employee to obtain a second opinion at the employing office's expense. Pending receipt of the second (or third) medical opinion, the employee is provisionally entitled to the benefits of the FMLA as made applicable by the CAA, including maintenance of group health benefits. If the certifications do not ultimately establish the employee's entitlement to FMLA leave, the leave shall not be designated as FMLA leave and may be treated as paid or unpaid leave under the employing office's established leave policies. The employing office is permitted to designate the health care provider to furnish the second opinion, but the selected health care provider may not be employed on a regular basis by the employing office. See also paragraphs (e) and (f) of this section.

(b) The employing office may not regularly contract with or otherwise regularly utilize the services of the health care provider furnishing the second opinion unless the employing office is located in an area where access to health care is extremely limited (e.g., a rural area where no more than one or two doctors practice in the relevant specialty in the vicinity).

(c) If the opinions of the employee's and the employing office's designated health care providers differ, the employing office may require the employee to obtain certification from a third health care provider, again at the employing office's expense. This third opinion shall be final and binding. The third health care provider must be designated or approved jointly by the employing office and the employee. The employing office and the employee must each act in good faith to attempt to reach agreement on whom to select for the third opinion provider. If the employing office does not attempt in good faith to reach agreement, the employing office will be bound by the first certification. If the employee does not attempt in good faith to reach agreement, the employee will be bound by the second certification. For example, an employee who refuses to agree to see a doctor in the specialty in question may be failing to act in good faith. On the other hand, an employing office that refuses to agree to any doctor on a list of specialists in the appropriate field provided by the employee and whom the employee has not previously consulted may be failing to act in good faith.

(d) The employing office is required to provide the employee with a copy of the second and third medical opinions, where applicable, upon request by the employee. Requested copies are to be provided within two business days unless extenuating circumstances prevent such action.

(e) If the employing office requires the employee to obtain either a second or third opinion the employing office must reimburse an employee or family member for any reasonable "out of pocket" travel expenses incurred to obtain the second and third medical opinions. The employing office may not require the employee or family member to travel outside normal commuting distance for purposes of obtaining the second or third medical opinions except in very unusual circumstances.

(f) In circumstances when the employee or a family member is visiting in another country, or a family member resides in a another country, and a serious health condition develops, the employing office shall accept a medical certification as well as second and third opinions from a health care provider who practices in that country.

§825.308 Under what circumstances may an employing office request subsequent recertifications of medical conditions?

(a) For pregnancy, chronic, or permanent/long-term conditions under continuing supervision of a health care provider (as defined in §825.114(a)(2) (ii), (iii) or (iv)), an employing office may request recertification no more often than every 30 days and only in connection with an absence by the employee, unless:

(1) Circumstances described by the previous certification have changed significantly (e.g., the duration or frequency of absences, the severity of the condition, complications); or

(2) The employing office receives information that casts doubt upon the employee's stated reason for the absence.

(b)(1) If the minimum duration of the period of incapacity specified on a certification furnished by the health care provider is more than 30 days, the employing office may not request recertification until that minimum duration has passed unless one of the conditions set forth in paragraph (c) (1), (2) or (3) of this section is met.

(2) For FMLA leave taken intermittently or on a reduced leave schedule basis, the employing office may not request recertification in less than the minimum period specified on the certification as necessary for such leave (including treatment) unless one of the conditions set forth in paragraph (c) (1), (2) or (3) of this section is met.

(c) For circumstances not covered by paragraphs (a) or (b) of this section, an employing office may request recertification at any reasonable interval, but not more often than every 30 days, unless:

(1) The employee requests an extension of leave;

(2) Circumstances described by the previous certification have changed significantly (e.g., the duration of the illness, the nature of the illness, complications); or

(3) The employing office receives information that casts doubt upon the continuing validity of the certification.

(d) The employee must provide the requested recertification to the employing office within the time frame requested by the employing office (which must allow at least 15 calendar days after the employing office's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

(e) Any recertification requested by the employing office shall be at the employee's expense unless the employing office provides otherwise. No second or third opinion on recertification may be required.

§825.309 What notice may an employing office require regarding an employee's intent to return to work?

(a) An employing office may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work. The employing office's policy regarding such reports may not be discriminatory and must take into account all of the relevant facts and circumstances related to the individual employee's leave situation.

(b) If an employee gives unequivocal notice of intent not to return to work, the employing office's obligations under FMLA, as made applicable by the CAA, to maintain health benefits (subject to requirements of COBRA or 5 U.S.C. 8905a, whichever is applicable) and to restore the employee cease. However, these obligations continue if an employee indicates he or she may be unable to return to work but expresses a continuing desire to do so.

(c) It may be necessary for an employee to take more leave than originally anticipated. Conversely, an employee may discover after beginning leave that the circumstances have

changed and the amount of leave originally anticipated is no longer necessary. An employee may not be required to take more FMLA leave than necessary to resolve the circumstance that precipitated the need for leave. In both of these situations, the employing office may require that the employee provide the employing office reasonable notice (i.e., within two business days) of the changed circumstances where foreseeable. The employing office may also obtain information on such changed circumstances through requested status reports.

§ 825.310 Under what circumstances may an employing office require that an employee submit a medical certification that the employee is able (or unable) to return to work (i.e., a "fitness-for-duty" report)?

(a) As a condition of restoring an employee whose FMLA leave was occasioned by the employee's own serious health condition that made the employee unable to perform the employee's job, an employing office may have a uniformly-applied policy or practice that requires all similarly-situated employees (i.e., same occupation, same serious health condition) who take leave for such conditions to obtain and present certification from the employee's health care provider that the employee is able to resume work.

(b) If the terms of a collective bargaining agreement govern an employee's return to work, those provisions shall be applied. Similarly, requirements under the Americans with Disabilities Act (ADA), as made applicable by the CAA, that any return-to-work physical be job-related and consistent with business necessity apply. For example, an attorney could not be required to submit to a medical examination or inquiry just because her leg had been amputated. The essential functions of an attorney's job do not require use of both legs; therefore such an inquiry would not be job related. An employing office may require a warehouse laborer, whose back impairment affects the ability to lift, to be examined by an orthopedist, but may not require this employee to submit to an HIV test where the test is not related to either the essential functions of his/her job or to his/her impairment.

(c) An employing office may seek fitness-for-duty certification only with regard to the particular health condition that caused the employee's need for FMLA leave. The certification itself need only be a simple statement of an employee's ability to return to work. A health care provider employed by the employing office may contact the employee's health care provider with the employee's permission, for purposes of clarification of the employee's fitness to return to work. No additional information may be acquired, and clarification may be requested only for the serious health condition for which FMLA leave was taken. The employing office may not delay the employee's return to work while contact with the health care provider is being made.

(d) The cost of the certification shall be borne by the employee and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification.

(e) The notice that employing offices are required to give to each employee giving notice of the need for FMLA leave regarding their FMLA rights and obligations as made applicable by the CAA (see § 825.301) shall advise the employee if the employing office will require fitness-for-duty certification to return to work. If the employing office has a handbook explaining employment policies and benefits, the handbook should explain the employing office's general policy regarding any requirement for fitness-for-duty certification to return to work. Specific notice shall also be given to any employee from whom fitness-for-duty certification will be required either at the time notice of the need for leave is given or immediately after leave commences and the employing office is advised of the medical circumstances requiring the leave, unless the employee's condition changes from one that did not previously require certification pursuant to the employing office's practice or policy. No second or third fitness-for-duty certification may be required.

(f) An employing office may delay restoration to employment until an employee submits a required fitness-for-duty certification unless the employing office has failed to provide the notices required in paragraph (e) of this section.

(g) An employing office is not entitled to certification of fitness to return to duty when the employee takes intermittent leave as described in § 825.203.

(h) When an employee is unable to return to work after FMLA leave because of the continuation, recurrence, or onset of the employee's or family member's serious health condition, thereby preventing the employing office from recovering its share of health benefit premium payments made on the employee's behalf during a period of unpaid FMLA leave, the employing office may require medical certification of the employee's or the family member's serious health condition. (See § 825.213(a)(3).) The cost of the certification shall be borne by the employee and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification.

§ 825.311 What happens if an employee fails to satisfy the medical certification and/or recertification requirements?

(a) In the case of foreseeable leave, an employing office may delay the taking of FMLA leave to an employee who fails to provide timely certification after being requested by the employing office to furnish such certification (i.e., within 15 calendar days, if practicable), until the required certification is provided.

(b) When the need for leave is not foreseeable, or in the case of recertification, an employee must provide certification (or recertification) within the time frame requested by the employing office (which must allow at least 15 days after the employing office's request) or as soon as reasonably possible under the particular facts and circumstances. In the case of a medical emergency, it may not be practicable for an employee to provide the required certification within 15 calendar days. If an employee fails to provide a medical certification within a reasonable time under the pertinent circumstances, the employing office may delay the employee's continuation of FMLA leave. If the employee never produces the certification, the leave is not FMLA leave.

(c) When requested by the employing office pursuant to a uniformly applied policy for similarly-situated employees, the employee must provide medical certification at the time the employee seeks reinstatement at the end of FMLA leave taken for the employee's serious health condition, that the employee is fit for duty and able to return to work (see § 825.310(a)) if the employing office has provided the required notice (see § 825.301(c)); the employing office may delay restoration until the certification is provided. In this situation, unless the employee provides either a fitness-for-duty certification or a new medical certification for a serious health condition at the time FMLA leave is concluded, the employee may be terminated. See also § 825.213(a)(3).

§ 825.312 Under what circumstances may an employing office refuse to provide FMLA leave or reinstatement to eligible employees?

(a) If an employee fails to give timely advance notice when the need for FMLA leave is foreseeable, the employing office may delay the taking of FMLA leave until 30 days after the date the employee provides notice to the employing office of the need for FMLA leave. (See § 825.302.)

(b) If an employee fails to provide in a timely manner a requested medical certification to substantiate the need for FMLA leave due to a serious health condition, an employing office may delay continuation of FMLA leave until an employee submits the certificate. (See §§ 825.305 and 825.311.) If the employee never produces the certification, the leave is not FMLA leave.

(c) If an employee fails to provide a requested fitness-for-duty certification to return to work, an employing office may delay restoration until the employee submits the certificate. (See §§ 825.310 and 825.311.)

(d) An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. Thus, an employee's rights to continued leave, maintenance of health benefits, and restoration cease under FMLA, as made applicable by the CAA, if and when the employment relationship terminates (e.g., layoff), unless that relationship continues, for example, by the employee remaining on paid FMLA leave. If the employee is recalled or otherwise re-employed, an eligible employee is immediately entitled to further FMLA leave for an FMLA-qualifying reason. An employing office must be able to show, when an employee requests restoration, that the employee would not otherwise have been employed if leave had not been taken in order to deny restoration to employment. (See § 825.216.)

(e) An employing office may require an employee on FMLA leave to report periodically on the employee's status and intention to return to work. (See § 825.309.) If an employee unequivocally advises the employing office either before or during the taking of leave that the employee does not intend to return to work, and the employment relationship is terminated, the employee's entitlement to continued leave, maintenance of health benefits, and restoration ceases unless the employment relationship continues, for example, by the employee remaining on paid leave. An employee may not be required to take more leave than necessary to address the circumstances for which leave was taken. If the employee is able to return to work earlier than anticipated, the employee shall provide the employing office two business days notice where feasible; the employing office is required to restore the employee once such notice is given, or where such prior notice was not feasible.

(f) An employing office may deny restoration to employment, but not the taking of FMLA leave and the maintenance of health benefits, to an eligible employee only under the terms of the "key employee" exemption. Denial of reinstatement must be necessary to prevent "substantial and grievous economic injury" to the employing office's operations. The employing office must notify the employee of the employee's status as a "key employee" and of the employing office's intent to deny reinstatement on that

basis when the employing office makes these determinations. If leave has started, the employee must be given a reasonable opportunity to return to work after being so notified. (See §825.219.)

(g) An employee who fraudulently obtains FMLA leave from an employing office is not protected by job restoration or maintenance of health benefits provisions of the FMLA as made applicable by the CAA.

(h) If the employing office has a uniformly-applied policy governing outside or supplemental employment, such a policy may continue to apply to an employee while on FMLA leave. An employing office which does not have such a policy may not deny benefits to which an employee is entitled under FMLA as made applicable by the CAA on this basis unless the FMLA leave was fraudulently obtained as in paragraph (g) of this section.

SUBPART D—WHAT ENFORCEMENT MECHANISMS DOES THE CAA PROVIDE?

§825.400 What can employees do who believe that their rights under the FMLA as made applicable by the CAA have been violated?

(a) To commence a proceeding, a covered employee alleging a violation of the rights and protections of the FMLA made applicable by the CAA must request counseling by the Office of Compliance not later than 180 days after the date of the alleged violation. If a covered employee misses this deadline, the covered employee will be unable to obtain a remedy under the CAA.

(b) The following procedures are available under title IV of the CAA for covered employees who believe that their rights under FMLA as made applicable by the CAA have been violated—

(1) counseling;

(2) mediation; and

(3) election of either—

(A) a formal complaint, filed with the Office of Compliance, and a hearing before a hearing officer, subject to review by the Board of Directors of the Office of Compliance, and judicial review in the United States Court of Appeals for the Federal Circuit; or

(B) a civil action in a district court of the United States.

(c) Regulations of the Office of Compliance describing and governing these procedures are found at [proposed rules can be found at 141 Cong. Rec. S17012 (November 14, 1995)].

§825.401 [Reserved]

§825.402 [Reserved]

§825.403 [Reserved]

§825.404 [Reserved]

SUBPART E—[RESERVED]

SUBPART F—WHAT SPECIAL RULES APPLY TO EMPLOYEES OF SCHOOLS?

§825.600 To whom do the special rules apply?

(a) Certain special rules apply to employees of "local educational agencies", including public school boards and elementary schools under their jurisdiction, and private elementary and secondary schools. The special rules do not apply to other kinds of educational institutions, such as colleges and universities, trade schools, and preschools.

(b) Educational institutions are covered by FMLA as made applicable by the CAA (and these special rules). The usual requirements for employees to be "eligible" apply.

(c) The special rules affect the taking of intermittent leave or leave on a reduced leave schedule, or leave near the end of an academic term (semester), by instructional employees. "Instructional employees" are those whose principal function is to teach and instruct students in a class, a small group, or an individual setting. This term includes not only teachers, but also athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. It does not include, and the special rules do not apply to, teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists, or curriculum specialists. It also does not include cafeteria workers, maintenance workers, or bus drivers.

(d) Special rules which apply to restoration to an equivalent position apply to all employees of local educational agencies.

§825.601 What limitations apply to the taking of intermittent leave or leave on a reduced leave schedule?

(a) Leave taken for a period that ends with the school year and begins the next semester is leave taken consecutively rather than intermittently. The period during the summer vacation when the employee would not have been required to report for duty is not counted against the employee's FMLA leave entitlement. An instructional employee who is on FMLA leave at the end of the school year must be provided with any benefits over the summer vacation that employees would normally receive if they had been working at the end of the school year.

(1) If an eligible instructional employee needs intermittent leave or leave on a reduced leave schedule to care for a family member, or for the employee's own serious health condition, which is foreseeable based on planned medical treatment, and the employee would be on leave for more than 20 percent of the total number of working days over the period the leave would extend, the employing office may require the employee to choose either to:

(i) Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or

(ii) Transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

(2) These rules apply only to a leave involving more than 20 percent of the working days during the period over which the leave extends. For example, if an instructional employee who normally works five days each week needs to take two days of FMLA leave per week over a period of several weeks, the special rules would apply. Employees taking leave which constitutes 20 percent or less of the working days during the leave period would not be subject to transfer to an alternative position. "Periods of a particular duration" means a block, or blocks, of time beginning no earlier than the first day for which leave is needed and ending no later than the last day on which leave is needed, and may include one uninterrupted period of leave.

(b) If an instructional employee does not give required notice of foreseeable FMLA leave (see §825.302) to be taken intermittently or on a reduced leave schedule, the employing office may require the employee to take leave of a particular duration, or to transfer temporarily to an alternative position. Alternatively, the employing office may require the employee to delay the taking of leave until the notice provision is met. See §825.207(h).

§825.602 What limitations apply to the taking of leave near the end of an academic term?

(a) There are also different rules for instructional employees who begin leave more than five weeks before the end of a term, less than five weeks before the end of a term, and less than three weeks before the end of a term. Regular rules apply except in circumstances when:

(1) An instructional employee begins leave more than five weeks before the end of a term. The employing office may require the employee to continue taking leave until the end of the term if—

(i) the leave will last at least three weeks, and

(ii) the employee would return to work during the three-week period before the end of the term.

(2) The employee begins leave for a purpose other than the employee's own serious health condition during the five-week period before the end of a term. The employing office may require the employee to continue taking leave until the end of the term if—

(i) the leave will last more than two weeks, and

(ii) the employee would return to work during the two-week period before the end of the term.

(3) The employee begins leave for a purpose other than the employee's own serious health condition during the three-week period before the end of a term, and the leave will last more than five working days. The employing office may require the employee to continue taking leave until the end of the term.

(b) For purposes of these provisions, "academic term" means the school semester, which typically ends near the end of the calendar year and the end of spring each school year. In no case may a school have more than two academic terms or semesters each year for purposes of FMLA as made applicable by the CAA. An example of leave falling within these provisions would be where an employee plans two weeks of leave to care for a family member which will begin three weeks before the end of the term. In that situation, the employing office could require the employee to stay out on leave until the end of the term.

§825.603 Is all leave taken during "periods of a particular duration" counted against the FMLA leave entitlement?

(a) If an employee chooses to take leave for "periods of a particular duration" in the case of intermittent or reduced schedule leave, the entire period of leave taken will count as FMLA leave.

(b) In the case of an employee who is required to take leave until the end of an academic term, only the period of leave until the employee is ready and able to return to work shall be charged against the employee's FMLA leave entitlement. The employing office has the option not to require the employee to stay on leave until the end of the school term. Therefore, any additional leave required by the employing office to the end of the school term is not counted as FMLA leave; however, the employing office shall be required to maintain the employee's group health insurance and restore the employee to the same or equivalent job including other benefits at the conclusion of the leave.

§825.604 What special rules apply to restoration to "an equivalent position"?

The determination of how an employee is to be restored to "an equivalent position" upon return from FMLA leave will be made on the basis of "established school board

policies and practices, private school policies and practices, and collective bargaining agreements". The "established policies" and collective bargaining agreements used as a basis for restoration must be in writing, must be made known to the employee prior to the taking of FMLA leave, and must clearly explain the employee's restoration rights upon return from leave. Any established policy which is used as the basis for restoration of an employee to "an equivalent position" must provide substantially the same protections as provided in the FMLA, as made applicable by the CAA, for reinstated employees. See §825.215. In other words, the policy or collective bargaining agreement must provide for restoration to an "equivalent position" with equivalent employment benefits, pay, and other terms and conditions of employment. For example, an employee may not be restored to a position requiring additional licensure or certification.

SUBPART G—HOW DO OTHER LAWS, EMPLOYING OFFICE PRACTICES, AND COLLECTIVE BARGAINING AGREEMENTS AFFECT EMPLOYEE RIGHTS UNDER THE FMLA AS MADE APPLICABLE BY THE CAA?

§825.700 What if an employing office provides more generous benefits than required by FMLA as made applicable by the CAA?

(a) An employing office must observe any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established by the FMLA. Conversely, the rights established by the FMLA, as made applicable by the CAA, may not be diminished by any employment benefit program or plan. For example, a provision of a collective bargaining agreement (CBA) which provides for reinstatement to a position that is not equivalent because of seniority (e.g., provides lesser pay) is superseded by FMLA. If an employing office provides greater unpaid family leave rights than are afforded by FMLA, the employing office is not required to extend additional rights afforded by FMLA, such as maintenance of health benefits (other than through COBRA or 5 U.S.C. 8905a, whichever is applicable), to the additional leave period not covered by FMLA. If an employee takes paid or unpaid leave and the employing office does not designate the leave as FMLA leave, the leave taken does not count against an employee's FMLA entitlement.

(b) Nothing in the FMLA, as made applicable by the CAA, prevents an employing office from amending existing leave and employee benefit programs, provided they comply with FMLA as made applicable by the CAA. However, nothing in the FMLA, as made applicable by the CAA, is intended to discourage employing offices from adopting or retaining more generous leave policies.

(c) [Reserved].

§825.701 [Reserved]

§825.702 How does FMLA affect anti-discrimination laws as applied by section 201 of the CAA?

(a) Nothing in FMLA modifies or affects any applicable law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability (e.g., title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act), as made applicable by the CAA. FMLA's legislative history explains that FMLA is "not intended to modify or affect the Rehabilitation Act of 1973, as amended, the regulations concerning employment which have been promulgated pursuant to that statute, or the Americans with Disabilities Act of 1990, or the regulations issued under that Act. Thus, the leave provisions of the [FMLA] are wholly distinct from the reasonable accommodation obligations of employers covered under the [ADA] * * * or the Federal government itself. The purpose of the FMLA is to make leave available to eligible employees and employing offices within its coverage, and not to limit already existing rights and protection". S. Rep. No. 3, 103d Cong., 1st Sess. 38 (1993). An employing office must therefore provide leave under whichever statutory provision provides the greater rights to employees.

(b) If an employee is a qualified individual with a disability within the meaning of the Americans with Disabilities Act (ADA), the employing office must make reasonable accommodations, etc., barring undue hardship, in accordance with the ADA. At the same time, the employing office must afford an employee his or her FMLA rights. ADA's "disability" and FMLA's "serious health condition" are different concepts, and must be analyzed separately. FMLA entitles eligible employees to 12 weeks of leave in any 12-month period, whereas the ADA allows an indeterminate amount of leave, barring undue hardship, as a reasonable accommodation. FMLA requires employing offices to maintain employees' group health plan coverage during FMLA leave on the same conditions as coverage would have been provided if the employee had been continuously employed during the leave period, whereas ADA does not require maintenance of health insurance unless other employees receive health insurance during leave under the same circumstances.

(c)(1) A reasonable accommodation under the ADA might be accomplished by providing an individual with a disability with a part-time job with no health benefits, assuming the employing office did not ordinarily provide health insurance for part-time employees. However, FMLA would permit an employee to work a reduced leave schedule until the equivalent of 12 workweeks of leave were used, with group health benefits maintained during this period. FMLA permits an employing office to temporarily transfer an employee who is taking leave intermittently or on a reduced leave schedule to an alternative position, whereas the ADA allows an accommodation of reassignment to an equivalent, vacant position only if the employee cannot perform the essential functions of the employee's present position and an accommodation is not possible in the employee's present position, or an accommodation in the employee's present position would cause an undue hardship. The examples in the following paragraphs of this section demonstrate how the two laws would interact with respect to a qualified individual with a disability.

(2) A qualified individual with a disability who is also an "eligible employee" entitled to FMLA leave requests 10 weeks of medical leave as a reasonable accommodation, which the employing office grants because it is not an undue hardship. The employing office advises the employee that the 10 weeks of leave is also being designated as FMLA leave and will count towards the employee's FMLA leave entitlement. This designation does not prevent the parties from also treating the leave as a reasonable accommodation and reinstating the employee into the same job, as required by the ADA, rather than an equivalent position under FMLA, if that is the greater right available to the employee. At the same time, the employee would be entitled under FMLA to have the employing office maintain group health plan coverage during the leave, as that requirement provides the greater right to the employee.

(3) If the same employee needed to work part-time (a reduced leave schedule) after returning to his or her same job, the employee would still be entitled under FMLA to have group health plan coverage maintained for the remainder of the two-week equivalent of FMLA leave entitlement, notwithstanding an employing office policy that part-time employees do not receive health insurance. This employee would be entitled under the ADA to reasonable accommodations to enable the employee to perform the essential functions of the part-time position. In addition, because the employee is working a part-time schedule as a reasonable accommodation, the employee would be shielded from FMLA's provision for temporary assignment to a different alternative position. Once the employee has exhausted his or her remaining FMLA leave entitlement while working the reduced (part-time) schedule, if the employee is a qualified individual with a disability, and if the employee is unable to return to the same full-time position at that time, the employee might continue to work part-time as a reasonable accommodation, barring undue hardship; the employee would then be entitled to only those employment benefits ordinarily provided by the employing office to part-time employees.

(4) At the end of the FMLA leave entitlement, an employing office is required under FMLA to reinstate the employee in the same or an equivalent position, with equivalent pay and benefits, to that which the employee held when leave commenced. The employing office's FMLA obligations would be satisfied if the employing office offered the employee an equivalent full-time position. If the employee were unable to perform the essential functions of that equivalent position even with reasonable accommodation, because of a disability, the ADA may require the employing office to make a reasonable accommodation at that time by allowing the employee to work part-time or by reassigning the employee to a vacant position, barring undue hardship.

(d)(1) If FMLA entitles an employee to leave, an employing office may not, in lieu of FMLA leave entitlement, require an employee to take a job with a reasonable accommodation. However, ADA may require that an employing office offer an employee the opportunity to take such a position. An employing office may not change the essential functions of the job in order to deny FMLA leave. See §825.220(b).

(2) An employee may be on a workers' compensation absence due to an on-the-job injury or illness which also qualifies as a serious health condition under FMLA. The workers' compensation absence and FMLA leave may run concurrently (subject to proper notice and designation by the employing office). At some point the health care provider providing medical care pursuant to the workers' compensation injury may certify the employee is able to return to work in a "light duty" position. If the employing office offers such a position, the employee is permitted but not required to accept the position (see §825.220(d)). As a result, the employee may no longer qualify for payments from the workers' compensation benefit plan, but the employee is entitled to continue on unpaid FMLA leave either until the employee is able to return to the same or equivalent job the employee left or until the 12-week FMLA leave entitlement is exhausted. See §825.207(d)(2). If the employee

returning from the workers' compensation injury is a qualified individual with a disability, he or she will have rights under the ADA.

(e) If an employing office requires certifications of an employee's fitness for duty to return to work, as permitted by FMLA under a uniform policy, it must comply with the ADA requirement that a fitness for duty physical be job-related and consistent with business necessity.

(f) Under title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act, and as made applicable by the CAA, an employing office should provide the same benefits for women who are pregnant as the employing office provides to other employees with short-term disabilities. Because title VII does not require employees to be employed for a certain period of time to be protected, an employee employed for less than 12 months by any employing office (and, therefore, not an "eligible" employee under FMLA, as made applicable by the CAA) may not be denied maternity leave if the employing office normally provides short-term disability benefits to employees with the same tenure who are experiencing other short-term disabilities.

(g) For further information on Federal anti-discrimination laws applied by section 201 of the CAA (2 U.S.C. 1311), including title VII, the Rehabilitation Act, and the ADA, individuals are encouraged to contact the Office of Compliance.

SUBPART H—DEFINITIONS

§ 825.800 Definitions.

For purposes of this part:

ADA means the Americans With Disabilities Act (42 U.S.C. 12101 et seq.).

CAA means the Congressional Accountability Act of 1995 (Pub. Law 104–1, 109 Stat. 3, 2 U.S.C. 1301 et seq.).

COBRA means the continuation coverage requirements of title X of the Consolidated Omnibus Budget Reconciliation Act of 1986 (Pub. Law 99–272, title X, section 10002; 100 Stat. 227; as amended; 29 U.S.C. 1161–1168).

Continuing treatment means: A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

(1) A period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom) of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(i) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

(ii) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

(2) Any period of incapacity due to pregnancy, or for prenatal care.

(3) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(i) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(ii) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(iii) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

(4) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(5) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

Covered employee—The term "covered employee", as defined in the CAA, means any employee of—(1) the House of Representatives; (2) the Senate; (3) the Capitol Guide Service; (4) the Capitol Police; (5) the Congressional Budget Office; (6) the Office of the Architect of the Capitol; (7) the Office of the Attending Physician; (8) the Office of Compliance; or (9) the Office of Technology Assessment.

Eligible employee—The term "eligible employee", as defined in the CAA, means a covered employee who has been employed in any employing office for 12 months and for at least 1,250 hours of employment during the previous 12 months.

Employ means to suffer or permit to work.

Employee means an employee as defined in the CAA and includes an applicant for employment and a former employee.

Employee employed in an instructional capacity: See Teacher.

Employee of the Capitol Police—The term "employee of the Capitol Police" includes any member or officer of the Capitol Police.

Employee of the House of Representatives—The term "employee of the House of Representatives" includes an individual occupying a position the pay for which is disbursed by the Clerk of the House of Representatives, or another official designated by the House of Representatives, or any employment position in an entity that is paid with funds derived from the clerk-hire allowance of the House of Representatives but not any such individual employed by any entity listed in subparagraphs (3) through (9) under "covered employee" above.

Employee of the Office of the Architect of the Capitol—The term "employee of the Office of the Architect of the Capitol" includes any employee of the Office of the Architect of the Capitol, the Botanic Garden, or the Senate Restaurants.

Employee of the Senate—The term "employee of the Senate" includes any employee whose pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (9) under "covered employee" above.

Employing Office—The term "employing office", as defined in the CAA, means—

(1) the personal office of a Member of the House of Representatives or of a Senator;

(2) a committee of the House of Representatives or the Senate or a joint committee;

(3) any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or

(4) the Capitol Guide Board, the Capitol Police Board, the Congessional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Compliance, and the Office of Technology Assessment.

Employment benefits means all benefits provided or made available to employees by an employing office, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employing office or through an employee benefit plan. The term does not include non-employment related obligations paid by employees through voluntary deductions such as supplemental insurance coverage. (See § 825.209(a)).

FLSA means the Fair Labor Standards Act (29 U.S.C. 201 et seq.).

FMLA means the Family and Medical Leave Act of 1993, Public Law 103–3 (February 5, 1993), 107 Stat. 6 (29 U.S.C. 2601 et seq.).

Group health plan means the Federal Employees Health Benefits Program and any other plan of, or contributed to by, an employing office (including a self-insured plan) to provide health care (directly or otherwise) to the employing office's employees, former employees, or the families of such employees or former employees. For purposes of FMLA, as made applicable by the CAA, the term "group health plan" shall not include an insurance program providing health coverage under which employees purchase individual policies from insurers provided that—

(1) no contributions are made by the employing office;

(2) participation in the program is completely voluntary for employees;

(3) the sole functions of the employing office with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees, to collect premiums through payroll deductions and to remit them to the insurer;

(4) the employing office receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deduction; and

(5) the premium charged with respect to such coverage does not increase in the event the employment relationship terminates.

Health care provider means:

(1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices; or

(2) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law; and

(3) Nurse practitioners, nurse-midwives and clinical social workers who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law; and

(4) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.

(5) Any health care provider from whom an employing office or a group health plan's

benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

(6) A health care provider as defined above who practices in a country other than the United States, who is licensed to practice in accordance with the laws and regulations of that country.

"Incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in several of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

Instructional employee: See Teacher.

Intermittent leave means leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy.

Mental disability: See Physical or mental disability.

Office of Compliance means the independent office established in the legislative branch under section 301 of the CAA (2 U.S.C. 1381).

Parent means the biological parent of an employee or an individual who stands or stood in loco parentis to an employee when the employee was a child.

Physical or mental disability means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. See the Americans with Disabilities Act (ADA), as made applicable by section 201(a)(3) of the CAA (2 U.S.C. 1311(a)(3)).

Reduced leave schedule means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

Secretary means the Secretary of Labor or authorized representative.

Serious health condition entitling an employee to FMLA leave means:

(1) An illness, injury, impairment, or physical or mental condition that involves:

(i) Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (for purposes of this section, defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom), or any subsequent treatment in connection with such inpatient care; or

(ii) Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes:

(A) A period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom) of more than three consecutive calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(1) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

(2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

(B) Any period of incapacity due to pregnancy, or for prenatal care.

(C) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(1) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

(D) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(E) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

(2) Treatment for purposes of paragraph (1) of this definition includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. Under paragraph (1)(ii)(A)(2) of this definition, a regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bedrest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

(3) Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not "serious health conditions" unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness resulting from stress or allergies may be serious health conditions, but only if all the conditions of this section are met.

(4) Substance abuse may be a serious health condition if the conditions of this section are met. However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. On the other hand, absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

(5) Absences attributable to incapacity under paragraphs (1)(ii) (B) or (C) of this definition qualify for FMLA leave even though the employee or the immediate family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability.

Spouse means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.

State means any State of the United States or the District of Columbia or any Territory or possession of the United States.

Teacher (or employee employed in an instructional capacity, or instructional employee) means an employee employed principally in an instructional capacity by an educational agency or school whose principal function is to teach and instruct students in a class, a small group, or an individual setting, and includes athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. The term does not include teacher assistants or aides who do not have as their principal function actual teaching or instructing, nor auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers, bus drivers, or other primarily noninstructional employees.

APPENDIX A TO PART 825—[RESERVED]

APPENDIX B TO PART 825—CERTIFICATION OF PHYSICIAN OR PRACTITIONER

CERTIFICATION OF HEALTH CARE PROVIDER

(FAMILY AND MEDICAL LEAVE ACT OF 1993 AS MADE APPLICABLE BY THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995)

1. Employee's Name:

2. Patient's Name (if different from employee):

3. The attached sheet describes what is meant by a "serious health condition" under the Family and Medical Leave Act as made applicable by the Congressional Accountability Act. Does the patient's condition[1] qualify under any of the categories described? If so, please check the applicable category.

(1) _____

(2) _____

(3) _____

(4) _____

(5) _____

(6) _____, or

None of the above _____

4. Describe the medical facts which support your certification, including a brief statement as to how the medical facts meet the criteria of one of these categories:

5.a. State the approximate date the condition commenced, and the probable duration of the condition (and also the probable duration of the patient's present incapacity[2] if different):

b. Will it be necessary for the employee to take work only intermittently or to work on a less than full schedule as a result of the condition (including for treatment described in Item 6 below)? _____

If yes, give probable duration:

c. If the condition is a chronic condition (condition #4) or pregnancy, state whether the patient is presently incapacitated[2] and the likely duration and frequency of episodes of incapacity[2]:

6.a. If additional treatments will be required for the condition, provide an estimate of the probable number of such treatments:

If the patient will be absent from work or other daily activities because of treatment on an intermittent or part-time basis, also provide an estimate of the probable number and interval between such treatments, actual or estimated dates of treatment if known, and period required for recovery if any:

b. If any of these treatments will be provided by another provider of health services (e.g., physical therapist), please state the nature of the treatments:

c. If a regimen of continuing treatment by the patient is required under your supervision, provide a general description of such regimen (e.g., prescription drugs, physical therapy requiring special equipment):

7.a. If medical leave is required for the employee's absence from work because of the employee's own condition (including absences due to pregnancy or a chronic condition), is the employee unable to perform work of any kind? _____

b. If able to perform some work, is the employee unable to perform any one or more of the essential functions of the employee's job (the employee or the employer should supply you with information about the essential job functions)? _____ If yes, please list the essential functions the employee is unable to perform: _____

c. If neither a. nor b. applies, is it necessary for the employee to be absent from work for treatment? _____

8.a. If leave is required to care for a family member of the employee with a serious health condition, does the patient require assistance for basic medical or personal needs or safety, or for transportation? _____

b. If no, would the employee's presence to provide psychological comfort be beneficial to the patient or assist in the patient's recovery? _____

c. If the patient will need care only intermittently or on a part-time basis, please indicate the probable duration of this need:

(Signature of Health Care Provider)

(Type of Practice)

(Address)

(Telephone number)

To be completed by the employee needing family leave to care for a family member:

State the care you will provide and an estimate of the period during which care will be provided, including a schedule if leave is to be taken intermittently or if it will be necessary for you to work less than a full schedule:

(Employee signature)

(Date)

A "Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. Hospital Care.—Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity[1] or subsequent treatment in connection with or consequent to such inpatient care.

2. Absence Plus Treatment.—A period of incapacity[2] of more than three consecutive calendar days (including any subsequent treatment or period of incapacity[2] relating to the same condition), that also involves:

(1) Treatment[3] two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

(2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment[4] under the supervision of the health care provider.

3. Pregnancy.—Any period of incapacity due to pregnancy, or for prenatal care.

4. Chronic Conditions Requiring Treatments.—A chronic condition which:

(1) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(3) May cause episodic rather than a continuing period of incapacity[2] (e.g., asthma, diabetes, epilepsy, etc.).

5. Permanent/Long-term Conditions Requiring Supervision.—A period of incapacity[2] which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

6. Multiple Treatments (Non-Chronic Conditions).—Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity[2] of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

FOOTNOTES

[1] Here and elsewhere on this form, the information sought relates only to the condition for which the employee is taking FMLA leave.

[2] "Incapacity", for purposes of FMLA as make applicable by the CAA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom.

[3] Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

[4] A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

APPENDIX C TO PART 825—[RESERVED]

APPENDIX D TO PART 825—PROTOTYPE NOTICE: EMPLOYING OFFICE RESPONSE TO EMPLOYEE REQUEST FOR FAMILY AND MEDICAL LEAVE

EMPLOYING OFFICE RESPONSE TO EMPLOYEE REQUEST FOR FAMILY OR MEDICAL LEAVE

(OPTIONAL USE FORM—SEE §825.301(B)(1) OF THE REGULATIONS OF THE OFFICE OF COMPLIANCE)

(FAMILY AND MEDICAL LEAVE ACT OF 1993, AS MADE APPLICABLE BY THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995)

(Date)

To:_____
(Employee's name)

From:_____
(Name of appropriate employing office representative)

Subject: Request for Family/Medical Leave

On_____, (date) you notified us of your need to take family/medical leave due to:

(Date)

The birth of your child, or the placement of a child with you for adoption or foster care; or

A serious health condition that makes you unable to perform the essential functions of your job; or

A serious health condition affecting your spouse, child, parent, for which you are needed to provide care.

You notified us that you need this leave beginning on _____(date) and that you expect leave to continue until on or about_____ (date).

Except as explained below, you have a right under the FMLA, as made applicable by the CAA, for up to 12 weeks of unpaid leave in a 12-month period for the reasons listed above. Also, your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work, and you must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from leave. If you do not return to work following FMLA leave for a reason other than: (1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA leave; or (2) other circumstances beyond your control, you may be required to

reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave.

This is to inform you that: (check appropriate boxes; explain where indicated)

1. You are ☐ eligible ☐ not eligible for leave under the FMLA as made applicable by the CAA.

2. The requested leave ☐ will ☐ will not be counted against your annual FMLA leave entitlement.

3. You ☐ will ☐ will not be required to furnish medical certification of a serious health condition. If required, you must furnish certification by_____ (insert date) (must be at least 15 days after you are notified of this requirement) or we may delay the commencement of your leave until the certification is submitted.

4. You may elect to substitute accrued paid leave for unpaid FMLA leave. We ☐ will ☐ will not require that you substitute accrued paid leave for unpaid FMLA leave. If paid leave will be used the following conditions will apply: (Explain)

5(a). If you normally pay a portion of the premiums for your health insurance, these payments will continue during the period of FMLA leave. Arrangements for payment have been discussed with you and it is agreed that you will make premium payments as follows: (Set forth dates, e.g., the 10th of each month, or pay periods, etc. that specifically cover the agreement with the employee.).

(b). You have a minimum 30-day (or, indicate longer period, if applicable) grace period in which to make premium payments. If payment is not made timely, your group health insurance may be cancelled: *Provided*, That we notify you in writing at least 15 days before the date that your health coverage will lapse, or, at our option, we may pay your share of the premiums during FMLA leave, and recover these payments from you upon your return to work. We ☐ will ☐ will not pay your share of health insurance premiums while you are on leave.

(c). We ☐ will ☐ will not do the same with other benefits (e.g., life insurance, disability insurance, etc.) while you are on FMLA leave. If we do pay your premiums for other benefits, when you return from leave you ☐ will ☐ will not be expected to reimburse us for the payments made on your behalf.

6. You ☐ will ☐ will not be required to present a fitness-for-duty certificate prior to being restored to employment. If such certification is required but not received, your return to work may be delayed until the certification is provided.

7(a). You ☐ are ☐ are not a "key employee" as described in §825.218 of the Office of Compliance's FMLA regulations. If you are a "key employee", restoration to employment may be denied following FMLA leave on the grounds that such restoration will cause substantial and grievous economic injury to us.

(b). We ☐ have ☐ have not determined that restoring you to employment at the conclusion of FMLA leave will cause substantial and grievous economic harm to us. (Explain (a) and/or (b) below. See §825.219 of the Office of Compliance's FMLA regulations.)

8. While on leave, you ☐ will ☐ will not be required to furnish us with periodic reports every _____ (indicate interval of periodic reports, as appropriate for the particular leave situation) of your status and intent to return to work (see §825.309 of the Office of Compliance's FMLA regulations). If the circumstances of your leave change and you are able to return to work earlier than the date indicated on the reverse side of this form, you ☐ will ☐ will not be required to notify us at least two work days prior to the date you intend to report for work.

9. You ☐ will ☐ will not be required to furnish recertification relating to a serious health condition. (Explain below, if necessary, including the interval between certifications as prescribed in §825.308 of the Office of Compliance's FMLA regulations.)

Subtitle C—Regulations Relating to the Employing Offices Other Than Those of the Senate and the House of Representatives—C Series

CHAPTER III—REGULATIONS RELATING TO THE RIGHTS AND PROTECTIONS UNDER THE FAIR LABOR STANDARDS ACT OF 1938

PART C501—GENERAL PROVISIONS

Sec.
C501.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.
C501.101 Purpose and scope.
C501.102 Definitions.
C501.103 Coverage.
C501.104 Administrative authority.
C501.105 Effect of Interpretations of the Labor Department.
C501.106 Application of the Portal-to-Portal Act of 1947.
C501.107 [Reserved].

§ C501.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance

The following table lists the parts of the Secretary of Labor Regulations at Title 29 of the Code of Federal Regulations under the FLSA with the corresponding parts of the Office of Compliance (OC) Regulations under section 203 of the CAA:

Secretary of Labor regulations	*OC regulations*
Part 531 Wage payments under the Fair Labor Standards Act of 1938	Part C531
Part 541 Defining and delimiting the terms "bona fide executive", "administrative", and "professional" employees	Part C541
Part 547 Requirements of a "Bona fide thrift or savings plan"	Part C547
Part 553 Application of the FLSA to employees of public agencies	Part C553
Part 570 Child labor	Part C570

SUBPART A—MATTERS OF GENERAL APPLICABILITY

§ C501.101 Purpose and scope

(a) Section 203 of the Congressional Accountability Act (CAA) provides that the rights and protections of subsections (a)(1) and (d) of section 6, section 7, and section 12(c) of the Fair Labor Standards Act of 1938 (FLSA) (29 U.S.C. §§206(a)(1) and (d), 207, 212(c)) shall apply to covered employees of the legislative branch of the Federal Government. Section 301 of the CAA creates the Office of Compliance as an independent office in the legislative branch for enforcing the rights and protections of the FLSA, as applied by the CAA.

(b) The FLSA as applied by the CAA provides for minimum standards for both wages and overtime entitlements, and delineates administrative procedures by which covered worktime must be compensated. Included also in the FLSA are provisions related to child labor, equal pay, and portal-to-portal activities. In addition, the FLSA exempts specified employees or groups of employees from the application of certain of its provisions.

(c) This chapter contains the substantive regulations with respect to the FLSA that the Board of Directors of the Office of Compliance has adopted pursuant to sections 203(c) and 304 of the CAA, which requires that the Board promulgate regulations that are "the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of §203 of the CAA] except insofar as the Board may determine, for good cause shown . . . that a modification of such regulations would be more effective for the implementation of the rights and protections under this section".

(d) These regulations are issued by the Board of Directors, Office of Compliance, pursuant to sections 203(c) and 304 of the CAA, which directs the Board to promulgate regulations implementing section 203 that are "the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of section 203 of the CAA] except insofar as the Board may determine, for good cause shown . . . that a modification of such regulations would be more effective for the implementation of the rights and protections under this section". The regulations issued by the Board herein are on all matters for which section 203 of the CAA requires regulations to be issued. Specifically, it is the Board's considered judgment, based on the information available to it at the time of the promulgation of these regulations, that, with the exception of regulations adopted and set forth herein, there are no other "substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of section 203 of the CAA]".

(e) In promulgating these regulations, the Board has made certain technical and nomenclature changes to the regulations as promulgated by the Secretary. Such changes are intended to make the provisions adopted accord more naturally to situations in the legislative branch. However, by making these changes, the Board does not intend a substantive difference between these regulations and those of the Secretary from which they are derived. Moreover, such changes, in and of themselves, are not intended to constitute an interpretation of the regulation or of the statutory provisions of the CAA upon which they are based.

§ C501.102 Definitions

For purposes of this chapter:

(a) "CAA" means the Congressional Accountability Act of 1995 (P.L. 104–1, 109 Stat. 3, 2 U.S.C. §§1301–1438).

(b) "FLSA" or "Act" means the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §201 et seq.), as applied by section 203 of the CAA to covered employees and employing offices.

(c) "Covered employee" means any employee, including an applicant for employment and a former employee, of the (1) the

Capitol Guide Service; (2) the Capitol Police; (3) the Congressional Budget Office; (4) the Office of the Architect of the Capitol; (5) the Office of the Attending Physician; (6) the Office of Compliance; or (7) the Office of Technology Assessment, but shall not include an intern.

(d)(1) "Employee of the Office of the Architect of the Capitol" includes any employee of the Architect of the Capitol, the Botanic Garden, or the Senate Restaurants;

(2) "Employee of the Capitol Police" includes any member or officer of the Capitol Police.

(e) "Employing office" and "employer" mean (1) the Capitol Guide Service; (2) the Capitol Police; (3) the Congressional Budget Office; (4) the Office of the Architect of the Capitol; (5) the Office of the Attending Physician; (6) the Office of Compliance; or (7) the Office of Technology Assessment.

(f) "Board" means the Board of Directors of the Office of Compliance.

(g) "Office" means the Office of Compliance.

(h) "Intern" is an individual who (a) is performing services in an employing office as part of a demonstrated educational plan, and (b) is appointed on a temporary basis for a period not to exceed 12 months: *Provided*, That if an intern is appointed for a period shorter than 12 months, the intern may be reappointed for additional periods as long as the total length of the internship does not exceed 12 months: *Provided further*, That the defintion of "intern" does not include volunteers, fellows or pages.

§ C501.103 Coverage

The coverage of section 203 of the CAA extends to any covered employee of an employing office without regard to whether the covered employee is engaged in commerce or the production of goods for interstate commerce and without regard to size, number of employees, amount of business transacted, or other measure.

§ C501.104 Administrative authority

(a) The Office of Compliance is authorized to administer the provisions of section 203 of the Act with respect to any covered employee or covered employer.

(b) The Board is authorized to promulgate substantive regulations in accordance with the provisions of sections 203(c) and 304 of the CAA.

§ C501.105 Effect of interpretations of the Department of Labor

(a) In administering the FLSA, the Wage and Hour Division of the Department of Labor has issued not only substantive regulations but also interpretative bulletins. Substantive regulations represent an exercise of statutorily-delegated lawmaking authority from the legislative branch to an administrative agency. Generally, they are proposed in accordance with the notice-and-comment procedures of the Administrative Procedure Act (APA), 5 U.S.C. §553. Once promulgated, such regulations are considered to have the force and effect of law, unless set aside upon judicial review as arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. See Batterton v. Francis, 432 U.S. 416, 425 n.9 (1977). See also 29 C.F.R. §790.17(b) (1994). Unlike substantive regulations, interpretative statements, including bulletins and other releases of the Wage and Hour Division, are not issued pursuant to the provisions of the APA and may not have the force and effect of law. Rather, they may only constitute official interpretations of the Department of Labor with respect to the meaning and application of the minimum wage, maximum hour, and overtime pay requirements of the FLSA. See 29 C.F.R. §790.17(c) (citing Final Report of the Attorney General's Committee on Administrative Procedure, Senate Document No. 8, 77th Cong., 1st Sess., at p. 27 (1941)). The purpose of such statements is to make available in one place the interpretations of the FLSA which will guide the Secretary of Labor and the Wage and Hour Administrator in the performance of their duties unless and until they are otherwise directed by authoritative decisions of the courts or conclude, upon reexamination of an interpretation, that it is incorrect. The Supreme Court has observed: "[T]he rulings, interpretations and opinions of the Administrator under this Act, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon the thoroughness evident in the consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.". Skidmore v. Swift, 323 U.S. 134, 140 (1944).

(b) Section 203(c) of the CAA provides that the substantive regulations implementing section 203 of the CAA shall be "the same as substantive regulations promulgated by the Secretary of Labor" except where the Board finds, for good cause shown, that a modification would more effectively implement the rights and protections established by the FLSA. Thus, the CAA by its terms does not mandate that the Board adopt the interpretative statements of the Department of Labor or its Wage and Hour Division. The Board is thus not adopting such statements as part of its substantive regulations.

§ C501.106 Application of the Portal-to-Portal Act of 1947

(a) Consistent with section 225 of the CAA, the Portal-to-Portal Act (PPA), 29 U.S.C. §§216 and 251 et seq., is applicable in defining and delimiting the rights and protections of the FLSA that are prescribed by the CAA. Section 10 of the PPA, 29 U.S.C. §259, provides in pertinent part: "[N]o employer shall be subject to any liability or punishment for or on account of the failure of the employer to pay minimum wages or overtime compensation under the Fair Labor Standards Act of 1938, as amended, . . . if he pleads and proves that the act or omission complained of was in good faith in conformity with and reliance on any written administrative regulation, order, ruling, approval or interpretation of [the Administrator of the Wage and Hour Division of the Department of Labor] . . . or any administrative practice or enforcement policy of such agency with respect to the class of employers to which he belonged. Such a defense, if established shall be a bar to the action or proceeding, notwithstanding that after such act or omission, such administrative regulation, order, ruling, approval, interpretation, practice or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.".

(b) In defending any action or proceeding based on any act or omission arising out of section 203 of the CAA, an employing office may satisfy the standards set forth in subsection (a) by pleading and proving good faith reliance upon any written administrative regulation, order, ruling, approval or interpretation, of the Administrator of the Wage and Hour Division of the Department of Labor: *Provided*, That such regulation, order, ruling, approval or interpretation had not been superseded at the time of reliance by any regulation, order, decision, or ruling of the Board or the courts.

§ C501.107 [Reserved]

PART C531—WAGE PAYMENTS UNDER THE FAIR LABOR STANDARDS ACT OF 1938

SUBPART A—PRELIMINARY MATTERS

Sec.
C531.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.
C531.1 Definitions.
C531.2 Purpose and scope.
SUBPART B—DETERMINATIONS OF "REASONABLE COST" AND "FAIR VALUE"; EFFECTS OF COLLECTIVE BARGAINING AGREEMENTS
C531.3 General determinations of "reasonable cost".
C531.6 Effects of collective bargaining agreements.

SUBPART A—PRELIMINARY MATTERS

§ C531.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance

The following table lists the sections of the Secretary of Labor Regulations at Title 29 of the Code of Federal Regulations under the FLSA with the corresponding sections of the Office of Compliance (OC) Regulations under section 203 of the CAA:

Secretary of Labor regulations	*OC regulations*
531.1 Definitions	C531.1
531.2 Purpose and scope	C531.2
531.3 General determinations of "reasonable cost"	C531.3
531.6 Effects of collective bargaining agreements	C531.6

§ C531.1 Definitions

(a) "Administrator" means the Administrator of the Wage and Hour Division or his authorized representative. The Secretary of Labor has delegated to the Administrator the functions vested in him under section 3(m) of the Act.

(b) "Act" means the Fair Labor Standards Act of 1938, as amended.

§ C531.2 Purpose and scope

(a) Section 3(m) of the Act defines the term "wage" to include the "reasonable cost", as determined by the Secretary of Labor, to an employer of furnishing any employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by the employer to his employees. In addition, section 3(m) gives the Secretary authority to determine the "fair value" of such facilities on the basis of average cost to the employer or to groups of employers similarly situated, on average value to groups of employees, or other appropriate measures of "fair value". Whenever so determined and when applicable and pertinent, the "fair value" of the facilities involved shall be includable as part of "wages" instead of the actual measure of the costs of those facilities. The section provides, however, that the cost of board, lodging, or other facilities shall not be included as part of "wages" if excluded therefrom by a bona fide collective bargaining agreement. Section 3(m) also provides a method for determining the wage of a tipped employee.

(b) This part 531 contains any determinations made as to the "reasonable cost" and

"fair value" of board, lodging, or other facilities having general application.

SUBPART B—DETERMINATIONS OF "REASONABLE COST" AND "FAIR VALUE"; EFFECTS OF COLLECTIVE BARGAINING AGREEMENTS

§ C531.3 General determinations of "reasonable cost"

(a) The term "reasonable cost" as used in section 3(m) of the Act is hereby determined to be not more than the actual cost to the employer of the board, lodging, or other facilities customarily furnished by him to his employees.

(b) Reasonable cost does not include a profit to the employer or to any affiliated person.

(c) The reasonable cost to the employer of furnishing the employee with board, lodging, or other facilities (including housing) is the cost of operation and maintenance including adequate depreciation plus a reasonable allowance (not more than 5½ percent) for interest on the depreciated amount of capital invested by the employer: *Provided*, That if the total so computed is more than the fair rental value (or the fair price of the commodities or facilities offered for sale), the fair rental value (or the fair price of the commodities or facilities offered for sale) shall be the reasonable cost. The cost of operation and maintenance, the rate of depreciation, and the depreciated amount of capital invested by the employer shall be those arrived at under good accounting practices. As used in this paragraph, the term "good accounting practices" does not include accounting practices which have been rejected by the Internal Revenue Service for tax purposes, and the term "depreciation" includes obsolescence.

(d)(1) The cost of furnishing "facilities" found by the Administrator to be primarily for the benefit or convenience of the employer will not be recognized as reasonable and may not therefore be included in computing wages.

(2) The following is a list of facilities found by the Administrator to be primarily for the benefit of convenience of the employer. The list is intended to be illustrative rather than exclusive: (i) Tools of the trade and other materials and services incidental to carrying on the employer's business; (ii) the cost of any construction by and for the employer; (iii) the cost of uniforms and of their laundering, where the nature of the business requires the employee to wear a uniform.

§ C531.6 Effects of collective bargaining agreements

(a) The cost of board, lodging, or other facilities shall not be included as part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective bargaining agreement applicable to the particular employee.

(b) A collective bargaining agreement shall be deemed to be "bona fide" when pursuant to the provisions of section 7(b)(1) or 7(b)(2) of the FLSA it is made with the certified representative of the employees under the provisions of the CAA.

PART C541—DEFINING AND DELIMITING THE TERMS "BONA FIDE EXECUTIVE", "ADMINISTRATIVE", OR "PROFESSIONAL" CAPACITY (INCLUDING ANY EMPLOYEE EMPLOYED IN THE CAPACITY OF ACADEMIC ADMINISTRATIVE PERSONNEL OR TEACHER IN SECONDARY SCHOOL)

SUBPART A—GENERAL REGULATIONS

Sec.

C541.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.

C541.01 Application of the exemptions of section 13(a)(1) of the FLSA.

C541.1 Executive.

C541.2 Administrative.

C541.3 Professional.

C541.5b Equal pay provisions of section 6(d) of the FLSA as applied by the CAA extend to executive, administrative, and professional employees.

C541.5d Special provisions applicable to employees of public agencies.

SUBPART A—GENERAL REGULATIONS

§ C541.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance

The following table lists the sections of the Secretary of Labor Regulations at Title 29 of the Code of Federal Regulations under the FLSA with the corresponding sections of the Office of Compliance (OC) Regulations under section 203 of the CAA:

Secretary of Labor Regulations	*OC Regulations*
541.1 Executive	C541.1
541.2 Administrative	C541.2
541.3 Professional	C541.3
541.5b Equal pay provisions of section 6(d) of the FLSA apply to executive, administrative, and professional employees.	C541.5b
541.5d Special provisions applicable to employees of public agencies	C541.5d

§ C541.01 Application of the exemptions of section 13(a)(1) of the FLSA

(a) Section 13(a)(1) of the FLSA, which provides certain exemptions for employees employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in a secondary school), applies to covered employees by virtue of section 225(f)(1) of the CAA.

(b) The substantive regulations set forth in this part are promulgated under the authority of sections 203(c)and 304 of the CAA, which require that such regulations be the same as the substantive regulations promulgated by the Secretary of Labor except where the Board determines for good cause shown that modifications would be more effective for the implementation of the rights and protections under § 203.

§ C541.1 Executive

The term "employee employed in a bona fide executive * * * capacity" in section 13(a)(1) of the FLSA as applied by the CAA shall mean any employee:

(a) Whose primary duty consists of the management of an employing office in which he is employed or of a customarily recognized department or subdivision thereof; and

(b) Who customarily and regularly directs the work of two or more other employees therein; and

(c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

(d) Who customarily and regularly exercises discretionary powers; and

(e) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (d) of this section: *Provided*, That this paragraph shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment; and

(f) Who is compensated for his services on a salary basis at a rate of not less than $155 per week, exclusive of board, lodging or other facilities: *Provided*, That an employee who is compensated on a salary basis at a rate of not less than $250 per week, exclusive of board, lodging or other facilities, and whose primary duty consists of the management of the employing office in which the employee is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein, shall be deemed to meet all the requirements of this section.

§ C541.2 Administrative

The term "employee employed in a bona fide * * * administrative * * * capacity" in section 13(a)(1) of the FLSA as applied by the CAA shall mean any employee:

(a) Whose primary duty consists of either:

(1) The performance of office or nonmanual work directly related to management policies or general operations of his employer or his employer's customers, or

(2) The performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein; and

(b) Who customarily and regularly exercises discretion and independent judgment; and

(c)(1) Who regularly and directly assists the head of an employing office, or an employee employed in a bona fide executive or administrative capacity (as such terms are defined in the regulations of this subpart), or

(2) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or

(3) Who executes under only general supervision special assignments and tasks; and

(d) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (c) of this section; and

(e)(1) Who is compensated for his services on a salary or fee basis at a rate of not less than $155 per week, exclusive of board, lodging or other facilities, or

(2) Who, in the case of academic administrative personnel, is compensated for services as required by paragraph (e)(1) of this section, or on a salary basis which is at least equal to the entrance salary for teachers in the school system, educational establishment or institution by which employed: *Provided*, That an employee who is compensated on a salary or fee basis at a rate of not less than $250 per week, exclusive of board, lodging or other facilities, and whose primary duty consists of the performance of work described in paragraph (a) of this section, which includes work requiring the exercise of discretion and independent judgment,

shall be deemed to meet all the requirements of this section.

§ C541.3 Professional

The term "employee employed in a bona fide * * * professional capacity" in section 13(a)(1) of the FLSA as applied by the CAA shall mean any employee:

(a) Whose primary duty consists of the performance of:

(1) Work requiring knowledge of an advance type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or

(2) Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee, or

(3) Teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in a school system, educational establishment or institution by which employed, or

(4) Work that requires theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering, and who is employed and engaged in these activities as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field; and

(b) Whose work requires the consistent exercise of discretion and judgment in its performance; and

(c) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and

(d) Who does not devote more than 20 percent of his hours worked in the workweek to activities which are not an essential part of and necessarily incident to the work described in paragraphs (a) through (c) of this section; and

(e) Who is compensated for services on a salary or fee basis at a rate of not less than $170 per week, exclusive of board, lodging or other facilities: *Provided*, That this paragraph shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof, nor in the case of an employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of medicine or any of its branches, nor in the case of an employee employed and engaged as a teacher as provided in paragraph (a)(3) of this section: *Provided further*, That an employee who is compensated on a salary or fee basis at a rate of not less than $250 per week, exclusive of board, lodging or other facilities, and whose primary duty consists of the performance either of work described in paragraph (a) (1), (3), or (4) of this section, which includes work requiring the consistent exercise of discretion and judgment, or of work requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section: *Provided further*, That the salary or fee requirements of this paragraph shall not apply to an employee engaged in computer-related work within the scope of paragraph (a)(4) of this section and who is compensated on an hourly basis at a rate in excess of 6½ times the minimum wage provided by section 6 of the FLSA as applied by the CAA.

§ C541.5b Equal pay provisions of section 6(d) of the FLSA as applied by the CAA extend to executive, administrative, and professional employees

The FLSA, as amended and as applied by the CAA, includes within the protection of the equal pay provisions those employees exempt from the minimum wage and overtime pay provisions as bona fide executive, administrative, and professional employees (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools) under section 13(a)(1) of the FLSA. Thus, for example, where an exempt administrative employee and another employee of the employing office are performing substantially "equal work", the sex discrimination prohibitions of section 6(d) are applicable with respect to any wage differential between those two employees.

§ C541.5d Special provisions applicable to employees of public agencies

(a) An employee of a public agency who otherwise meets the requirement of being paid on a salary basis shall not be disqualified from exemption under section C541.1, C541.2, or C541.3 on the basis that such employee is paid according to a pay system established by statute, ordinance, or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the public agency employee's pay to be reduced or such employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one workday when accrued leave is not used by an employee because—(1) permission for its use has not been sought or has been sought and denied; (2) accrued leave has been exhausted; or (3) the employee chooses to use leave without pay.

(b) Deductions from the pay of an employee of a public agency for absences due to a budget-required furlough shall not disqualify the employee from being paid "on a salary basis" except in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

PART C547—REQUIREMENTS OF A "BONA FIDE THRIFT OR SAVINGS PLAN"

Sec.
C547.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.
C547.0 Scope and effect of part.
C547.1 Essential requirements of qualifications.
C547.2 Disqualifying provisions.

§ C547.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance

The following table lists the sections of the Secretary of Labor Regulations under the FLSA with the corresponding sections of the Office of Compliance (OC) Regulations under section 203 of the CAA:

Secretary of Labor regulations	*OC regulations*
547.0 Scope and effect of part	C547.0
547.1 Essential requirements of qualifications	C547.1
547.2 Disqualifying provisions	C547.2

§ C547.0 Scope and effect of part

(a) The regulations in this part set forth the requirements of a "bona fide thrift or savings plan" under section 7(e)(3)(b) of the Fair Labor Standards Act of 1938, as amended (FLSA), as applied by the CAA. In determining the total remuneration for employment which section 7(e) of the FLSA requires to be included in the regular rate at which an employee is employed, it is not necessary to include any sums paid to or on behalf of such employee, in recognition of services performed by him during a given period, which are paid pursuant to a bona fide thrift or savings plan meeting the requirements set forth herein. In the formulation of these regulations due regard has been given to the factors and standards set forth in section 7(e)(3)(b) of the Act.

(b) Where a thrift or savings plan is combined in a single program (whether in one or more documents) with a plan or trust for providing old age, retirement, life, accident or health insurance or similar benefits for employees, contributions made by the employer pursuant to such thrift or savings plan may be excluded from the regular rate if the plan meets the requirements of the regulation in this part and the contributions made for the other purposes may be excluded from the regular rate if they meet the tests set forth in regulations.

§ C547.1 Essential requirements for qualifications

(a) A "bona fide thrift or savings plan" for the purpose of section 7(e)(3)(b) of the FLSA as applied by the CAA is required to meet all the standards set forth in paragraphs (b) through (f) of this section and must not contain the disqualifying provisions set forth in § 547.2.

(b) The thrift or savings plan constitutes a definite program or arrangement in writing, adopted by the employer or by contract as a result of collective bargaining and communicated or made available to the employees, which is established and maintained, in good faith, for the purpose of encouraging voluntary thrift or savings by employees by providing an incentive to employees to accumulate regularly and retain cash savings for a reasonable period of time or to save through the regular purchase of public or private securities.

(c) The plan specifically shall set forth the category or categories of employees participating and the basis of their eligibility. Eligibility may not be based on such factors as hours of work, production, or efficiency of the employees: *Provided, however*, That hours of work may be used to determine eligibility of part-time or casual employees.

(d) The amount any employee may save under the plan shall be specified in the plan or determined in accordance with a definite formula specified in the plan, which formula may be based on one or more factors such as the straight-time earnings or total earnings, base rate of pay, or length of service of the employee.

(e) The employer's total contribution in any year may not exceed 15 percent of the participating employees' total earnings during that year. In addition, the employer's total contribution in any year may not exceed the total amount saved or invested by

the participating employees during that year.

(f) The employer's contributions shall be apportioned among the individual employees in accordance with a definite formula or method of calculation specified in the plan, which formula or method of calculation is based on the amount saved or the length of time the individual employee retains his savings or investment in the plan: *Provided*, That no employee's share determined in accordance with the plan may be diminished because of any other remuneration received by him.

§ C547.2 Disqualifying provisions

(a) No employee's participation in the plan shall be on other than a voluntary basis.

(b) No employee's wages or salary shall be dependent upon or influenced by the existence of such thrift or savings plan or the employer's contributions thereto.

(c) The amounts any employee may save under the plan, or the amounts paid by the employer under the plan may not be based upon the employee's hours of work, production or efficiency.

PART C553—OVERTIME COMPENSATION: PARTIAL EXEMPTION FOR EMPLOYEES ENGAGED IN LAW ENFORCEMENT AND FIRE PROTECTION; OVERTIME AND COMPENSATORY TIME-OFF FOR EMPLOYEES WHOSE WORK SCHEDULE DIRECTLY DEPENDS UPON THE SCHEDULE OF THE HOUSE

INTRODUCTION

Sec.
C553.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.
C553.1 Definitions.
C553.2 Purpose and scope.
SUBPART C—PARTIAL EXEMPTION FOR EMPLOYEES ENGAGED IN LAW ENFORCEMENT AND FIRE PROTECTION
C553.201 Statutory provisions: section 7(k).
C553.202 Limitations.
C553.211 Law enforcement activities.
C553.212 Twenty percent limitation on nonexempt work.
C553.213 Public agency employees engaged in both fire protection and law enforcement activities.
C553.214 Trainees.
C553.215 Ambulance and rescue service employees.
C553.216 Other exemptions.
C553.220 "Tour of duty" defined.
C553.221 Compensable hours of work.
C553.222 Sleep time.
C553.223 Meal time.
C553.224 "Work period" defined.
C553.225 Early relief.
C553.226 Training time.
C553.227 Outside employment.
C553.230 Maximum hours standards for work periods of 7 to 28 days—section 7(k).
C553.231 Compensatory time off.
C553.232 Overtime pay requirements.
C553.233 "Regular rate" defined.
SUBPART D—COMPENSATORY TIME-OFF FOR OVERTIME EARNED BY EMPLOYEES WHOSE WORK SCHEDULE DIRECTLY DEPENDS UPON THE SCHEDULE OF THE HOUSE
C553.301 Definition of "directly depends".
C553.302 Overtime compensation and compensatory time off for an employee whose work schedule directly depends upon the schedule of the House.
C553.303 Using compensatory time off.
C553.304 Payment of overtime compensation for accrued compensatory time off as of termination of service.

INTRODUCTION

§ C553.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance

The following table lists the sections of the Secretary of Labor Regulations under the FLSA with the corresponding sections of the Office of Compliance (OC) Regulations under section 203 of the CAA:

Secretary of Labor regulations	*OC regulations*
553.1 Definitions	C553.1
553.2 Purpose and scope	C553.2
553.201 Statutory provisions: section 7(k)	C553.201
553.202 Limitations	C553.202
553.211 Law enforcement activities	C553.211
553.212 Twenty percent limitation on nonexempt work	C553.212
553.213 Public agency employees engaged in both fire protection and law enforcement activities	C553.213
553.214 Trainees	C553.214
553.215 Ambulance and rescue service employees	C553.215
553.216 Other exemptions	C553.216
553.220 "Tour of duty" defined	C553.220
553.221 Compensable hours of work	C553.221
553.222 Sleep time	C553.222
553.223 Meal time	C553.223
553.224 "Work period" defined	C553.224
553.225 Early relief	C553.225
553.226 Training time	C553.226
553.227 Outside employment	C553.227
553.230 Maximum hours standards for work periods of 7 to 28 days—section 7(k)	C553.230
553.231 Compensatory time off	C553.231
553.232 Overtime pay requirements	C553.232
553.233 "Regular rate" defined	C553.233

INTRODUCTION

§ C553.1 Definitions

(a) "Act" or "FLSA" means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended; 29 U.S.C. 201–219), as applied by the CAA.

(b) "1985 Amendments" means the Fair Labor Standards Amendments of 1985 (Pub. L. 99–150).

(c) "Public agency" means an employing office as the term is defined in § 501.102 of this chapter, including the Capitol Police.

(d) Section 7(k) means the provisions of § 7(k) of the FLSA as applied to covered employees and employing offices by § 203 of the CAA.

§ C553.2 Purpose and scope

The purpose of part C553 is to adopt with appropriate modifications the regulations of the Secretary of Labor to carry out those provisions of the FLSA relating to public agency employees as they are applied to covered employees and employing offices of the CAA. In particular, these regulations apply section 7(k) as it relates to fire protection and law enforcement employees of public agencies.

SUBPART C—PARTIAL EXEMPTION FOR EMPLOYEES ENGAGED IN LAW ENFORCEMENT AND FIRE PROTECTION

§ C553.201 Statutory provisions: section 7(k).

Section 7(k) of the Act provides a partial overtime pay exemption for fire protection and law enforcement personnel (including security personnel in correctional institutions) who are employed by public agencies on a work period basis. This section of the Act formerly permitted public agencies to pay overtime compensation to such employees in work periods of 28 consecutive days only after 216 hours of work. As further set forth in § C553.230 of this part, the 216-hour standard has been replaced, pursuant to the study mandated by the statute, by 212 hours for fire protection employees and 171 hours for law enforcement employees. In the case of such employees who have a work period of at least 7 but less than 28 consecutive days, overtime compensation is required when the ratio of the number of hours worked to the number of days in the work period exceeds the ratio of 212 (or 171) hours to 28 days.

§ C553.202 Limitations

The application of § 7(k), by its terms, is limited to public agencies, and does not apply to any private organization engaged in furnishing fire protection or law enforcement services. This is so even if the services are provided under contract with a public agency.

EXEMPTION REQUIREMENTS

§ C553.211 Law enforcement activities

(a) As used in § 7(k) of the Act, the term "any employee . . . in law enforcement activities" refers to any employee (1) who is a uniformed or plainclothed member of a body of officers and subordinates who are empowered by law to enforce laws designed to maintain public peace and order and to protect both life and property from accidental or willful injury, and to prevent and detect crimes, (2) who has the power to arrest, and (3) who is presently undergoing or has undergone or will undergo on-the-job training and/or a course of instruction and study which typically includes physical training, self-defense, firearm proficiency, criminal and civil law principles, investigative and law enforcement techniques, community relations, medical aid and ethics.

(b) Employees who meet these tests are considered to be engaged in law enforcement activities regardless of their rank, or of their status as "trainee", "probationary", or "permanent", and regardless of their assignment to duties incidental to the performance of their law enforcement activities such as equipment maintenance, and lecturing, or to support activities of the type described in paragraph (g) of this section, whether or not such assignment is for training or familiarization purposes, or for reasons of illness, injury or infirmity. The term would also include rescue and ambulance service personnel if such personnel form an integral part of the public agency's law enforcement activities. See section C553.215.

(c) Typically, employees engaged in law enforcement activities include police who are regularly employed and paid as such. Other agency employees with duties not specifically mentioned may, depending upon the particular facts and pertinent statutory provisions in that jurisdiction, meet the three tests described above. If so, they will also qualify as law enforcement officers. Such employees might include, for example, any law enforcement employee within the legislative branch concerned with keeping public peace and order and protecting life and property.

(d) Employees who do not meet each of the three tests described above are not engaged in (law enforcement activities' as that term is used in section 7(k). Employees who normally would not meet each of these tests include:

(1) Building inspectors (other than those defined in section C553.213(a)),

(2) Health inspectors,

(3) Sanitarians,

(4) Civilian traffic employees who direct vehicular and pedestrian traffic at specified intersections or other control points,

(5) Civilian parking checkers who patrol assigned areas for the purpose of discovering parking violations and issuing appropriate warnings or appearance notices,

(6) Wage and hour compliance officers,

(7) Equal employment opportunity compliance officers, and

(8) Building guards whose primary duty is to protect the lives and property of persons within the limited area of the building.

(e) The term "any employee in law enforcement activities" also includes, by express reference, "security personnel in correctional institutions". Typically, such facilities may include precinct house lockups. Employees of correctional institutions who qualify as security personnel for purposes of the section 7(k) exemption are those who have responsibility for controlling and maintaining custody of inmates and of safeguarding them from other inmates or for supervising such functions, regardless of whether their duties are performed inside the correctional institution or outside the institution. These employees are considered to be engaged in law enforcement activities regardless of their rank or of their status as "trainee", "probationary", or "permanent", and regardless of their assignment to duties incidental to the performance of their law enforcement activities, or to support activities of the type described in paragraph (f) of this section, whether or not such assignment is for training or familiarization purposes or for reasons of illness, injury or infirmity.

(f) Not included in the term "employee in law enforcement activities" are the so-called "civilian" employees of law enforcement agencies or correctional institutions who engage in such support activities as those performed by dispatcher, radio operators, apparatus and equipment maintenance and repair workers, janitors, clerks and stenographers. Nor does the term include employees in correctional institutions who engage in building repair and maintenance, culinary services, teaching, or in psychological, medical and paramedical services. This is so even though such employees may, when assigned to correctional institutions, come into regular contact with the inmates in the performance of their duties.

§ C553.212 Twenty percent limitation on nonexempt work

(a) Employees engaged in fire protection or law enforcement activities as described in sections C553.210 and C553.211, may also engage in some nonexempt work which is not performed as an incident to or in conjunction with their fire protection or law enforcement activities. For example, firefighters who work for forest conservation agencies may, during slack times, plant trees and perform other conservation activities unrelated to their firefighting duties. The performance of such nonexempt work will not defeat the §7(k) exemption unless it exceeds 20 percent of the total hours worked by that employee during the workweek or applicable work period. A person who spends more than 20 percent of his/her working time in nonexempt activities is not considered to be an employee engaged in fire protection or law enforcement activities for purposes of this part.

(b) Public agency fire protection and law enforcement personnel may, at their own option, undertake employment for the same employer on an occasional or sporadic and part-time basis in a different capacity from their regular employment. The performance of such work does not affect the application of the §7(k) exemption with respect to the regular employment. In addition, the hours of work in the different capacity need not be counted as hours worked for overtime purposes on the regular job, nor are such hours counted in determining the 20 percent tolerance for nonexempt work discussed in paragraph (a) of this section.

§ C553.213 Public agency employees engaged in both fire protection and law enforcement activities

(a) Some public agencies have employees (often called "public safety officers") who engage in both fire protection and law enforcement activities, depending on the agency needs at the time. This dual assignment would not defeat the section 7(k) exemption, provided that each of the activities performed meets the appropriate tests set forth in sections C553.210 and C553.211. This is so regardless of how the employee's time is divided between the two activities. However, all time spent in nonexempt activities by public safety officers within the work period, whether performed in connection with fire protection or law enforcement functions, or with neither, must be combined for purposes of the 20 percent limitation on nonexempt work discussed in section C553.212.

(b) As specified in section C553.230, the maximum hours standards under section 7(k) are different for employees engaged in fire protection and for employees engaged in law enforcement. For those employees who perform both fire protection and law enforcement activities, the applicable standard is the one which applies to the activity in which the employee spends the majority of work time during the work period.

§ C553.214 Trainees

The attendance at a bona fide fire or police academy or other training facility, when required by the employing agency, constitutes engagement in activities under section 7(k) only when the employee meets all the applicable tests described in section C553.210 or section C553.211 (except for the power of arrest for law enforcement personnel), as the case may be. If the applicable tests are met, then basic training or advanced training is considered incidental to, and part of, the employee's fire protection or law enforcement activities.

§ C553.215 Ambulance and rescue service employees

Ambulance and rescue service employees of a public agency other than a fire protection or law enforcement agency may be treated as employees engaged in fire protection or law enforcement activities of the type contemplated by §7(k) if their services are substantially related to firefighting or law enforcement activities in that (1) the ambulance and rescue service employees have received training in the rescue of fire, crime, and accident victims or firefighters or law enforcement personnel injured in the performance of their respective duties, and (2) the ambulance and rescue service employees are regularly dispatched to fires, crime scenes, riots, natural disasters and accidents. As provided in section C553.213(b), where employees perform both fire protection and law enforcement activities, the applicable standard is the one which applies to the activity in which the employee spends the majority of work time during the work period.

§ C553.216 Other exemptions

Although the 1974 Amendments to the FLSA as applied by the CAA provide special exemptions for employees of public agencies engaged in fire protection and law enforcement activities, such workers may also be subject to other exemptions in the Act, and public agencies may claim such other applicable exemptions in lieu of §7(k). For example, section 13(a)(1) as applied by the CAA provides a complete minimum wage and overtime pay exemption for any employee employed in a bona fide executive, administrative, or professional capacity, as those terms are defined and delimited in part C541. The section 13(a)(1) exemption can be claimed for any fire protection or law enforcement employee who meets all of the tests specified in part C541 relating to duties, responsibilities, and salary. Thus, high ranking police officials who are engaged in law enforcement activities, may also, depending on the facts, qualify for the section 13(a)(1) exemption as "executive" employees. Similarly, certain criminal investigative agents may qualify as "administrative" employees under section 13(a)(1).

TOUR OF DUTY AND COMPENSABLE HOURS OF WORK RULES

§ C553.220 "Tour of duty" defined

(a) The term "tour of duty" is a unique concept applicable only to employees for whom the section 7(k) exemption is claimed. This term, as used in section 7(k), means the period of time during which an employee is considered to be on duty for purposes of determining compensable hours. It may be a scheduled or unscheduled period. Such periods include "shifts" assigned to employees often days in advance of the performance of the work. Scheduled periods also include time spent in work outside the "shift" which the public agency employer assigns. For example, a police officer may be assigned to crowd control during a parade or other special event outside of his or her shift.

(b) Unscheduled periods include time spent in court by police officers, time spent handling emergency situations, and time spent working after a shift to complete an assignment. Such time must be included in the compensable tour of duty even though the specific work performed may not have been assigned in advance.

(c) The tour of duty does not include time spent working for a separate and independent employer in certain types of special details as provided in section C553.227.

§ C553.221 Compensable hours of work

(a) The rules under the FLSA as applied by the CAA on compensable hours of work are applicable to employees for whom the section 7(k) exemption is claimed. Special rules for sleep time (section C553.222) apply to both law enforcement and firefighting employees for whom the section 7(k) exemption is claimed. Also, special rules for meal time apply in the case of firefighters (section C553.223).

(b) Compensable hours of work generally include all of the time during which an employee is on duty on the employer's premises or at a prescribed workplace, as well as all other time during which the employee is suffered or permitted to work for the employer. Such time includes all pre-shift and post-shift activities which are an integral part of

the employee's principal activity or which are closely related to the performance of the principal activity, such as attending roll call, writing up and completing tickets or reports, and washing and re-racking fire hoses.

(c) Time spent away from the employer's premises under conditions that are so circumscribed that they restrict the employee from effectively using the time for personal pursuits also constitutes compensable hours of work. For example, where a police station must be evacuated because of an electrical failure and the employees are expected to remain in the vicinity and return to work after the emergency has passed, the entire time spent away from the premises is compensable. The employees in this example cannot use the time for their personal pursuits.

(d) An employee who is not required to remain on the employer's premises but is merely required to leave word at home or with company officials where he or she may be reached is not working while on call. Time spent at home on call may or may not be compensable depending on whether the restrictions placed on the employee preclude using the time for personal pursuits. Where, for example, a firefighter has returned home after the shift, with the understanding that he or she is expected to return to work in the event of an emergency in the night, such time spent at home is normally not compensable. On the other hand, where the conditions placed on the employee's activities are so restrictive that the employee cannot use the time effectively for personal pursuits, such time spent on call is compensable.

(e) Normal home to work travel is not compensable, even where the employee is expected to report to work at a location away from the location of the employer's premises.

(f) A police officer, who has completed his or her tour of duty and who is given a patrol car to drive home and use on personal business, is not working during the travel time even where the radio must be left on so that the officer can respond to emergency calls. Of course, the time spent in responding to such calls is compensable.

§ C553.222 Sleep time

(a) Where a public agency elects to pay overtime compensation to firefighters and/or law enforcement personnel in accordance with section 7(a)(1) of the Act, the public agency may exclude sleep time from hours worked if all the conditions for the exclusion of such time are met.

(b) Where the employer has elected to use the section 7(k) exemption, sleep time cannot be excluded from the compensable hours of work where—

(1) the employee is on a tour of duty of less than 24 hours, and

(2) the employee is on a tour of duty of exactly 24 hours.

(c) Sleep time can be excluded from compensable hours of work, however, in the case of police officers or firefighters who are on a tour of duty of more than 24 hours, but only if there is an expressed or implied agreement between the employer and the employees to exclude such time. In the absence of such an agreement, the sleep time is compensable. In no event shall the time excluded as sleep time exceed 8 hours in a 24-hour period. If the sleep time is interrupted by a call to duty, the interruption must be counted as hours worked. If the sleep period is interrupted to such an extent that the employee cannot get a reasonable night's sleep (which, for enforcement purposes means at least 5 hours), the entire time must be counted as hours of work.

§ C553.223 Meal time

(a) If a public agency elects to pay overtime compensation to firefighters and law enforcement personnel in accordance with section 7(a)(1) of the Act, the public agency may exclude meal time from hours worked if all the statutory tests for the exclusion of such time are met.

(b) If a public agency elects to use the section 7(k) exemption, the public agency may, in the case of law enforcement personnel, exclude meal time from hours worked on tours of duty of 24 hours or less: *Provided*, That the employee is completely relieved from duty during the meal period, and all the other statutory tests for the exclusion of such time are met. On the other hand, where law enforcement personnel are required to remain on call in barracks or similar quarters, or are engaged in extended surveillance activities (e.g., stakeouts), they are not considered to be completely relieved from duty, and any such meal periods would be compensable.

(c) With respect to firefighters employed under section 7(k), who are confined to a duty station, the legislative history of the Act indicates congressional intent to mandate a departure from the usual FLSA "hours of work" rules and adoption of an overtime standard keyed to the unique concept of "tour of duty" under which firefighters are employed. Where the public agency elects to use the section 7(k) exemption for firefighters, meal time cannot be excluded from the compensable hours of work where (1) the firefighter is on a tour of duty of less than 24 hours, and (2) where the firefighter is on a tour of duty of exactly 24 hours.

(d) In the case of police officers or firefighters who are on a tour of duty of more than 24 hours, meal time may be excluded from compensable hours of work provided that the statutory tests for exclusion of such hours are met.

§ C553.224 "Work period" defined

(a) As used in section 7(k), the term "work period" refers to any established and regularly recurring period of work which, under the terms of the Act and legislative history, cannot be less than 7 consecutive days nor more than 28 consecutive days. Except for this limitation, the work period can be of any length, and it need not coincide with the duty cycle or pay period or with a particular day of the week or hour of the day. Once the beginning and ending time of an employee's work period is established, however, it remains fixed regardless of how many hours are worked within the period. The beginning and ending of the work period may be changed: *Provided*, That the change is intended to be permanent and is not designed to evade the overtime compensation requirements of the Act.

(b) An employer may have one work period applicable to all employees, or different work periods for different employees or groups of employees.

§ C553.225 Early relief

It is a common practice among employees engaged in fire protection activities to relieve employees on the previous shift prior to the scheduled starting time. Such early relief time may occur pursuant to employee agreement, either expressed or implied. This practice will not have the effect of increasing the number of compensable hours of work for employees employed under section 7(k) where it is voluntary on the part of the employees and does not result, over a period of time, in their failure to receive proper compensation for all hours actually worked. On the other hand, if the practice is required by the employer, the time involved must be added to the employee's tour of duty and treated as compensable hours of work.

§ C553.226 Training time

(a) The general rules for determining the compensability of training time under the FLSA apply to employees engaged in law enforcement or fire protection activities.

(b) While time spent in attending training required by an employer is normally considered compensable hours of work, following are situations where time spent by employees in required training is considered to be noncompensable:

(1) Attendance outside of regular working hours at specialized or follow-up training, which is required by law for certification of public and private sector employees within a particular governmental jurisdiction (e.g., certification of public and private emergency rescue workers), does not constitute compensable hours of work for public employees within that jurisdiction and subordinate jurisdictions.

(2) Attendance outside of regular working hours at specialized or follow-up training, which is required for certification of employees of a governmental jurisdiction by law of a higher level of government, does not constitute compensable hours of work.

(3) Time spent in the training described in paragraphs (b) (1) or (2) of this section is not compensable, even if all or part of the costs of the training is borne by the employer.

(c) Police officers or firefighters, who are in attendance at a police or fire academy or other training facility, are not considered to be on duty during those times when they are not in class or at a training session, if they are free to use such time for personal pursuits. Such free time is not compensable.

§ C553.227 Outside employment

(a) Section 7(p)(1) makes special provision for fire protection and law enforcement employees of public agencies who, at their own option, perform special duty work in fire protection, law enforcement or related activities for a separate and independent employer (public or private) during their off-duty hours. The hours of work for the separate and independent employer are not combined with the hours worked for the primary public agency employer for purposes of overtime compensation.

(b) Section 7(p)(1) applies to such outside employment provided (1) the special detail work is performed solely at the employee's option, and (2) the two employers are in fact separate and independent.

(c) Whether two employers are, in fact, separate and independent can only be determined on a case-by-case basis.

(d) The primary employer may facilitate the employment or affect the conditions of employment of such employees. For example, a police department may maintain a roster of officers who wish to perform such work. The department may also select the officers for special details from a list of those wishing to participate, negotiate their pay, and retain a fee for administrative expenses. The department may require that the separate and independent employer pay the fee for such services directly to the department, and establish procedures for the officers to receive their pay for the special details through the agency's payroll system. Finally, the department may require that the officers observe their normal standards of conduct during such details and take disciplinary action against those who fail to do so.

(e) Section 7(p)(1) applies to special details even where a State law or local ordinance requires that such work be performed and that only law enforcement or fire protection employees of a public agency in the same jurisdiction perform the work. For example, a city ordinance may require the presence of city police officers at a convention center during concerts or sports events. If the officers perform such work at their own option, the hours of work need not be combined with the hours of work for their primary employer in computing overtime compensation.

(f) The principles in paragraphs (d) and (e) of this section with respect to special details of public agency fire protection and law enforcement employees under section 7(p)(1) are exceptions to the usual rules on joint employment set forth in part 791 of this title.

(g) Where an employee is directed by the public agency to perform work for a second employer, section 7(p)(1) does not apply. Thus, assignments of police officers outside of their normal work hours to perform crowd control at a parade, where the assignments are not solely at the option of the officers, would not qualify as special details subject to this exception. This would be true even if the parade organizers reimburse the public agency for providing such services.

(h) Section 7(p)(1) does not prevent a public agency from prohibiting or restricting outside employment by its employees.

OVERTIME COMPENSATION RULES

§ C553.230 Maximum hours standards for work periods of 7 to 28 days—section 7(k)

(a) For those employees engaged in fire protection activities who have a work period of at least 7 but less than 28 consecutive days, no overtime compensation is required under section 7(k) until the number of hours worked exceeds the number of hours which bears the same relationship to 212 as the number of days in the work period bears to 28.

(b) For those employees engaged in law enforcement activities (including security personnel in correctional institutions) who have a work period of at least 7 but less than 28 consecutive days, no overtime compensation is required under section 7(k) until the number of hours worked exceeds the number of hours which bears the same relationship to 171 as the number of days in the work period bears to 28.

(c) The ratio of 212 hours to 28 days for employees engaged in fire protection activities is 7.57 hours per day (rounded) and the ratio of 171 hours to 28 days for employees engaged in law enforcement activities is 6.11 hours per day (rounded). Accordingly, overtime compensation (in premium pay or compensatory time) is required for all hours worked in excess of the following maximum hours standards (rounded to the nearest whole hour):

MAXIMUM HOURS STANDARDS

Work period (days)	Fire protection	Law enforcement
28	212	171
27	204	165
26	197	159
25	189	153
24	182	147
23	174	141
22	167	134
21	159	128
20	151	122
19	144	116
18	136	110
17	129	104
16	121	98
15	114	92
14	106	86

MAXIMUM HOURS STANDARDS—Continued

Work period (days)	Fire protection	Law enforcement
13	98	79
12	91	73
11	83	67
10	76	61
9	68	55
8	61	49
7	53	43

§ C553.231 Compensatory time off

(a) Law enforcement and fire protection employees who are subject to the section 7(k) exemption may receive compensatory time off in lieu of overtime pay for hours worked in excess of the maximum for their work period as set forth in section C553.230.

(b) Section 7(k) permits public agencies to balance the hours of work over an entire work period for law enforcement and fire protection employees. For example, if a firefighter's work period is 28 consecutive days, and he or she works 80 hours in each of the first two weeks, but only 52 hours in the third week, and does not work in the fourth week, no overtime compensation (in cash wages or compensatory time) would be required since the total hours worked do not exceed 212 for the work period. If the same firefighter had a work period of only 14 days, overtime compensation or compensatory time off would be due for 54 hours (160 minus 106 hours) in the first 14 day work period.

§ C553.232 Overtime pay requirements

If a public agency pays employees subject to section 7(k) for overtime hours worked in cash wages rather than compensatory time off, such wages must be paid at one and one-half times the employees' regular rates of pay.

§ C553.233 "Regular rate" defined

The statutory rules for computing an employee's "regular rate", for purposes of the Act's overtime pay requirements are applicable to employees or whom the section 7(k) exemption is claimed when overtime compensation is provided in cash wages.

SUBPART D—COMPENSATORY TIME-OFF FOR OVERTIME EARNED BY EMPLOYEES WHOSE WORK SCHEDULE DIRECTLY DEPENDS UPON THE SCHEDULE OF THE HOUSE AND THE SENATE

§ C553.301 Definition of "directly depends"

For the purposes of this Part, a covered employee's work schedule "directly depends" on the schedule of the House of Representatives and the Senate only if the eligible employee performs work that directly supports the conduct of legislative or other business in the chamber and works hours that regularly change in response to the schedule of the House and the Senate.

§ C553.302 Overtime compensation and compensatory time off for an employee whose work schedule directly depends upon the schedule of the House and Senate

No employing office shall be deemed to have violated section 203(a)(1) of the CAA, which applies the protections of section 7(a) of the Fair Labor Standards Act ("FLSA") to covered employees and employing office, by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under section 7(a) of the FLSA where the employee's work schedule directly depends on the schedule of the House of Representatives or the Senate within the meaning of § C553.301, and: (a) the employee is compensated at the rate of time-and-a-half in pay for all hours in excess of 40 and up to 60 hours in a workweek, and (b) the employee is compensated at the rate of time-and-a-half in either pay or in time off for all hours in excess of 60 hours in a workweek.

§ C553.303 Using compensatory time off

An employee who has accrued compensatory time off under § C553.302 upon his or her request, shall be permitted by the employing office to use such time within a reasonable period after making the request, unless the employing office makes a bona fide determination that the needs of the operations of the office do not allow the taking of compensatory time off at the time of the request. An employee may renew the request at a subsequent time. An employing office may also, upon reasonable notice, require an employee to use accrued compensatory time-off.

§ C553.304 Payment of overtime compensation for accrued compensatory time off as of termination of service

An employee who has accrued compensatory time authorized by this regulation shall, upon termination of employment, be paid for the unused compensatory time at the rate earned by the employee at the time the employee receives such payment.

PART C570—CHILD LABOR REGULATIONS

SUBPART A—GENERAL

Sec.

C570.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.

C570.1 Definitions.

C570.2 Minimum age standards.

SUBPART B [RESERVED]

SUBPART C—EMPLOYMENT OF MINORS BETWEEN 14 AND 16 YEARS OF AGE (CHILD LABOR REG. 3)

C570.31 Determination.

C570.32 Effect of this subpart.

C570.33 Occupations.

C570.35 Periods and conditions of employment.

SUBPART D [RESERVED]

SUBPART E—OCCUPATIONS PARTICULARLY HAZARDOUS FOR THE EMPLOYMENT OF MINORS BETWEEN 16 AND 18 YEARS OF AGE OR DETRIMENTAL TO THEIR HEALTH OR WELL-BEING

C570.50 General.

C570.51 Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components (Order 1).

C570.52 Occupations of motor-vehicle driver and outside helper (Order 2).

C570.55 Occupations involved in the operation of power-driven woodworking machines (Order 5).

C570.58 Occupations involved in the operation of power-driven hoisting apparatus (Order 7).

C570.59 Occupations involved in the operations of power-driven metal forming, punching, and shearing machines (Order 8).

C570.62 Occupations involved in the operation of bakery machines (Order 11).

C570.63 Occupations involved in the operation of paper-products machines (Order 12).

C570.65 Occupations involved in the operations of circular saws, band saws, and guillotine shears (Order 14).

C570.66 Occupations involved in wrecking and demolition operations (Order 15).

C570.67 Occupations in roofing operations (Order 16).
C570.68 Occupations in excavation operations (Order 17).

SUBPART A—GENERAL

§ C570.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance

The following table lists the sections of the Secretary of Labor Regulations under the FLSA with the corresponding sections of the Office of Compliance Regulations under section 202 of the CAA:

Secretary of Labor regulations	*OC regulations*
570.1 Definitions	C570.1
570.2 Minimum age standards	C570.2
570.31 Determinations	C570.31
570.32 Effect of this subpart	C570.32
570.33 Occupations	C570.33
570.35 Periods and conditions of employment	C570.35
570.50 General	C570.50
570.51 Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components (Order 1)	C570.51
570.52 Occupations of motor-vehicle driver and outside helper (Order 2)	C570.52
570.55 Occupations involved in the operation of power-driven woodworking machines (Order 5)	C570.55
570.58 Occupations involved in the operation of power-driven hoisting apparatus (Order 7)	C570.58
570.59 Occupations involved in the operations of power-driven metal forming, punching, and shearing machines (Order 8)	C570.59
570.62 Occupations involved in the operation of bakery machines (Order 11)	C570.62
570.63 Occupations involved in the operation of paper-products machines (Order 12)	C570.63
570.65 Occupations involved in the operations of circular saws, band saws, and guillotine shears (Order 14)	C570.65
570.66 Occupations involved in wrecking and demolition operations (Order 15)	C570.66
570.67 Occupations in roofing operations (Order 16)	C570.67
570.68 Occupations in excavation operations (Order 17)	C570.68

§ C570.1 Definitions

As used in this part:

(a) "Act" means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended; 29 U.S.C. 201–219).

(b) "Oppressive child labor" means employment of a minor in an occupation for which he does not meet the minimum age standards of the Act, as set forth in section 570.2 of this subpart.

(c) "Oppressive child labor age" means an age below the minimum age established under the Act for the occupation in which a minor is employed or in which his employment is contemplated.

(d) [Reserved].

(e) [Reserved].

(f) "Secretary" or "Secretary of Labor" means the Secretary of Labor, United States Department of Labor, or his authorized representative.

(g) "Wage and Hour Division" means the Wage and Hour Division, Employment Standards Administration, United States Department of Labor.

(h) "Administrator" means the Administrator of the Wage and Hour Division or his authorized representative.

§ C570.2 Minimum age standards

(a) ALL OCCUPATIONS EXCEPT IN AGRICULTURE.—(1) The Act, in section 3(1), sets a general 16-year minimum age which applies to all employment subject to its child labor provisions in any occupation other than in agriculture, with the following exceptions:

(i) The Act authorizes the Secretary of Labor to provide by regulation or by order that the employment of employees between the ages of 14 and 16 years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor, if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being (see subpart C of this part); and

(ii) The Act sets an 18-year minimum age with respect to employment in any occupation found and declared by the Secretary of Labor to be particularly hazardous for the employment of minors of such age or detrimental to their health or well-being.

(2) The Act exempts from its minimum age requirements the employment by a parent of his own child, or by a person standing in place of a parent of a child in his custody, except in occupations to which the 18-year age minimum applies and in manufacturing and mining occupations.

SUBPART B [RESERVED]

SUBPART C—EMPLOYMENT OF MINORS BETWEEN 14 AND 16 YEARS OF AGE (CHILD LABOR REG. 3)

§ C570.31 Determination

The employment of minors between 14 and 16 years of age in the occupations, for the periods, and under the conditions hereafter specified does not interfere with their schooling or with their health and well-being and shall not be deemed to be oppressive child labor.

§ C570.32 Effect of this subpart

In all occupations covered by this subpart the employment (including suffering or permitting to work) by an employer of minor employees between 14 and 16 years of age for the periods and under the conditions specified in § 570.35 shall not be deemed to be oppressive child labor within the meaning of the Fair Labor Standards Act of 1938.

§ C570.33 Occupations

This subpart shall apply to all occupations other than the following:

(a) Manufacturing, mining, or processing occupations, including occupations requiring the performance of any duties in work rooms or work places where goods are manufactured, mined, or otherwise processed;

(b) Occupations which involve the operation or tending of hoisting apparatus or of any power-driven machinery other than office machines;

(c) The operation of motor vehicles or service as helpers on such vehicles;

(d) Public messenger service;

(e) Occupations which the Secretary of Labor may, pursuant to section 3(1) of the Fair Labor Standards Act and Reorganization Plan No. 2, issued pursuant to the Reorganization Act of 1945, find and declare to be hazardous for the employment of minors between 16 and 18 years of age or detrimental to their health or well-being;

(f) Occupations in connection with:

(1) Transportation of persons or property by rail, highway, air, water, pipeline, or other means;

(2) Warehousing and storage;

(3) Communications and public utilities;

(4) Construction (including demolition and repair); except such office (including ticket office) work, or sales work, in connection with paragraphs (f) (1), (2), (3), and (4) of this section, as does not involve the performance of any duties on trains, motor vehicles, aircraft, vessels, or other media of transportation or at the actual site of construction operations.

§ C570.35 Periods and conditions of employment

(a) Except as provided in paragraph (b) of this section, employment in any of the occupations to which this subpart is applicable shall be confined to the following periods:

(1) Outside school hours;

(2) Not more than 40 hours in any 1 week when school is not in session;

(3) Not more than 18 hours in any 1 week when school is in session;

(4) Not more than 8 hours in any 1 day when school is not in session;

(5) Not more than 3 hours in any 1 day when school is in session;

6) Between 7 a.m. and 7 p.m. in any 1 day, except during the summer (June 1 through Labor Day) when the evening hour will be 9 p.m.

SUBPART D [RESERVED]

SUBPART E—OCCUPATIONS PARTICULARLY HAZARDOUS FOR THE EMPLOYMENT OF MINORS BETWEEN 16 AND 18 YEARS OF AGE OR DETRIMENTAL TO THEIR HEALTH OR WELL-BEING

§ C570.50 General

(a) HIGHER STANDARDS.—Nothing in this subpart shall authorize non-compliance with any Federal law or regulation establishing a higher standard. If more than one standard within this subpart applies to a single activity the higher standard shall be applicable.

(b) APPRENTICES.—Some sections in this subpart contain an exemption for the employment of apprentices. Such an exemption shall apply only when: (1) The apprentice is employed in a craft recognized as an apprenticeable trade; (2) the work of the apprentice in the occupations declared particularly hazardous is incidental to his training; (3) such work is intermittent and for short periods of time and is under the direct and close supervision of a journeyman as a necessary part of such apprentice training; and (4) the apprentice is registered by the Executive Director of the Office of Compliance as employed in accordance with the standards established by the Bureau of Apprenticeship and Training of the United States Department of Labor.

(c) STUDENT-LEARNERS.—Some sections in this subpart contain an exemption for the employment of student-learners. Such an exemption shall apply when:

(1) The student-learner is enrolled in a course of study and training in a cooperative

vocational training program under a recognized State or local educational authority or in a course of study in a substantially similar program conducted by a private school; and

(2) Such student-learner is employed under a written agreement which provides:

(i) That the work of the student-learner in the occupations declared particularly hazardous shall be incidental to his training;

(ii) That such work shall be intermittent and for short periods of time, and under the direct and close supervision of a qualified and experienced person;

(iii) That safety instructions shall be given by the school and correlated by the employer with on-the-job training; and

(iv) That a schedule of organized and progressive work processes to be performed on the job shall have been prepared. Each such written agreement shall contain the name of student-learner, and shall be signed by the employer and the school coordinator or principal. Copies of each agreement shall be kept on file by both the school and the employer. This exemption for the employment of student-learners may be revoked in any individual situation where it is found that reasonable precautions have not been observed for the safety of minors employed thereunder. A high school graduate may be employed in an occupation in which he has completed training as provided in this paragraph as a student-learner, even though he is not yet 18 years of age.

§ C570.51 Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components (Order 1)

(a) FINDING AND DECLARATION OF FACT.—The following occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components are particularly hazardous for minors between 16 and 18 years of age or detrimental to their health or well-being:

(1) All occupations in or about any plant or establishment (other than retail establishments or plants or establishments of the type described in paragraph (a)(2) of this section) manufacturing or storing explosives or articles containing explosive components except where the occupation is performed in a "nonexplosives area" as defined in paragraph (b)(3) of this section.

(2) The following occupations in or about any plant or establishment manufacturing or storing small-arms ammunition not exceeding .60 caliber in size, shotgun shells, or blasting caps when manufactured or stored in conjunction with the manufacture of small-arms ammunition:

(i) All occupations involved in the manufacturing, mixing, transporting, or handling of explosive compounds in the manufacture of small-arms ammunition and all other occupations requiring the performance of any duties in the explosives area in which explosive compounds are manufactured or mixed.

(ii) All occupations involved in the manufacturing, transporting, or handling of primers and all other occupations requiring the performance of any duties in the same building in which primers are manufactured.

(iii) All occupations involved in the priming of cartridges and all other occupations requiring the performance of any duties in the same workroom in which rim-fire cartridges are primed.

(iv) All occupations involved in the plate loading of cartridges and in the operation of automatic loading machines.

(v) All occupations involved in the loading, inspecting, packing, shipping and storage of blasting caps.

(b) DEFINITIONS.—For the purpose of this section:

(1) The term "plant or establishment manufacturing or storing explosives or articles containing explosive component" means the land with all the buildings and other structures thereon used in connection with the manufacturing or processing or storing of explosives or articles containing explosive components.

(2) The terms "explosives" and "articles containing explosive components" mean and include ammunition, black powder, blasting caps, fireworks, high explosives, primers, smokeless powder, and all goods classified and defined as explosives by the Interstate Commerce Commission in regulations for the transportation of explosives and other dangerous substances by common carriers (49 CFR parts 71 to 78) issued pursuant to the Act of June 25, 1948 (62 Stat. 739; 18 U.S.C. 835).

(3) An area meeting all of the criteria in paragraphs (b)(3) (i) through (iv) of this section shall be deemed a "nonexplosives area":

(i) None of the work performed in the area involves the handling or use of explosives;

(ii) The area is separated from the explosives area by a distance not less than that prescribed in the American Table of Distances for the protection of inhabited buildings;

(iii) The area is separated from the explosives area by a fence or is otherwise located so that it constitutes a definite designated area; and

(iv) Satisfactory controls have been established to prevent employees under 18 years of age within the area from entering any area in or about the plant which does not meet criteria of paragraphs (b)(3) (i) through (iii) of this section.

§ C570.52 Occupations of motor-vehicle driver and outside helper (Order 2)

(a) FINDINGS AND DECLARATION OF FACT.—Except as provided in paragraph (b) of this section, the occupations of motor-vehicle driver and outside helper on any public road, highway, in or about any mine (including open pit mine or quarry), place where logging or sawmill operations are in progress, or in any excavation of the type identified in § C570.68(a) are particularly hazardous for the employment of minors between 16 and 18 years of age.

(b) EXEMPTION.—The findings and declaration in paragraph (a) of this section shall not apply to the operation of automobiles or trucks not exceeding 6,000 pounds gross vehicle weight if such driving is restricted to daylight hours: *Provided*, That such operation is only occasional and incidental to the minor's employment; that the minor holds a State license valid for the type of driving involved in the job performed and has completed a State approved driver education course: *Provided further*, That the vehicle is equipped with a seat belt or similar restraining device for the driver and for each helper, and the employer has instructed each minor that such belts or other devices must be used. This paragraph shall not be applicable to any occupation of motor-vehicle driver which involves the towing of vehicles.

(c) DEFINITIONS.—For the purpose of this section:

(1) The term "motor vehicle" shall mean any automobile, truck, truck-tractor, trailer, semitrailer, motorcycle, or similar vehicle propelled or drawn by mechanical power and designed for use as a means of transportation but shall not include any vehicle operated exclusively on rails.

(2) The term "driver" shall mean any individual who, in the course of employment, drives a motor vehicle at any time.

(3) The term "outside helper" shall mean any individual, other than a driver, whose work includes riding on a motor vehicle outside the cab for the purpose of assisting in transporting or delivering goods.

(4) The term "gross vehicle weight" includes the truck chassis with lubricants, water and a full tank or tanks of fuel, plus the weight of the cab or driver's compartment, body and special chassis and body equipment, and payload.

§ C570.55 Occupations involved in the operation of power-driven woodworking machines (Order 5)

(a) FINDING AND DECLARATION OF FACT.—The following occupations involved in the operation of power-driven wood-working machines are particularly hazardous for minors between 16 and 18 years of age:

(1) The occupation of operating power-driven woodworking machines, including supervising or controlling the operation of such machines, feeding material into such machines, and helping the operator to feed material into such machines but not including the placing of material on a moving chain or in a hopper or slide for automatic feeding.

(2) The occupations of setting up, adjusting, repairing, oiling, or cleaning power-driven woodworking machines.

(3) The occupations of off-bearing from circular saws and from guillotine-action veneer clippers.

(b) DEFINITIONS.—As used in this section:

(1) The term "power-driven woodworking machines" shall mean all fixed or portable machines or tools driven by power and used or designed for cutting, shaping, forming, surfacing, nailing, stapling, wire stitching, fastening, or otherwise assembling, pressing, or printing wood or veneer.

(2) The term "off-bearing" shall mean the removal of material or refuse directly from a saw table or from the point of operation. Operations not considered as off-bearing within the intent of this section include: (i) The removal of material or refuse from a circular saw or guillotine-action veneer clipper where the material or refuse has been conveyed away from the saw table or point of operation by a gravity chute or by some mechanical means such as a moving belt or expulsion roller, and (ii) the following operations when they do not involve the removal of material or refuse directly from a saw table or from the point of operation: The carrying, moving, or transporting of materials from one machine to another or from one part of a plant to another; the piling, stacking, or arranging of materials for feeding into a machine by another person; and the sorting, tying, bundling, or loading of materials.

(c) EXEMPTIONS.—This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in section 570.50 (b) and (c).

§ C570.58 Occupations involved in the operation of power-driven hoisting apparatus (Order 7)

(a) FINDING AND DECLARATION OF FACT.—The following occupations involved in the operation of power-driven hoisting apparatus are particularly hazardous for minors between 16 and 18 years of age:

(1) Work of operating an elevator, crane, derrick, hoist, or high-lift truck, except operating an unattended automatic operation passenger elevator or an electric or air-operated hoist not exceeding one ton capacity.

(2) Work which involves riding on a manlift or on a freight elevator, except a freight elevator operated by an assigned operator.

(3) Work of assisting in the operation of a crane, derrick, or hoist performed by crane hookers, crane chasers, hookers-on, riggers, rigger helpers, and like occupations.

(b) DEFINITIONS.—As used in this section:

(1) The term "elevator" shall mean any power-driven hoisting or lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction. The term shall include both passenger and freight elevators (including portable elevators or tiering machines), but shall not include dumbwaiters.

(2) The term "crane" shall mean a power-driven machine for lifting and lowering a load and moving it horizontally, in which the hoisting mechanism is an integral part of the machine. The term shall include all types of cranes, such as cantilever gantry, crawler, gantry, hammerhead, ingot-pouring, jib, locomotive, motor-truck, overhead traveling, pillar jib, pintle, portal, semi-gantry, semi-portal, storage bridge, tower, walking jib, and wall cranes.

(3) The term "derrick" shall mean a power-driven apparatus consisting of a mast or equivalent members held at the top by guys or braces, with or without a boom, for use with a hoisting mechanism or operating ropes. The term shall include all types of derricks, such as A-frame, breast, Chicago boom, gin-pole, guy and stiff-leg derrick.

(4) The term "hoist" shall mean a power-driven apparatus for raising or lowering a load by the application of a pulling force that does not include a car or platform running in guides. The term shall include all types of hoists, such as base mounted electric, clevis suspension, hook suspension, monorail, overhead electric, simple drum and trolley suspension hoists.

(5) The term "high-lift" truck shall mean a power-driven industrial type of truck used for lateral transportation that is equipped with a power-operated lifting device usually in the form of a fork or platform capable of tiering loaded pallets or skids one above the other. Instead of a fork or platform, the lifting device may consist of a ram, scoop, shovel, crane, revolving fork, or other attachments for handling specific loads. The term shall mean and include highlift trucks known under such names as fork lifts, fork trucks, fork-lift trucks, tiering trucks, or stacking trucks, but shall not mean low-lift trucks or low-lift platform trucks that are designed for the transportation of but not the tiering of material.

(6) The term "manlift" shall mean a device intended for the conveyance of persons which consists of platforms or brackets mounted on, or attached to, an endless belt, cable, chain or similar method of suspension; such belt, cable or chain operating in a substantially vertical direction and being supported by and driven through pulleys, sheaves or sprockets at the top and bottom.

(c) EXCEPTION.—(1) This section shall not prohibit the operation of an automatic elevator and an automatic signal operation elevator: *Provided*, That the exposed portion of the car interior (exclusive of vents and other necessary small openings), the car door, and the hoistway doors are constructed of solid surfaces without any opening through which a part of the body may extend; all hoistway openings at floor level have doors which are interlocked with the car door so as to prevent the car from starting until all such doors are closed and locked; the elevator (other than hydraulic elevators) is equipped with a device which will stop and hold the car in case of overspeed or if the cable slackens or breaks; and the elevator is equipped with upper and lower travel limit devices which will normally bring the car to rest at either terminal and a final limit switch which will prevent the movement in either direction and will open in case of excessive over travel by the car.

(2) For the purpose of this exception the term "automatic elevator" shall mean a passenger elevator, a freight elevator, or a combination passenger-freight elevator, the operation of which is controlled by pushbuttons in such a manner that the starting, going to the landing selected, leveling and holding, and the opening and closing of the car and hoistway doors are entirely automatic.

(3) For the purpose of this exception, the term "automatic signal operation elevator" shall mean an elevator which is started in response to the operation of a switch (such as a lever or pushbutton) in the car which when operated by the operator actuates a starting device that automatically closes the car and hoistway doors from this point on, the movement of the car to the landing selected, leveling and holding when it gets there, and the opening of the car and hoistway doors are entirely automatic.

§ C570.59 Occupations involved in the operations of power-driven metal forming, punching, and shearing machines (Order 8)

(a) FINDING AND DECLARATION OF FACT.—The following occupations are particularly hazardous for the employment of minors between 16 and 18 years of age:

(1) The occupations of operator of or helper on the following power-driven metal forming, punching, and shearing machines:

(i) All rolling machines, such as beading, straightening, corrugating, flanging, or bending rolls; and hot or cold rolling mills.

(ii) All pressing or punching machines, such as punch presses except those provided with full automatic feed and ejection and with a fixed barrier guard to prevent the hands or fingers of the operator from entering the area between the dies; power presses; and plate punches.

(iii) All bending machines, such as apron brakes and press brakes.

(iv) All hammering machines, such as drop hammers and power hammers.

(v) All shearing machines, such as guillotine or squaring shears; alligator shears; and rotary shears.

(2) The occupations of setting up, adjusting, repairing, oiling, or cleaning these machines including those with automatic feed and ejection.

(b) DEFINITIONS.—(1) The term "operator" shall mean a person who operates a machine covered by this section by performing such functions as starting or stopping the machine, placing materials into or removing them from the machine, or any other functions directly involved in operation of the machine.

(2) The term "helper" shall mean a person who assists in the operation of a machine covered by this section by helping place materials into or remove them from the machine.

(3) The term "forming, punching, and shearing machines" shall mean power-driven metal-working machines, other than machine tools, which change the shape of or cut metal by means of tools, such as dies, rolls, or knives which are mounted on rams, plungers, or other moving parts. Types of forming, punching, and shearing machines enumerated in this section are the machines to which the designation is by custom applied.

(c) EXEMPTIONS.—This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in section 570.50 (b) and (c).

§ C570.62 Occupations involved in the operation of bakery machines (Order 11)

The following occupations involved in the operation of power-driven bakery machines are particularly hazardous for the employment of minors between 16 and 18 years of age:

(1) The occupations of operating, assisting to operate, or setting up, adjusting, repairing, oiling, or cleaning any horizontal or vertical dough mixer; batter mixer; bread dividing, rounding, or molding machine; dough brake; dough sheeter; combination bread slicing and wrapping machine; or cake cutting band saw.

(2) The occupation of setting up or adjusting a cookie or cracker machine.

§ C570.63 Occupations involved in the operation of paper-products machines (Order 12)

(a) FINDINGS AND DECLARATION OF FACT.—The following occupations are particularly hazardous for the employment of minors between 16 and 18 years of age:

(1) The occupations of operation or assisting to operate any of the following power-driven paper products machines:

(i) Arm-type wire stitcher or stapler, circular or band saw, corner cutter or mitering machine, corrugating and single-or-double-facing machine, envelope die-cutting press, guillotine paper cutter or shear, horizontal bar scorer, laminating or combining machine, sheeting machine, scrap-paper baler, or vertical slotter.

(ii) Platen die-cutting press, platen printing press, or punch press which involves hand feeding of the machine.

(2) The occupations of setting-up, adjusting, repairing, oiling, or cleaning these machines including those which do not involve hand feeding.

(b) DEFINITIONS.—(1) The term "operating or assisting to operate" shall mean all work which involves starting or stopping a machine covered by this section, placing or removing materials into or from the machine, or any other work directly involved in operating the machine. The term does not include the stacking of materials by an employee in an area nearby or adjacent to the machine where such employee does not place the materials into the machine.

(2) The term "paper products" machine shall mean all power-driven machines used in:

(i) The remanufacture or conversion of paper or pulp into a finished product, including the preparation of such materials for recycling; or

(ii) The preparation of such materials for disposal. The term applies to such machines whether they are used in establishments that manufacture converted paper or pulp products, or in any other type of manufacturing or nonmanufacturing establishment.

(c) EXEMPTIONS.—This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in section 570.50 (b) and (c).

§ C570.65 Occupations involved in the operations of circular saws, band saws, and guillotine shears (Order 14)

(a) FINDINGS AND DECLARATION OF FACT.—The following occupations are particularly hazardous for the employment of minors between 16 and 18 years of age:

(1) The occupations of operator of or helper on the following power-driven fixed or portable machines except machines equipped with full automatic feed and ejection:

(i) Circular saws.

(ii) Band saws.

(iii) Guillotine shears.

(2) The occupations of setting-up, adjusting, repairing, oiling, or cleaning circular saws, band saws, and guillotine shears.

(b) DEFINITIONS.—(1) The term "operator" shall mean a person who operates a machine covered by this section by performing such functions as starting or stopping the machine, placing materials into or removing them from the machine, or any other functions directly involved in operation of the machine.

(2) The term "helper" shall mean a person who assists in the operation of a machine covered by this section by helping place materials into or remove them from the machine.

(3) The term "machines equipped with full automatic feed and ejection" shall mean machines covered by this Order which are equipped with devices for full automatic feeding and ejection and with a fixed barrier guard to prevent completely the operator or helper from placing any part of his body in the point-of-operation area.

(4) The term "circular saw" shall mean a machine equipped with a thin steel disc having a continuous series of notches or teeth on the periphery, mounted on shafting, and used for sawing materials.

(5) The term "band saw" shall mean a machine equipped with an endless steel band having a continuous series of notches or teeth, running over wheels or pulleys, and used for sawing materials.

(6) The term "guillotine shear" shall mean a machine equipped with a movable blade operated vertically and used to shear materials. The term shall not include other types of shearing machines, using a different form of shearing action, such as alligator shears or circular shears.

(c) EXEMPTIONS.—This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in section 570.50 (b) and (c).

§ C570.66 Occupations involved in wrecking and demolition operations (Order 15)

(a) FINDING AND DECLARATION OF FACT.—All occupations in wrecking and demolition operations are particularly hazardous for the employment of minors between 16 and 18 years of age and detrimental to their health and well-being.

(b) DEFINITION.—The term "wrecking and demolition operations" shall mean all work, including clean-up and salvage work, performed at the site of the total or partial razing, demolishing, or dismantling of a building, bridge, steeple, tower, chimney, other structure.

§ C570.67 Occupations in roofing operations (Order 16)

(a) FINDING AND DECLARATION OF FACT.—All occupations in roofing operations are particularly hazardous for the employment of minors between 16 and 18 years of age or detrimental to their health.

(b) DEFINITION OF ROOFING OPERATIONS.—The term "roofing operations" shall mean all work performed in connection with the application of weatherproofing materials and substances (such as tar or pitch, asphalt prepared paper, tile, slate, metal, translucent materials, and shingles of asbestos, asphalt or wood) to roofs of buildings or other structures. The term shall also include all work performed in connection with: (1) The installation of roofs, including related metal work such as flashing and (2) alterations, additions, maintenance, and repair, including painting and coating, of existing roofs. The term shall not include gutter and downspout work; the construction of the sheathing or base of roofs; or the installation of television antennas, air conditioners, exhaust and ventilating equipment, or similar appliances attached to roofs.

(c) EXEMPTIONS.—This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in section 570.50 (b) and (c).

§ C570.68 Occupations in excavation operations (Order 17)

(a) FINDING AND DECLARATION OF FACT.—The following occupations in excavation operations are particularly hazardous for the employment of persons between 16 and 18 years of age: (1) Excavating, working in, or backfilling (refilling) trenches, except (i) manually excavating or manually backfilling trenches that do not exceed four feet in depth at any point, or (ii) working in trenches that do not exceed four feet in depth at any point. (2) Excavating for buildings or other structures or working in such excavations, except: (i) Manually excavating to a depth not exceeding four feet below any ground surface adjoining the excavation, or (ii) working in an excavation not exceeding such depth, or (iii) working in an excavation where the side walls are shored or sloped to the angle of repose. (3) Working within tunnels prior to the completion of all driving and shoring operations. (4) Working within shafts prior to the completion of all sinking and shoring operations.

(b) EXEMPTIONS.—This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in section C570.50 (b) and (c).

EXCLUSION FOR EMPLOYEES OF THE CAPITOL POLICE

None of the limitations on the use of lie detector tests by employing offices set forth in section 204 of the CAA apply to the Capitol Police. This exclusion from the limitations of section 204 of the CAA applies only with respect to Capitol Police employees. Except as otherwise provided by law or these regulations, this exclusion does not extend to contractors or nongovernmental agents of the Capitol Police; nor does it extend to the Capitol Police with respect to employees of a private employer or an otherwise covered employing office with which the Capitol Police has a contractual or other business relationship.

APPLICATION OF RIGHTS AND PROTECTIONS OF THE EMPLOYEE POLYGRAPH PROTECTION ACT OF 1988

SUBPART A—GENERAL

Sec.
1.1 Purpose and scope.
1.2 Definitions.
1.3 Coverage.
1.4 Prohibitions on lie detector use.
1.5 Effect on other laws or agreements.
1.6 Notice of protection.
1.7 Authority of the Board.
1.8 Employment relationship.

SUBPART B—EXEMPTIONS

1.10 Exclusion for employees of the Capitol Police. [Reserved].
1.11 Exemption for national defense and security.
1.12 Exemption for employing offices conducting investigations of economic loss or injury.
1.13 Exemption for employing offices authorized to manufacture, distribute, or dispense controlled substances.

SUBPART C—RESTRICTIONS ON POLYGRAPH USAGE UNDER EXEMPTIONS

1.20 Adverse employment action under ongoing investigation exemption.
1.21 Adverse employment action under controlled substance exemption.
1.22 Rights of examinee—general.
1.23 Rights of examinee—pretest phase.
1.24 Rights of examinee—actual testing phase.
1.25 Rights of examinee—post-test phase.
1.26 Qualifications of and requirements for examiners.

SUBPART D—RECORDKEEPING AND DISCLOSURE REQUIREMENTS

1.30 Records to be preserved for 3 years.
1.35 Disclosure of test information.

SUBPART E—[RESERVED]

1.40 [Reserved].
Appendix A—Notice to Examinee.

Authority: Pub. L. 104–1, 109 Stat. 3, 2 U.S.C. 1314(c).

SUBPART A—GENERAL

SEC. 1.1 PURPOSE AND SCOPE.

Enacted into law on January 23, 1995, the Congressional Accountability Act ("CAA") directly applies the rights and protections of eleven Federal labor and employment law statutes to covered employees and employing offices within the legislative branch. Section 204(a) of the CAA, 2 U.S.C. §1314(a) provides that no employing office may require any covered employee (including a covered employee who does not work in that employing office) to take a lie detector test where such test would be prohibited if required by an employer under paragraphs (1), (2) or (3) of section 3 of the Employee Polygraph Protection Act of 1988 (EPPA), 29 U.S.C. §2002 (1), (2) or (3). The purpose of this Part is to set forth the regulations to carry out the provisions of section 204 of the CAA.

Subpart A contains the provisions generally applicable to covered employers, including the requirements relating to the prohibitions on lie detector use. Subpart B sets forth rules regarding the statutory exemptions from application of section 204 of the CAA. Subpart C sets forth the restrictions on polygraph usage under such exemptions. Subpart D sets forth the rules on recordkeeping and the disclosure of polygraph test information.

SEC. 1.2 DEFINITIONS.

For purposes of this part:

(a) Act or CAA means the Congressional Accountability Act of 1995 (P.L. 104–1, 109 Stat. 3, 2 U.S.C. §§1301–1438).

(b) EPPA means the Employee Polygraph Protection Act of 1988 (Pub. L. 100–347, 102 Stat. 646, 29 U.S.C. §§2001–2009) as applied to covered employees and employing offices by section 204 of the CAA.

(c) The term covered employee means any employee of (1) the House of Representatives; (2) the Senate; (3) the Capitol Guide Service; (4) the Congressional Budget Office; (5) the Office of the Architect of the Capitol; (6) the Office of the Attending Physician; (7) the Office of Compliance; or (8) the Office of Technology Assessment.

(d) The term employee includes an applicant for employment and a former employee.

(e) The term employee of the Office of the Architect of the Capitol includes any employee of the Office of the Architect of the Capitol, the Botanic Gardens, or the Senate Restaurants.

(f) The term employee of the Capitol Police includes any member or officer of the Capitol Police.

(g) The term employee of the House of Representatives includes an individual occupying a position the pay for which is disbursed by the Clerk of the House of Representatives, or another official designated by the House of Representatives, or any employment position in an entity that is paid with funds derived from the clerk-hire allowance of the House of Representatives but not any such individual employed by any entity listed in subparagraphs (3) through (8) of paragraph (c) above.

(h) The term employee of the Senate includes any employee whose pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (8) of paragraph (c) above.

(i) The term employing office means (1) the personal office of a Member of the House of Representatives or of a Senator; (2) a committee of the House of Representatives or the Senate or a joint committee; (3) any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or (4) the Capitol Guide Board, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Compliance, and the Office of Technology Assessment. The term employing office includes any person acting directly or indirectly in the interest of an employing office in relation to an employee or prospective employee. A polygraph examiner either employed for or whose services are retained for the sole purpose of administering polygraph tests ordinarily would not be deemed an employing office with respect to the examinees. Any reference to "employer" in these regulations includes employing offices.

(j)(1) The term lie detector means a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device (whether mechanical or electrical) that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual. Voice stress analyzers, or psychological stress evaluators, include any systems that utilize voice stress analysis, whether or not an opinion on honesty or dishonesty is specifically rendered.

(2) The term lie detector does not include medical tests used to determine the presence or absence of controlled substances or alcohol in bodily fluids. Also not included in the definition of lie detector are written or oral tests commonly referred to as "honesty" or "paper and pencil" tests, machine-scored or otherwise; and graphology tests commonly referred to as handwriting tests.

(k) The term polygraph means an instrument that—

(1) records continuously, visually, permanently, and simultaneously changes in cardiovascular, respiratory, and electrodermal patterns as minimum instrumentation standards; and

(2) is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

(l) Board means the Board of Directors of the Office of Compliance.

(m) Office means the Office of Compliance.

SEC. 1.3 COVERAGE.

The coverage of section 204 of the Act extends to any "covered employee" or "covered employing office" without regard to the number of employees or the employing office's effect on interstate commerce.

SEC. 1.4 PROHIBITIONS ON LIE DETECTOR USE.

(a) Section 204 of the CAA provides that, subject to the exemptions of the EPPA incorporated into the CAA under section 225(f) of the CAA, as set forth in section 1.10 through 1.12 of this Part, employing offices are prohibited from:

(1) Requiring, requesting, suggesting or causing, directly or indirectly, any covered employee or prospective employee to take or submit to a lie detector test;

(2) Using, accepting, or inquiring about the results of a lie detector test of any covered employee or prospective employee; and

(3) Discharging, disciplining, discriminating against, denying employment or promotion, or threatening any covered employee or prospective employee to take such action for refusal or failure to take or submit to such test, or on the basis of the results of a test.

The above prohibitions apply irrespective of whether the covered employee referred to in paragraphs (1), (2) or (3), above, works in that employing office.

(b) An employing office that reports a theft or other incident involving economic loss to police or other law enforcement authorities is not engaged in conduct subject to the prohibitions under paragraph (a) of this section if, during the normal course of a subsequent investigation, such authorities deem it necessary to administer a polygraph test to a covered employee(s) suspected of involvement in the reported incident. Employing offices that cooperate with police authorities during the course of their investigations into criminal misconduct are likewise not deemed engaged in prohibitive conduct: *Provided*, That such cooperation is passive in nature. For example, it is not uncommon for police authorities to request employees suspected of theft or criminal activity to submit to a polygraph test during the employee's tour of duty since, as a general rule, suspect employees are often difficult to locate away from their place of employment. Allowing a test on the employing office's premises, releasing a covered employee during working hours to take a test at police headquarters, and other similar types of cooperation at the request of the police authorities would not be construed as "requiring, requesting, suggesting, or causing, directly or indirectly, any covered employee * * * to take or submit to a lie detector test". Cooperation of this type must be distinguished from actual participation in the testing of employees suspected of wrongdoing, either through the administration of a test by the employing office at the request or direction of police authorities, or through reimbursement by the employing office of tests administered by police authorities to employees. In some communities, it may be a practice of police authorities to request testing by employing offices of employees before a police investigation is initiated on a reported incident. In other communities, police examiners are available to covered employing offices, on a cost reimbursement basis, to conduct tests on employees suspected by an employing office of wrongdoing. All such conduct on the part of employing offices is deemed within the prohibitions of section 204 of the CAA.

(c) The receipt by an employing office of information from a polygraph test administered by police authorities pursuant to an investigation is prohibited by section 3(2) of the EPPA. (See paragraph (a)(2) of this section.)

(d) The simulated use of a polygraph instrument so as to lead an individual to believe that an actual test is being or may be performed (e.g., to elicit confessions or admissions of guilt) constitutes conduct prohibited by paragraph (a) of this section. Such use includes the connection of a covered employee or prospective employee to the instrument without any intention of a diagnostic purpose, the placement of the instrument in a room used for interrogation unconnected to the covered employee or prospective employee, or the mere suggestion that the instrument may be used during the course of the interview.

(e) The Capitol Police may not require a covered employee not employed by the Capitol Police to take a lie detector test (on its own initiative or at the request of another employing office) except where the Capitol Police administers such lie detector test as part of an "ongoing investigation" by the Capitol Police. For the purpose of this subsection, the definition of "ongoing investigation" contained in section 1.12(b) shall apply.

SEC. 1.5 EFFECT ON OTHER LAWS OR AGREEMENTS.

(a) Section 204 of the CAA does not preempt any otherwise applicable provision of Federal law or any rule or regulation of the House or Senate or any negotiated collective bargaining agreement that prohibits lie detector tests or is more restrictive with respect to the use of lie detector tests.

(b)(1) This provision applies to all aspects of the use of lie detector tests, including procedural safeguards, the use of test results, the rights and remedies provided examinees, and the rights, remedies, and responsibilities of examiners and employing offices.

(2) For example, a collective bargaining agreement that provides greater protection to an examinee would apply in addition to the protection provided in section 204 of the CAA.

SEC. 1.6 NOTICE OF PROTECTION.

Pursuant to section 301(h) of the CAA, the Office shall prepare, in a manner suitable for posting, a notice explaining the provisions of section 204 of the CAA. Copies of such notice may be obtained from the Office of Compliance.

SEC. 1.7 AUTHORITY OF THE BOARD.

Pursuant to sections 204 and 304 of the CAA, the Board is authorized to issue regulations to implement the rights and protections of the EPPA. Section 204(c) directs the Board to promulgate regulations implementing section 204 that are "the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsections (a) and (b) [of section 204 of the CAA] except insofar as the Board may determine, for good cause shown . . . that a modification of such regulations would be more effective for the implementation of the rights and protections under this section". The regulations issued by the Board herein are on all matters for which section 204 of the CAA requires a regulation to be issued. Specifically, it is the Board's considered judgment, based on the information available to it at the time of promulgation of these regulations, that, with the exception of the regulations adopted and set forth herein, there are no other "substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsections (a) and (b) [of section 204 of the CAA]".

In promulgating these regulations, the Board has made certain technical and nomenclature changes to the regulations as promulgated by the Secretary. Such changes

are intended to make the provisions adopted accord more naturally to situations in the legislative branch. However, by making these changes, the Board does not intend a substantive difference between these regulations and those of the Secretary from which they are derived. Moreover such changes, in and of themselves, are not intended to constitute an interpretation of the regulation or of the statutory provisions of the CAA upon which they are based.

SEC. 1.8 EMPLOYMENT RELATIONSHIP.

Subject to the exemptions incorporated into the CAA by section 225(f), section 204 applies the prohibitions on the use of lie detectors by employing offices with respect to covered employees irrespective of whether a covered employee works in that employing office. Sections 101 (3), (4) and 204 of the CAA also apply EPPA prohibitions against discrimination to applicants for employment and former employees of a covered employing office. For example, an employee may quit rather than take a lie detector test. The employing office cannot discriminate or threaten to discriminate in any manner against that person (such as by providing bad references in the future) because of that person's refusal to be tested. Similarly, an employing office cannot discriminate or threaten to discriminate in any manner against that person because that person files a complaint, institutes a proceeding, testifies in a proceeding, or exercises any right under section 204 of the CAA. (See section 207 of the CAA.)

SUBPART B—EXEMPTIONS

SEC. 1.10 EXCLUSION FOR EMPLOYEES OF THE CAPITOL POLICE [RESERVED].

SEC. 1.11 EXEMPTION FOR NATIONAL DEFENSE AND SECURITY.

(a) The exemptions allowing for the administration of lie detector tests in the following paragraphs (b) through (e) of this section apply only to the Federal Government; they do not allow covered employing offices to administer such tests. For the purposes of this section, the term "Federal Government" means any agency or entity within the Federal Government authorized to administer polygraph examinations which is otherwise exempt from coverage under section 7(a) of the EPPA, 29 U.S.C. §2006(a).

(b) Section 7(b)(1) of the EPPA, incorporated into the CAA under section 225(f) of the CAA, provides that nothing in the EPPA shall be construed to prohibit the administration of any lie detector test by the Federal Government, in the performance of any counterintelligence function, to any expert, consultant or employee of any contractor under contract with the Department of Defense; or with the Department of Energy, in connection with the atomic energy defense activities of such Department.

(c) Section 7(b)(2)(A) of the EPPA, incorporated into the CAA under section 225(f) of the CAA, provides that nothing in the EPPA shall be construed to prohibit the administration of any lie detector test by the Federal Government, in the performance of any intelligence or counterintelligence function of the National Security Agency, the Defense Intelligence Agency, or the Central Intelligence Agency, to any individual employed by, assigned to, or detailed to any such agency; or any expert or consultant under contract to any such agency; or any employee of a contractor to such agency; or any individual applying for a position in any such agency; or any individual assigned to a space where sensitive cryptologic information is produced, processed, or stored for any such agency.

(d) Section 7(b)(2)(B) of the EPPA, incorporated into the CAA under section 225(f) of the CAA, provides that nothing in the EPPA shall be construed to prohibit the administration of any lie detector test by the Federal Government, in the performance of any intelligence or counterintelligence function, to any covered employee whose duties involve access to information that has been classified at the level of top secret or designated as being within a special access program under section 4.2 (a) of Executive Order 12356 (or a successor Executive order).

(e) Counterintelligence for purposes of the above paragraphs means information gathered and activities conducted to protect against espionage and other clandestine intelligence activities, sabotage, terrorist activities, or assassinations conducted for or on behalf of foreign governments, or foreign or domestic organizations or persons.

(f) Lie detector tests of persons described in the above paragraphs will be administered in accordance with applicable Department of Defense directives and regulations, or other regulations and directives governing the use of such tests by the United States Government, as applicable.

SEC. 1.12 EXEMPTION FOR EMPLOYING OFFICES CONDUCTING INVESTIGATIONS OF ECONOMIC LOSS OR INJURY.

(a) Section 7(d) of the EPPA, incorporated into the CAA under section 225(f) of the CAA, provides a limited exemption from the general prohibition on lie detector use for employers conducting ongoing investigations of economic loss or injury to the employer's business. An employing office may request an employee, subject to the conditions set forth in sections 8 and 10 of the EPPA and sections 1.20, 1.22, 1.23, 1.24, 1.25, 1.26 and 1.35 of this part, to submit to a polygraph test, but no other type of lie detector test, only if—

(1) The test is administered in connection with an ongoing investigation involving economic loss or injury to the employing office's operations, such as theft, embezzlement, misappropriation or an act of unlawful industrial espionage or sabotage;

(2) The employee had access to the property that is the subject of the investigation;

(3) The employing office has a reasonable suspicion that the employee was involved in the incident or activity under investigation;

(4) The employing office provides the examinee with a statement, in a language understood by the examinee, prior to the test which fully explains with particularity the specific incident or activity being investigated and the basis for testing particular employees and which contains, at a minimum:

(i) An identification with particularity of the specific economic loss or injury to the operations of the employing office;

(ii) A description of the employee's access to the property that is the subject of the investigation;

(iii) A description in detail of the basis of the employing office's reasonable suspicion that the employee was involved in the incident or activity under investigation; and

(iv) Signature of a person (other than a polygraph examiner) authorized to legally bind the employing office; and

(5) The employing office retains a copy of the statement and proof of service described in paragraph (a)(4) of this section for at least 3 years.

(b) For the exemption to apply, the condition of an "ongoing investigation" must be met. As used in section 7(d) of the EPPA, the ongoing investigation must be of a specific incident or activity. Thus, for example, an employing office may not request that an employee or employees submit to a polygraph test in an effort to determine whether or not any thefts have occurred. Such random testing by an employing office is precluded by the EPPA. Further, because the exemption is limited to a specific incident or activity, an employing office is precluded from using the exemption in situations where the so-called "ongoing investigation" is continuous. For example, the fact that items are frequently missing would not be a sufficient basis, standing alone, for administering a polygraph test. Even if the employing office can establish that unusually high amounts of property are missing in a given month, this, in and of itself, would not be a sufficient basis to meet the specific incident requirement. On the other hand, polygraph testing in response to missing property would be permitted where additional evidence is obtained through subsequent investigation of specific items missing through intentional wrongdoing, and a reasonable suspicion that the employee to be polygraphed was involved in the incident under investigation. Administering a polygraph test in circumstances where the missing property is merely unspecified, statistical shortages, without identification of a specific incident or activity that produced the missing property and a "reasonable suspicion that the employee was involved", would amount to little more than a fishing expedition and is prohibited by the EPPA as applied to covered employees and employing offices by the CAA.

(c)(1)(i) The terms economic loss or injury to the employing office's operations include both direct and indirect economic loss or injury.

(ii) Direct loss or injury includes losses or injuries resulting from theft, embezzlement, misappropriation, espionage or sabotage. These examples, cited in the EPPA, are intended to be illustrative and not exhaustive. Another specific incident which would constitute direct economic loss or injury is the misappropriation of confidential or trade secret information.

(iii) Indirect loss or injury includes the use of an employing office's operations to commit a crime, such as check-kiting or money laundering. In such cases, the ongoing investigation must be limited to criminal activity that has already occurred, and to use of the employing office's operations (and not simply the use of the premises) for such activity. For example, the use of an employing office's vehicles, warehouses, computers or equipment to smuggle or facilitate the importing of illegal substances constitutes an indirect loss or injury to the employing office's business operations. Conversely, the mere fact that an illegal act occurs on the employing office's premises (such as a drug transaction that takes place in the employing office's parking lot or rest room) does not constitute an indirect economic loss or injury to the employing office.

(iv) Indirect loss or injury also includes theft or injury to property of another for which the employing office exercises fiduciary, managerial or security responsibility, or where the office has custody of the property (but not property of other offices to which the employees have access by virtue of the employment relationship). For example, if a maintenance employee of the manager of an apartment building steals jewelry from a tenant's apartment, the theft results in an indirect economic loss or injury to the employer because of the manager's management responsibility with respect to the tenant's apartment. A messenger on a delivery

of confidential business reports for a client firm who steals the reports causes an indirect economic loss or injury to the messenger service because the messenger service is custodian of the client firm's reports, and therefore is responsible for their security. Similarly, the theft of property protected by a security service employer is considered an economic loss or injury to that employer.

(v) A theft or injury to a client firm does not constitute an indirect loss or injury to an employing office unless that employing office has custody of, or management, or security responsibility for, the property of the client that was lost or stolen or injured. For example, a cleaning contractor has no responsibility for the money at a client bank. If money is stolen from the bank by one of the cleaning contractor's employees, the cleaning contractor does not suffer an indirect loss or injury.

(vi) Indirect loss or injury does not include loss or injury which is merely threatened or potential, e.g., a threatened or potential loss of an advantageous business relationship.

(2) Economic losses or injuries which are the result of unintentional or lawful conduct would not serve as a basis for the administration of a polygraph test. Thus, apparently unintentional losses or injuries stemming from truck, car, workplace, or other similar type accidents or routine inventory or cash register shortages would not meet the economic loss or injury requirement. Any economic loss incident to lawful union or employee activity also would not satisfy this requirement.

(3) It is the operations of the employing office which must suffer the economic loss or injury. Thus, a theft committed by one employee against another employee of the same employing office would not satisfy the requirement.

(d) While nothing in the EPPA as applied by the CAA prohibits the use of medical tests to determine the presence of controlled substances or alcohol in bodily fluids, the section 7(d) exemption of the EPPA does not permit the use of a polygraph test to learn whether an employee has used drugs or alcohol, even where such possible use may have contributed to an economic loss to the employing office (e.g., an accident involving an employing office's vehicle).

(e) Section 7(d)(2) of the EPPA provides that, as a condition for the use of the exemption, the employee must have had access to the property that is the subject of the investigation.

(1) The word access, as used in section 7(d)(2), refers to the opportunity which an employee had to cause, or to aid or abet in causing, the specific economic loss or injury under investigation. The term "access", thus, includes more than direct or physical contact during the course of employment. For example, as a general matter, all employees working in or with authority to enter a property storage area have "access" to unsecured property in the area. All employees with the combination to a safe have "access" to the property in a locked safe. Employees also have "access" who have the ability to divert possession or otherwise affect the disposition of the property that is the subject of investigation. For example, a bookkeeper in a jewelry store with access to inventory records may aid or abet a clerk who steals an expensive watch by removing the watch from the employing office's inventory records. In such a situation, it is clear that the bookkeeper effectively has "access" to the property that is the subject of the investigation.

(2) As used in section 7(d)(2), property refers to specifically identifiable property, but also includes such things of value as security codes and computer data, and proprietary, financial or technical information, such as trade secrets, which by its availability to competitors or others would cause economic harm to the employing office.

(f)(1) As used in section 7(d)(3), the term reasonable suspicion refers to an observable, articulable basis in fact which indicates that a particular employee was involved in, or responsible for, an economic loss. Access in the sense of possible or potential opportunity, standing alone, does not constitute a basis for "reasonable suspicion". Information from a co-worker, or an employee's behavior, demeanor, or conduct may be factors in the basis for reasonable suspicion. Likewise, inconsistencies between facts, claims, or statements that surface during an investigation can serve as a sufficient basis for reasonable suspicion. While access or opportunity, standing alone, does not constitute a basis for reasonable suspicion, the totality of circumstances surrounding the access or opportunity (such as its unauthorized or unusual nature or the fact that access was limited to a single individual) may constitute a factor in determining whether there is a reasonable suspicion.

(2) For example, in an investigation of a theft of an expensive piece of jewelry, an employee authorized to open the establishment's safe no earlier than 9 a.m., in order to place the jewelry in a window display case, is observed opening the safe at 7:30 a.m. In such a situation, the opening of the safe by the employee one and one-half hours prior to the specified time may serve as the basis for reasonable suspicion. On the other hand, in the example given, if the employee is asked to bring the piece of jewelry to his or her office at 7:30 a.m., and the employee then opened the safe and reported the jewelry missing, such access, standing alone, would not constitute a basis for reasonable suspicion that the employee was involved in the incident unless access to the safe was limited solely to the employee. If no one other than the employee possessed the combination to the safe, and all other possible explanations for the loss are ruled out, such as a break-in, a basis for reasonable suspicion may be formulated based on sole access by one employee.

(3) The employing office has the burden of establishing that the specific individual or individuals to be tested are "reasonably suspected" of involvement in the specific economic loss or injury for the requirement in section 7(d)(3) of the EPPA to be met.

(g)(1) As discussed in paragraph (a)(4) of this section, section 7(d)(4) of the EPPA sets forth what information, at a minimum, must be provided to an employee if the employing office wishes to claim the exemption.

(2) The statement required under paragraph (a)(4) of this section must be received by the employee at least 48 hours, excluding weekend days and holidays, prior to the time of the examination. The statement must set forth the time and date of receipt by the employee and be verified by the employee's signature. This will provide the employee with adequate pre-test notice of the specific incident or activity being investigated and afford the employee sufficient time prior to the test to obtain and consult with legal counsel or an employee representative.

(3) The statement to be provided to the employee must set forth with particularity the specific incident or activity being investigated and the basis for testing particular employees. Section 7(d)(4)(A) of the EPPA requires specificity beyond the mere assertion of general statements regarding economic loss, employee access, and reasonable suspicion. For example, an employing office's assertion that an expensive watch was stolen, and that the employee had access to the watch and is therefore a suspect, would not meet the "with particularity" criterion. If the basis for an employing office's requesting an employee (or employees) to take a polygraph test is not articulated with particularity, and reduced to writing, then the standard is not met. The identity of a co-worker or other individual providing information used to establish reasonable suspicion need not be revealed in the statement.

(4) It is further required that the statement provided to the examinee be signed by the employing office, or an employee or other representative of the employing office with authority to legally bind the employing office. The person signing the statement must not be a polygraph examiner unless the examiner is acting solely in the capacity of an employing office with respect to his or her own employees and does not conduct the examination. The standard would not be met, and the exemption would not apply if the person signing the statement is not authorized to legally bind the employing office.

(h) Polygraph tests administered pursuant to this exemption are subject to the limitations set forth in sections 8 and 10 of the EPPA, as discussed in sections 1.20, 1.22, 1.23, 1.24, 1.25, 1.26, and 1.35 of this part. As provided in these sections, the exemption will apply only if certain requirements are met. Failure to satisfy any of the specified requirements nullifies the statutory authority for polygraph test administration and may subject the employing office to remedial actions, as provided for in section 6(c) of the EPPA.

SEC. 1.13 EXEMPTION OF EMPLOYING OFFICES AUTHORIZED TO MANUFACTURE, DISTRIBUTE, OR DISPENSE CONTROLLED SUBSTANCES.

(a) Section 7(f) of the EPPA, incorporated into the CAA by section 225(f) of the CAA, provides an exemption from the EPPA's general prohibition regarding the use of polygraph tests for employers authorized to manufacture, distribute, or dispense a controlled substance listed in schedule I, II, III, or IV of section 202 of the Controlled Substances Act (21 U.S.C. §812). This exemption permits the administration of polygraph tests, subject to the conditions set forth in sections 8 and 10 of the EPPA and sections 1.21, 1.22, 1.23, 1.24, 1.25, 1.26, and 1.35 of this part, to:

(1) A prospective employee who would have direct access to the manufacture, storage, distribution, or sale of any such controlled substance; or

(2) A current employee if the following conditions are met:

(i) The test is administered in connection with an ongoing investigation of criminal or other misconduct involving, or potentially involving, loss or injury to the manufacture, distribution, or dispensing of any such controlled substance by such employing office; and

(ii) The employee had access to the person or property that is the subject of the investigation.

(b)(1) The terms manufacture, distribute, distribution, dispense, storage, and sale, for the purposes of this exemption, are construed within the meaning of the Controlled Substances Act (21 U.S.C. §812 et seq.), as administered by the Drug Enforcement Administration (DEA), United States Department of Justice.

(2) The exemption in section 7(f) of the EPPA applies only to employing offices that

are authorized by DEA to manufacture, distribute, or dispense a controlled substance. Section 202 of the Controlled Substances Act (21 U.S.C. §812) requires every person who manufactures, distributes, or dispenses any controlled substance to register with the Attorney General (i.e., with DEA). Common or contract carriers and warehouses whose possession of the controlled substance is in the usual course of their business or employment are not required to register. Truck drivers and warehouse employees of the persons or entities registered with DEA and authorized to manufacture, distribute, or dispense controlled substances, are within the scope of the exemption where they have direct access or access to the controlled substances, as discussed below.

(c) In order for a polygraph examination to be performed, section 7(f) of the Act requires that a prospective employee have "direct access" to the controlled substance(s) manufactured, dispensed, or distributed by the employing office. Where a current employee is to be tested as a part of an ongoing investigation, section 7(f) requires that the employee have "access" to the person or property that is the subject of the investigation.

(1) A prospective employee would have "direct access" if the position being applied for has responsibilities which include contact with or which affect the disposition of a controlled substance, including participation in the process of obtaining, dispensing, or otherwise distributing a controlled substance. This includes contact or direct involvement in the manufacture, storage, testing, distribution, sale or dispensing of a controlled substance and may include, for example, packaging, repackaging, ordering, licensing, shipping, receiving, taking inventory, providing security, prescribing, and handling of a controlled substance. A prospective employee would have "direct access" if the described job duties would give such person access to the products in question, whether such employee would be in physical proximity to controlled substances or engaged in activity which would permit the employee to divert such substances to his or her possession.

(2) A current employee would have "access" within the meaning of section 7(f) if the employee had access to the specific person or property which is the subject of the on-going investigation, as discussed in section 1.12(e) of this part. Thus, to test a current employee, the employee need not have had "direct" access to the controlled substance, but may have had only infrequent, random, or opportunistic access. Such access would be sufficient to test the employee if the employee could have caused, or could have aided or abetted in causing, the loss of the specific property which is the subject of the investigation. For example, a maintenance worker in a drug warehouse, whose job duties include the cleaning of areas where the controlled substances which are the subject of the investigation were present, but whose job duties do not include the handling of controlled substances, would be deemed to have "access", but normally not "direct access", to the controlled substances. On the other hand, a drug warehouse truck loader, whose job duties include the handling of outgoing shipment orders which contain controlled substances, would have "direct access" to such controlled substances. A pharmacy department in a supermarket is another common situation which is useful in illustrating the distinction between "direct access" and "access". Store personnel receiving pharmaceutical orders, i.e., the pharmacist, pharmacy intern, and other such employees working in the pharmacy department, would ordinarily have "direct access" to controlled substances. Other store personnel whose job duties and responsibilities do not include the handling of controlled substances but who had occasion to enter the pharmacy department where the controlled substances which are the subject of the investigation were stored, such as maintenance personnel or pharmacy cashiers, would have "access". Certain other store personnel whose job duties do not permit or require entrance into the pharmacy department for any reason, such as produce or meat clerks, checkout cashiers, or baggers, would not ordinarily have "access". However, any current employee, regardless of described job duties, may be polygraphed if the employing office's investigation of criminal or other misconduct discloses that such employee in fact took action to obtain "access" to the person or property that is the subject of the investigation—e.g., by actually entering the drug storage area in violation of company rules. In the case of "direct access", the prospective employee's access to controlled substances would be as a part of the manufacturing, dispensing or distribution process, while a current employee's "access" to the controlled substances which are the subject of the investigation need only be opportunistic.

(d) The term prospective employee, for the purposes of this section, includes a current employee who presently holds a position which does not entail direct access to controlled substances, and therefore is outside the scope of the exemption's provisions for preemployment polygraph testing, provided the employee has applied for and is being considered for transfer or promotion to another position which entails such direct access. For example, an office secretary may apply for promotion to a position in the vault or cage areas of a drug warehouse, where controlled substances are kept. In such a situation, the current employee would be deemed a "prospective employee" for the purposes of this exemption, and thus could be subject to preemployment polygraph screening, prior to such a change in position. However, any adverse action which is based in part on a polygraph test against a current employee who is considered a "prospective employee" for purposes of this section may be taken only with respect to the prospective position and may not affect the employee's employment in the current position.

(e) Section 7(f) of the EPPA, as applied by the CAA, makes no specific reference to a requirement that employing offices provide current employees with a written statement prior to polygraph testing. Thus, employing offices to whom this exemption is available are not required to furnish a written statement such as that specified in section 7(d) of the EPPA and section 1.12(a)(4) of this part.

(f) For the section 7(f) exemption to apply, the polygraph testing of current employees must be administered in connection with an ongoing investigation of criminal or other misconduct involving, or potentially involving, loss or injury to the manufacture, distribution, or dispensing of any such controlled substance by such employing office.

(1) Current employees may only be administered polygraph tests in connection with an ongoing investigation of criminal or other misconduct, relating to a specific incident or activity, or potential incident or activity. Thus, an employing office is precluded from using the exemption in connection with continuing investigations or on a random basis to determine if thefts are occurring. However, unlike the exemption in section 7(d) of the EPPA for employing offices conducting ongoing investigations of economic loss or injury, the section 7(f) exemption includes ongoing investigations of misconduct involving potential drug losses. Nor does the latter exemption include the requirement for "reasonable suspicion" contained in the section 7(d) exemption. Thus, a drug store operator is permitted to polygraph all current employees who have access to a controlled substance stolen from the inventory, or where there is evidence that such a theft is planned. Polygraph testing based on an inventory shortage of the drug during a particular accounting period would not be permitted unless there is extrinsic evidence of misconduct.

(2) In addition, the test must be administered in connection with loss or injury, or potential loss or injury, to the manufacture, distribution, or dispensing of a controlled substance.

(i) Retail drugstores and wholesale drug warehouses typically carry inventory of so-called health and beauty aids, cosmetics, over-the-counter drugs, and a variety of other similar products, in addition to their product lines of controlled drugs. The non-controlled products usually constitute the majority of such firms' sales volumes. An economic loss or injury related to such non-controlled substances would not constitute a basis of applicability of the section 7(f) exemption. For example, an investigation into the theft of a gross of cosmetic products could not be a basis for polygraph testing under section 7(f), but the theft of a container of valium could be.

(ii) Polygraph testing, with respect to an ongoing investigation concerning products other than controlled substances might be initiated under section 7(d) of the EPPA and section 1.12 of this part. However, the exemption in section 7(f) of the EPPA and this section is limited solely to losses or injury associated with controlled substances.

(g) Polygraph tests administered pursuant to this exemption are subject to the limitations set forth in sections 8 and 10 of the EPPA, as discussed in sections 1.21, 1.22, 1.23, 1.24, 1.25, 1.26, and 1.35 of this part. As provided in these sections, the exemption will apply only if certain requirements are met. Failure to satisfy any of the specified requirements nullifies the statutory authority for polygraph test administration and may subject the employing office to the remedies authorized in section 204 of the CAA. The administration of such tests is also subject to collective bargaining agreements, which may either prohibit lie detector tests, or contain more restrictive provisions with respect to polygraph testing.

SUBPART C—RESTRICTIONS ON POLYGRAPH USAGE UNDER EXEMPTIONS

SEC. 1.20 ADVERSE EMPLOYMENT ACTION UNDER ONGOING INVESTIGATION EXEMPTION.

(a) Section 8(a)(1) of the EPPA provides that the limited exemption in section 7(d) of the EPPA and section 1.12 of this part for ongoing investigations shall not apply if an employing office discharges, disciplines, denies employment or promotion or otherwise discriminates in any manner against a current employee based upon the analysis of a polygraph test chart or the refusal to take a polygraph test, without additional supporting evidence.

(b) "Additional supporting evidence", for purposes of section 8(a) of the EPPA, includes, but is not limited to, the following:

(1)(i) Evidence indicating that the employee had access to the missing or damaged property that is the subject of an ongoing investigation; and

(ii) Evidence leading to the employing office's reasonable suspicion that the employee was involved in the incident or activity under investigation; or

(2) Admissions or statements made by an employee before, during or following a polygraph examination.

(c) Analysis of a polygraph test chart or refusal to take a polygraph test may not serve as a basis for adverse employment action, even with additional supporting evidence, unless the employing office observes all the requirements of sections 7(d) and 8(b) of the EPPA, as applied by the CAA and described in sections 1.12, 1.22, 1.23, 1.24 and 1.25 of this part.

SEC. 1.21 ADVERSE EMPLOYMENT ACTION UNDER CONTROLLED SUBSTANCE EXEMPTION.

(a) Section 8(a)(2) of the EPPA provides that the controlled substance exemption in section 7(f) of the EPPA and section 1.13 of this part shall not apply if an employing office discharges, disciplines, denies employment or promotion, or otherwise discriminates in any manner against a current employee or prospective employee based solely on the analysis of a polygraph test chart or the refusal to take a polygraph test.

(b) Analysis of a polygraph test chart or refusal to take a polygraph test may serve as one basis for adverse employment actions of the type described in paragraph (a) of this section: *Provided*, That the adverse action was also based on another bona fide reason, with supporting evidence therefor. For example, traditional factors such as prior employment experience, education, job performance, etc. may be used as a basis for employment decisions. Employment decisions based on admissions or statements made by an employee or prospective employee before, during or following a polygraph examination may, likewise, serve as a basis for such decisions.

(c) Analysis of a polygraph test chart or the refusal to take a polygraph test may not serve as a basis for adverse employment action, even with another legitimate basis for such action, unless the employing office observes all the requirements of section 7(f) of the EPPA, as appropriate, and section 8(b) of the EPPA, as described in sections 1.13, 1.22, 1.23, 1.24 and 1.25 of this part.

SEC. 1.22 RIGHTS OF EXAMINEE—GENERAL.

(a) Pursuant to section 8(b) of the EPPA, the limited exemption in section 7(d) of the EPPA for ongoing investigations (described in sections 1.12 and 1.13 of this part) shall not apply unless all of the requirements set forth in this section and sections 1.23 through 1.25 of this part are met.

(b) During all phases of the polygraph testing the person being examined has the following rights:

(1) The examinee may terminate the test at any time.

(2) The examinee may not be asked any questions in a degrading or unnecessarily intrusive manner.

(3) The examinee may not be asked any questions dealing with:

(i) Religious beliefs or affiliations;

(ii) Beliefs or opinions regarding racial matters;

(iii) Political beliefs or affiliations;

(iv) Sexual preferences or behavior; or

(v) Beliefs, affiliations, opinions, or lawful activities concerning unions or labor organizations.

(4) The examinee may not be subjected to a test when there is sufficient written evidence by a physician that the examinee is suffering from any medical or psychological condition or undergoing any treatment that might cause abnormal responses during the actual testing phase. "Sufficient written evidence" shall constitute, at a minimum, a statement by a physician specifically describing the examinee's medical or psychological condition or treatment and the basis for the physician's opinion that the condition or treatment might result in such abnormal responses.

(5) An employee or prospective employee who exercises the right to terminate the test, or who for medical reasons with sufficient supporting evidence is not administered the test, shall be subject to adverse employment action only on the same basis as one who refuses to take a polygraph test, as described in sections 1.20 and 1.21 of this part.

(c) Any polygraph examination shall consist of one or more pretest phases, actual testing phases, and post-test phases, which must be conducted in accordance with the rights of examinees described in sections 1.23 through 1.25 of this part.

SEC. 1.23 RIGHTS OF EXAMINEE—PRETEST PHASE.

(a) The pretest phase consists of the questioning and other preparation of the prospective examinee before the actual use of the polygraph instrument. During the initial pretest phase, the examinee must be:

(1) Provided with written notice, in a language understood by the examinee, as to when and where the examination will take place and that the examinee has the right to consult with counsel or an employee representative before each phase of the test. Such notice shall be received by the examinee at least forty-eight hours, excluding weekend days and holidays, before the time of the examination, except that a prospective employee may, at the employee's option, give written consent to administration of a test anytime within 48 hours but no earlier than 24 hours after receipt of the written notice. The written notice or proof of service must set forth the time and date of receipt by the employee or prospective employee and be verified by his or her signature. The purpose of this requirement is to provide a sufficient opportunity prior to the examination for the examinee to consult with counsel or an employee representative. Provision shall also be made for a convenient place on the premises where the examination will take place at which the examinee may consult privately with an attorney or an employee representative before each phase of the test. The attorney or representative may be excluded from the room where the examination is administered during the actual testing phase.

(2) Informed orally and in writing of the nature and characteristics of the polygraph instrument and examination, including an explanation of the physical operation of the polygraph instrument and the procedure used during the examination.

(3) Provided with a written notice prior to the testing phase, in a language understood by the examinee, which shall be read to and signed by the examinee. Use of Appendix A to this part, if properly completed, will constitute compliance with the contents of the notice requirement of this paragraph. If a format other than in Appendix A is used, it must contain at least the following information:

(i) Whether or not the polygraph examination area contains a two-way mirror, a camera, or other device through which the examinee may be observed;

(ii) Whether or not any other device, such as those used in conversation or recording will be used during the examination;

(iii) That both the examinee and the employing office have the right, with the other's knowledge, to make a recording of the entire examination;

(iv) That the examinee has the right to terminate the test at any time;

(v) That the examinee has the right, and will be given the opportunity, to review all questions to be asked during the test;

(vi) That the examinee may not be asked questions in a manner which degrades, or needlessly intrudes;

(vii) That the examinee may not be asked any questions concerning religious beliefs or opinions; beliefs regarding racial matters; political beliefs or affiliations; matters relating to sexual behavior; beliefs, affiliations, opinions, or lawful activities regarding unions or labor organizations;

(viii) That the test may not be conducted if there is sufficient written evidence by a physician that the examinee is suffering from a medical or psychological condition or undergoing treatment that might cause abnormal responses during the examination;

(ix) That the test is not and cannot be required as a condition of employment;

(x) That the employing office may not discharge, dismiss, discipline, deny employment or promotion, or otherwise discriminate against the examinee based on the analysis of a polygraph test, or based on the examinee's refusal to take such a test, without additional evidence which would support such action;

(xi)(A) In connection with an ongoing investigation, that the additional evidence required for the employing office to take adverse action against the examinee, including termination, may be evidence that the examinee had access to the property that is the subject of the investigation, together with evidence supporting the employing office's reasonable suspicion that the examinee was involved in the incident or activity under investigation;

(B) That any statement made by the examinee before or during the test may serve as additional supporting evidence for an adverse employment action, as described in paragraph (a)(3)(x) of this section, and that any admission of criminal conduct by the examinee may be transmitted to an appropriate Government law enforcement agency;

(xii) That information acquired from a polygraph test may be disclosed by the examiner or by the employing office only:

(A) To the examinee or any other person specifically designated in writing by the examinee to receive such information;

(B) To the employing office that requested the test;

(C) To a court, governmental agency, arbitrator, or mediator pursuant to a court order;

(D) By the employing office, to an appropriate governmental agency without a court order where, and only insofar as, the information disclosed is an admission of criminal conduct;

(xiii) That if any of the examinee's rights or protections under the law are violated, the examinee has the right to take action against the employing office under sections 401–404 of the CAA. Employing offices that violate this law are liable to the affected examinee, who may recover such legal or equitable relief as may be appropriate, including, but not limited to, employment, reinstatement, and promotion, payment of lost wages

and benefits, and reasonable costs, including attorney's fees;

(xiv) That the examinee has the right to obtain and consult with legal counsel or other representative before each phase of the test, although the legal counsel or representative may be excluded from the room where the test is administered during the actual testing phase.

(xv) That the employee's rights under the CAA may not be waived, either voluntarily or involuntarily, by contract or otherwise, except as part of a written settlement to a pending action or complaint under the CAA, agreed to and signed by the parties.

(b) During the initial or any subsequent pretest phases, the examinee must be given the opportunity, prior to the actual testing phase, to review all questions in writing that the examiner will ask during each testing phase. Such questions may be presented at any point in time prior to the testing phase.

SEC. 1.24 RIGHTS OF EXAMINEE—ACTUAL TESTING PHASE.

(a) The actual testing phase refers to that time during which the examiner administers the examination by using a polygraph instrument with respect to the examinee and then analyzes the charts derived from the test. Throughout the actual testing phase, the examiner shall not ask any question that was not presented in writing for review prior to the testing phase. An examiner may, however, recess the testing phase and return to the pre-test phase to review additional relevant questions with the examinee. In the case of an ongoing investigation, the examiner shall ensure that all relevant questions (as distinguished from technical baseline questions) pertain to the investigation.

(b) No testing period subject to the provisions of the Act shall be less than ninety minutes in length. Such "test period" begins at the time that the examiner begins informing the examinee of the nature and characteristics of the examination and the instruments involved, as prescribed in section 8(b)(2)(B) of the EPPA and section 1.23(a)(2) of this part, and ends when the examiner completes the review of the test results with the examinee as provided in section 1.25 of this part. The ninety-minute minimum duration shall not apply if the examinee voluntarily acts to terminate the test before the completion thereof, in which event the examiner may not render an opinion regarding the employee's truthfulness.

SEC. 1.25 RIGHTS OF EXAMINEE—POST-TEST PHASE.

(a) The post-test phase refers to any questioning or other communication with the examinee following the use of the polygraph instrument, including review of the results of the test with the examinee. Before any adverse employment action, the employing office must:

(1) Further interview the examinee on the basis of the test results; and

(2) Give to the examinee a written copy of any opinions or conclusions rendered in response to the test, as well as the questions asked during the test, with the corresponding charted responses. The term "corresponding charted responses" refers to copies of the entire examination charts recording the employee's physiological responses, and not just the examiner's written report which describes the examinee's responses to the questions as "charted" by the instrument.

SEC. 1.26 QUALIFICATIONS OF AND REQUIREMENTS FOR EXAMINERS.

(a) Section 8 (b) and (c) of the EPPA provides that the limited exemption in section 7(d) of the EPPA for ongoing investigations shall not apply unless the person conducting the polygraph examination meets specified qualifications and requirements.

(b) An examiner must meet the following qualifications:

(1) Have a valid current license, if required by the State in which the test is to be conducted; and

(2) Carry a minimum bond of $50,000 provided by a surety incorporated under the laws of the United States or of any State, which may under those laws guarantee the fidelity of persons holding positions of trust, or carry an equivalent amount of professional liability coverage.

(c) An examiner must also, with respect to examinees identified by the employing office pursuant to section 1.30(c) of this part:

(1) Observe all rights of examinees, as set out in sections 1.22, 1.23, 1.24, and 1.25 of this part;

(2) Administer no more than five polygraph examinations in any one calendar day on which a test or tests subject to the provisions of EPPA are administered, not counting those instances where an examinee voluntarily terminates an examination prior to the actual testing phase;

(3) Administer no polygraph examination subject to the provisions of the EPPA which is less than ninety minutes in duration, as described in section 1.24(b) of this part; and

(4) Render any opinion or conclusion regarding truthfulness or deception in writing. Such opinion or conclusion must be based solely on the polygraph test results. The written report shall not contain any information other than admissions, information, case facts, and interpretation of the charts relevant to the stated purpose of the polygraph test and shall not include any recommendation concerning the employment of the examinee.

(5) Maintain all opinions, reports, charts, written questions, lists, and other records relating to the test, including, statements signed by examinees advising them of rights under the CAA (as described in section 1.23(a)(3) of this part) and any electronic recordings of examinations, for at least three years from the date of the administration of the test. (See section 1.30 of this part for recordkeeping requirements.)

SUBPART D—RECORDKEEPING AND DISCLOSURE REQUIREMENTS

SEC. 1.30 RECORDS TO BE PRESERVED FOR 3 YEARS.

(a) The following records shall be kept for a minimum period of three years from the date the polygraph examination is conducted (or from the date the examination is requested if no examination is conducted):

(1) Each employing office that requests an employee to submit to a polygraph examination in connection with an ongoing investigation involving economic loss or injury shall retain a copy of the statement that sets forth the specific incident or activity under investigation and the basis for testing that particular covered employee, as required by section 7(d)(4) of the EPPA and described in 1.12(a)(4) of this part.

(2) Each examiner retained to administer examinations pursuant to any of the exemptions under section 7 (d), (e) or (f) of the EPPA (described in sections 1.12 and 1.13 of this part) shall maintain all opinions, reports, charts, written questions, lists, and other records relating to polygraph tests of such persons.

SEC. 1.35 DISCLOSURE OF TEST INFORMATION.

This section prohibits the unauthorized disclosure of any information obtained during a polygraph test by any person, other than the examinee, directly or indirectly, except as follows:

(a) A polygraph examiner or an employing office (other than an employing office exempt under section 7 (a) or (b) of the EPPA (described in sections 1.10 and 1.11 of this part)) may disclose information acquired from a polygraph test only to:

(1) The examinee or an individual specifically designated in writing by the examinee to receive such information;

(2) The employing office that requested the polygraph test pursuant to the provisions of the EPPA (including management personnel of the employing office where the disclosure is relevant to the carrying out of their job responsibilities);

(3) Any court, governmental agency, arbitrator, or mediator pursuant to an order from a court of competent jurisdiction requiring the production of such information;

(b) An employing office may disclose information from the polygraph test at any time to an appropriate governmental agency without the need of a court order where, and only insofar as, the information disclosed is an admission of criminal conduct.

(c) A polygraph examiner may disclose test charts, without identifying information (but not other examination materials and records), to another examiner(s) for examination and analysis, provided that such disclosure is for the sole purpose of consultation and review of the initial examiner's opinion concerning the indications of truthfulness or deception. Such action would not constitute disclosure under this part provided that the other examiner has no direct or indirect interest in the matter.

SUBPART E—[RESERVED]

SEC. 1.40 [RESERVED].

APPENDIX A TO PART 801—NOTICE TO EXAMINEE

Section 204 of the Congressional Accountability Act, which applies the rights and protections of section 8(b) of the Employee Polygraph Protection Act to covered employees and employing offices, and the regulations of the Board of Directors of the Office of Compliance (sections 1.22, 1.23, 1.24, and 1.25), require that you be given the following information before taking a polygraph examination:

1. (a) The polygraph examination area [does] [does not] contain a two-way mirror, a camera, or other device through which you may be observed.

(b) Another device, such as those used in conversation or recording [will] [will not] be used during the examination.

(c) Both you and the employing office have the right, with the other's knowledge, to record electronically the entire examination.

2. (a) You have the right to terminate the test at any time.

(b) You have the right, and will be given the opportunity, to review all questions to be asked during the test.

(c) You may not be asked questions in a manner which degrades, or needlessly intrudes.

(d) You may not be asked any questions concerning: Religious beliefs or opinions; beliefs regarding racial matters; political beliefs or affiliations; matters relating to sexual preference or behavior; beliefs, affiliations, opinions, or lawful activities regarding unions or labor organizations.

(e) The test may not be conducted if there is sufficient written evidence by a physician

that you are suffering from a medical or psychological condition or undergoing treatment that might cause abnormal responses during the examination.

(f) You have the right to consult with legal counsel or other representative before each phase of the test, although the legal counsel or other representative may be excluded from the room where the test is administered during the actual testing phase.

3. (a) The test is not and cannot be required as a condition of employment.

(b) The employing office may not discharge, dismiss, discipline, deny employment or promotion, or otherwise discriminate against you based on the analysis of a polygraph test, or based on your refusal to take such a test without additional evidence which would support such action.

(c)(1) In connection with an ongoing investigation, the additional evidence required for an employing office to take adverse action against you, including termination, may be (A) evidence that you had access to the property that is the subject of the investigation, together with (B) the evidence supporting the employing office's reasonable suspicion that you were involved in the incident or activity under investigation.

(2) Any statement made by you before or during the test may serve as additional supporting evidence for an adverse employment action, as described in 3(b) above, and any admission of criminal conduct by you may be transmitted to an appropriate Government law enforcement agency.

4. (a) Information acquired from a polygraph test may be disclosed by the examiner or by the employing office only:

(1) To you or any other person specifically designated in writing by you to receive such information;

(2) To the employing office that requested the test;

(3) To a court, governmental agency, arbitrator, or mediator that obtains a court order.

(b) Information acquired from a polygraph test may be disclosed by the employing office to an appropriate governmental agency without a court order where, and only insofar as, the information disclosed is an admission of criminal conduct.

5. If any of your rights or protections under the law are violated, you have the right to take action against the employing office by filing a request for counseling with the Office of Compliance under section 402 of the Congressional Accountability Act. Employing offices that violate this law are liable to the affected examinee, who may recover such legal or equitable relief as may be appropriate, including, but not limited to, employment, reinstatement, and promotion, payment of lost wages and benefits, and reasonable costs, including attorney's fees.

6. Your rights under the CAA may not be waived, either voluntarily or involuntarily, by contract or otherwise, except as part of a written settlement to a pending action or complaint under the CAA, and agreed to and signed by the parties.

I acknowledge that I have received a copy of the above notice, and that it has been read to me.

_____

(Date)

_____

(Signature)

APPLICATION OF RIGHTS AND PROTECTIONS OF THE WORKER ADJUSTMENT RETRAINING AND NOTIFICATION ACT OF 1988 (IMPLEMENTING SECTION 204 OF THE CAA)

Sec.
639.1 Purpose and scope.
639.2 What does WARN require?
639.3 Definitions.
639.4 Who must give notice?
639.5 When must notice be given?
639.6 Who must receive notice?
639.7 What must the notice contain?
639.8 How is the notice served?
639.9 When may notice be given less than 60 days in advance?
639.10 When may notice be extended?
639.11 [Reserved].

§ 639.1 Purpose and scope

(a) PURPOSE OF WARN AS APPLIED BY THE CAA.—Section 205 of the Congressional Accountability Act, Public Law 104–1 ("CAA"), provides protection to covered employees and their families by requiring employing offices to provide notification 60 calendar days in advance of office closings and mass layoffs within the meaning of section 3 of the Worker Adjustment and Retraining Notification Act of 1988, 29 U.S.C. §2102. Advance notice provides workers and their families some transition time to adjust to the prospective loss of employment, to seek and obtain alternative jobs and, if necessary, to enter skill training or retraining that will allow these workers to successfully compete in the job market. As used in these regulations, WARN shall refer to the provisions of WARN applied to covered employing offices by section 205 of the CAA.

(b) SCOPE OF THESE REGULATIONS.—These regulations are issued by the Board of Directors, Office of Compliance, pursuant to sections 205(c) and 304 of the CAA, which directs the Board to promulgate regulations implementing section 205 that are "the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of section 205 of the CAA] except insofar as the Board may determine, for good cause shown . . . that a modification of such regulations would be more effective for the implementation of the rights and protections under this section". The regulations issued by the Board herein are on all matters for which section 205 of the CAA requires a regulation to be issued. Specifically, it is the Board's considered judgment, based on the information available to it at the time of promulgation of these regulations, that, with the exception of regulations adopted and set forth herein, there are no other "substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of section 205 of the CAA]".

In promulgating these regulations, the Board has made certain technical and nomenclature changes to the regulations as promulgated by the Secretary. Such changes are intended to make the provisions adopted accord more naturally to situations in the legislative branch. However, by making these changes, the Board does not intend a substantive difference between these sections and those of the Secretary from which they are derived. Moreover, such changes, in and of themselves, are not intended to constitute an interpretation of the regulation or of the statutory provisions of the CAA upon which they are based.

These regulations establish basic definitions and rules for giving notice, implementing the provisions of WARN. The objective of these regulations is to establish clear principles and broad guidelines which can be applied in specific circumstances. However, it is recognized that rulemaking cannot address the multitude of employing office-specific situations in which advance notice will be given.

(c) NOTICE IN AMBIGUOUS SITUATIONS.—It is civically desirable and it would appear to be good business practice for an employing office to provide advance notice, where reasonably possible, to its workers or unions when terminating a significant number of employees. The Office encourages employing offices to give notice in such circumstances.

(d) WARN NOT TO SUPERSEDE OTHER LAWS AND CONTRACTS.—The provisions of WARN do not supersede any otherwise applicable laws or collective bargaining agreements that provide for additional notice or additional rights and remedies. If such law or agreement provides for a longer notice period, WARN notice shall run concurrently with that additional notice period. Collective bargaining agreements may be used to clarify or amplify the terms and conditions of WARN, but may not reduce WARN rights.

§ 639.2 What does WARN require?

WARN requires employing offices that are planning an office closing or a mass layoff to give affected employees at least 60 days' notice of such an employment action. While the 60-day period is the minimum for advance notice, this provision is not intended to discourage employing offices from voluntarily providing longer periods of advance notice. Not all office closings and layoffs are subject to WARN, and certain employment thresholds must be reached before WARN applies. WARN sets out specific exemptions, and provides for a reduction in the notification period in particular circumstances. Remedies authorized under section 205 of the CAA may be assessed against employing offices that violate WARN requirements.

§ 639.3 Definitions

(a) EMPLOYING OFFICE.—(1) The term "employing office" means any of the entities listed in section 101(9) of the CAA, 2 U.S.C. §1301(9) that employs—

(i) 100 or more employees, excluding part-time employees; or

(ii) employs 100 or more employees, including part-time employees, who in the aggregate work at least 4,000 hours per week, exclusive of overtime.

Workers on temporary layoff or on leave who have a reasonable expectation of recall are counted as employees. An employee has a "reasonable expectation of recall" when he/she understands, through notification or through common practice, that his/her employment with the employing office has been temporarily interrupted and that he/she will be recalled to the same or to a similar job.

(2) Workers, other than part-time workers, who are exempt from notice under section 4 of WARN, are nonetheless counted as employees for purposes of determining coverage as an employing office.

(3) An employing office may have one or more sites of employment under common control.

(b) OFFICE CLOSING.—The term "office closing" means the permanent or temporary shutdown of a "single site of employment", or one or more "facilities or operating units" within a single site of employment, if the shutdown results in an "employment loss" during any 30-day period at the single site of employment for 50 or more employees, excluding any part-time employees. An

employment action that results in the effective cessation of the work performed by a unit, even if a few employees remain, is a shutdown. A "temporary shutdown" triggers the notice requirement only if there are a sufficient number of terminations, layoffs exceeding 6 months, or reductions in hours of work as specified under the definition of "employment loss".

(c) MASS LAYOFF.—(1) The term "mass layoff" means a reduction in force which first, is not the result of an office closing, and second, results in an employment loss at the single site of employment during any 30-day period for:

(i) At least 33 percent of the active employees, excluding part-time employees, and

(ii) At least 50 employees, excluding part-time employees.

Where 500 or more employees (excluding part-time employees) are affected, the 33 percent requirement does not apply, and notice is required if the other criteria are met. Office closings involve employment loss which results from the shutdown of one or more distinct units within a single site or the entire site. A mass layoff involves employment loss, regardless of whether one or more units are shut down at the site.

(2) Workers, other than part-time workers, who are exempt from notice under section 4 of WARN are nonetheless counted as employees for purposes of determining coverage as an office closing or mass layoff. For example, if an employing office closes a temporary project on which 10 permanent and 40 temporary workers are employed, a covered office closing has occurred although only 10 workers are entitled to notice.

(d) REPRESENTATIVE.—The term "representative" means an exclusive representative of employees within the meaning of 5 U.S.C. §§7101 et seq., as applied to covered employees and employing offices by section 220 of the CAA, 2 U.S.C. §1351.

(e) AFFECTED EMPLOYEES.—The term "affected employees" means employees who may reasonably be expected to experience an employment loss as a consequence of a proposed office closing or mass layoff by their employing office. This includes individually identifiable employees who will likely lose their jobs because of bumping rights or other factors, to the extent that such individual workers reasonably can be identified at the time notice is required to be given. The term affected employees includes managerial and supervisory employees. Consultant or contract employees who have a separate employment relationship with another employing office or employer and are paid by that other employing office or employer, or who are self-employed, are not "affected employees" of the operations to which they are assigned. In addition, for purposes of determining whether coverage thresholds are met, either incumbent workers in jobs being eliminated or, if known 60 days in advance, the actual employees who suffer an employment loss may be counted.

(f) EMPLOYMENT LOSS.—(1) The term employment loss means (i) an employment termination, other than a discharge for cause, voluntary departure, or retirement, (ii) a layoff exceeding 6 months, or (iii) a reduction in hours of work of individual employees of more than 50 percent during each month of any 6-month period.

(2) Where a termination or a layoff (see paragraphs (f)(1) (i) and (ii) of this section) is involved, an employment loss does not occur when an employee is reassigned or transferred to employing office-sponsored programs, such as retraining or job search activities, as long as the reassignment does not constitute a constructive discharge or other involuntary termination.

(3) An employee is not considered to have experienced an employment loss if the closing or layoff is the result of the relocation or consolidation of part or all of the employing office's operations and, prior to the closing or layoff—

(i) The employing office offers to transfer the employee to a different site of employment within a reasonable commuting distance with no more than a 6-month break in employment, or

(ii) The employing office offers to transfer the employee to any other site of employment regardless of distance with no more than a 6-month break in employment, and the employee accepts within 30 days of the offer or of the closing or layoff, whichever is later.

(4) A "relocation or consolidation" of part or all of an employing office's operations, for purposes of paragraph §639.3(f)(3), means that some definable operations are transferred to a different site of employment and that transfer results in an office closing or mass layoff.

(g) PART-TIME EMPLOYEE.—The term "part-time" employee means an employee who is employed for an average of fewer than 20 hours per week or who has been employed for fewer than 6 of the 12 months preceding the date on which notice is required, including workers who work full-time. This term may include workers who would traditionally be understood as "seasonal" employees. The period to be used for calculating whether a worker has worked "an average of fewer than 20 hours per week" is the shorter of the actual time the worker has been employed or the most recent 90 days.

(h) SINGLE SITE OF EMPLOYMENT.—(1) A single site of employment can refer to either a single location or a group of contiguous locations. Separate facilities across the street from one another may be considered a single site of employment.

(2) There may be several single sites of employment within a single building, such as an office building, if separate employing offices conduct activities within such a building. For example, an office building housing 50 different employing offices will contain 50 single sites of employment. The offices of each employing office will be its single site of employment.

(3) Separate buildings or areas which are not directly connected or in immediate proximity may be considered a single site of employment if they are in reasonable geographic proximity, used for the same purpose, and share the same staff and equipment.

(4) Non-contiguous sites in the same geographic area which do not share the same staff or operational purpose should not be considered a single site.

(5) Contiguous buildings operated by the same employing office which have separate management and have separate workforces are considered separate single sites of employment.

(6) For workers whose primary duties require travel from point to point, who are outstationed, or whose primary duties involve work outside any of the employing office's regular employment sites (e.g., railroad workers, bus drivers, salespersons), the single site of employment to which they are assigned as their home base, from which their work is assigned, or to which they report will be the single site in which they are covered for WARN purposes.

(7) Foreign sites of employment are not covered under WARN. United States workers at such sites are counted to determine whether an employing office is covered as an employing office under §639.3(a).

(8) The term "single site of employment" may also apply to truly unusual organizational situations where the above criteria do not reasonably apply. The application of this definition with the intent to evade the purpose of WARN to provide notice is not acceptable.

(i) FACILITY OR OPERATING UNIT.—The term "facility" refers to a building or buildings. The term "operating unit" refers to an organizationally or operationally distinct product, operation, or specific work function within or across facilities at the single site.

§639.4 Who must give notice?

Section 205(a)(1) of the CAA states that "[n]o employing office shall be closed or a mass layoff ordered within the meaning of section 3 of [WARN] until the end of a 60-day period after the employing office serves written notice of such prospective closing or layoff . . . ". Therefore, an employing office that is anticipating carrying out an office closing or mass layoff is required to give notice to affected employees or their representative(s). (See definitions in §639.3 of this part.)

(a) It is the responsibility of the employing office to decide the most appropriate person within the employing office's organization to prepare and deliver the notice to affected employees or their representative(s). In most instances, this may be the local site office manager, the local personnel director or a labor relations officer.

(b) An employing office that has previously announced and carried out a short-term layoff (6 months or less) which is being extended beyond 6 months due to circumstances not reasonably foreseeable at the time of the initial layoff is required to give notice when it becomes reasonably foreseeable that the extension is required. A layoff extending beyond 6 months from the date the layoff commenced for any other reason shall be treated as an employment loss from the date of its commencement.

(c) In the case of the privatization or sale of part or all of an employing office's operations, the employing office is responsible for providing notice of any office closing or mass layoff which takes place up to and including the effective date (time) of the privatization or sale, and the contractor or buyer is responsible for providing any required notice of any office closing or mass layoff that takes place thereafter.

(1) If the employing office is made aware of any definite plans on the part of the buyer or contractor to carry out an office closing or mass layoff within 60 days of purchase, the employing office may give notice to affected employees as an agent of the buyer or contractor, if so empowered. If the employing office does not give notice, the buyer or contractor is, nevertheless, responsible to give notice. If the employing office gives notice as the agent of the buyer or contractor, the responsibility for notice still remains with the buyer or contractor.

(2) It may be prudent for the buyer or contractor and employing office to determine the impacts of the privatization or sale on workers, and to arrange between them for advance notice to be given to affected employees or their representative(s), if a mass layoff or office closing is planned.

§639.5 When must notice be given?

(a) GENERAL RULE.—(1) With certain exceptions discussed in paragraphs (b) and (c) of

this section and in §639.9 of this part, notice must be given at least 60 calendar days prior to any planned office closing or mass layoff, as defined in these regulations. When all employees are not terminated on the same date, the date of the first individual termination within the statutory 30-day or 90-day period triggers the 60-day notice requirement. A worker's last day of employment is considered the date of that worker's layoff. The first and each subsequent group of terminees are entitled to a full 60 days' notice. In order for an employing office to decide whether issuing notice is required, the employing office should—

(i) look ahead 30 days and behind 30 days to determine whether employment actions both taken and planned will, in the aggregate for any 30-day period, reach the minimum numbers for an office closing or a mass layoff and thus trigger the notice requirement; and

(ii) look ahead 90 days and behind 90 days to determine whether employment actions both taken and planned each of which separately is not of sufficient size to trigger WARN coverage will, in the aggregate for any 90-day period, reach the minimum numbers for an office closing or a mass layoff and thus trigger the notice requirement. An employing office is not, however, required under section 3(d) to give notice if the employing office demonstrates that the separate employment losses are the result of separate and distinct actions and causes, and are not an attempt to evade the requirements of WARN.

(2) The point in time at which the number of employees is to be measured for the purpose of determining coverage is the date the first notice is required to be given. If this "snapshot" of the number of employees employed on that date is clearly unrepresentative of the ordinary or average employment level, then a more representative number can be used to determine coverage. Examples of unrepresentative employment levels include cases when the level is near the peak or trough of an employment cycle or when large upward or downward shifts in the number of employees occur around the time notice is to be given. A more representative number may be an average number of employees over a recent period of time or the number of employees on an alternative date which is more representative of normal employment levels. Alternative methods cannot be used to evade the purpose of WARN, and should only be used in unusual circumstances.

(b) TRANSFERS.—(1) Notice is not required in certain cases involving transfers, as described under the definition of "employment loss" at §639.3(f) of this part.

(2) An offer of reassignment to a different site of employment should not be deemed to be a "transfer" if the new job constitutes a constructive discharge.

(3) The meaning of the term "reasonable commuting distance" will vary with local conditions. In determining what is a "reasonable commuting distance", consideration should be given to the following factors: geographic accessibility of the place of work, the quality of the roads, customarily available transportation, and the usual travel time.

(4) In cases where the transfer is beyond reasonable commuting distance, the employing office may become liable for failure to give notice if an offer to transfer is not accepted within 30 days of the offer or of the closing or layoff (whichever is later). Depending upon when the offer of transfer was made by the employing office, the normal 60-day notice period may have expired and the office closing or mass layoff may have occurred. An employing office is, therefore, well advised to provide 60-day advance notice as part of the transfer offer.

(c) TEMPORARY EMPLOYMENT.—(1) No notice is required if the closing is of a temporary facility, or if the closing or layoff is the result of the completion of a particular project or undertaking, and the affected employees were hired with the understanding that their employment was limited to the duration of the facility or the project or undertaking.

(2) Employees must clearly understand at the time of hire that their employment is temporary. When such understandings exist will be determined by reference to employment contracts, collective bargaining agreements, or employment practices of other employing offices or a locality, but the burden of proof will lie with the employing office to show that the temporary nature of the project or facility was clearly communicated should questions arise regarding the temporary employment understandings.

§639.6 Who must receive notice?

Section 3(a) of WARN provides for notice to each representative of the affected employees as of the time notice is required to be given or, if there is no such representative at that time, to each affected employee.

(a) REPRESENTATIVE(S) OF AFFECTED EMPLOYEES.—Written notice is to be served upon the chief elected officer of the exclusive representative(s) or bargaining agent(s) of affected employees at the time of the notice. If this person is not the same as the officer of the local union(s) representing affected employees, it is recommended that a copy also be given to the local union official(s).

(b) AFFECTED EMPLOYEES.—Notice is required to be given to employees who may reasonably be expected to experience an employment loss. This includes employees who will likely lose their jobs because of bumping rights or other factors, to the extent that such workers can be identified at the time notice is required to be given. If, at the time notice is required to be given, the employing office cannot identify the employee who may reasonably be expected to experience an employment loss due to the elimination of a particular position, the employing office must provide notice to the incumbent in that position. While part-time employees are not counted in determining whether office closing or mass layoff thresholds are reached, such workers are due notice.

§639.7 What must the notice contain?

(a) NOTICE MUST BE SPECIFIC.—(1) All notice must be specific.

(2) Where voluntary notice has been given more than 60 days in advance, but does not contain all of the required elements set out in this section, the employing office must ensure that all of the information required by this section is provided in writing to the parties listed in §639.6 at least 60 days in advance of a covered employment action.

(3) Notice may be given conditional upon the occurrence or nonoccurrence of an event only when the event is definite and the consequences of its occurrence or nonoccurrence will necessarily, in the normal course of operations, lead to a covered office closing or mass layoff less than 60 days after the event. The notice must contain each of the elements set out in this section.

(4) The information provided in the notice shall be based on the best information available to the employing office at the time the notice is served. It is not the intent of the regulations that errors in the information provided in a notice that occur because events subsequently change or that are minor, inadvertent errors are to be the basis for finding a violation of WARN.

(b) DEFINITION.—As used in this section, the term "date" refers to a specific date or to a 14-day period during which a separation or separations are expected to occur. If separations are planned according to a schedule, the schedule should indicate the specific dates on which or the beginning date of each 14-day period during which any separations are expected to occur. Where a 14-day period is used, notice must be given at least 60 days in advance of the first day of the period.

(c) NOTICE.—Notice to each representative of affected employees is to contain:

(1) The name and address of the employment site where the office closing or mass layoff will occur, and the name and telephone number of an employing office official to contact for further information;

(2) A statement as to whether the planned action is expected to be permanent or temporary and, if the entire office is to be closed, a statement to that effect;

(3) The expected date of the first separation and the anticipated schedule for making separations;

(4) The job titles of positions to be affected and the names of the workers currently holding affected jobs.

The notice may include additional information useful to the employees such as information on available dislocated worker assistance, and, if the planned action is expected to be temporary, the estimated duration, if known.

(d) EMPLOYEES NOT REPRESENTED.—Notice to each affected employee who does not have a representative is to be written in language understandable to the employees and is to contain:

(1) A statement as to whether the planned action is expected to be permanent or temporary and, if the entire office is to be closed, a statement to that effect;

(2) The expected date when the office closing or mass layoff will commence and the expected date when the individual employee will be separated;

(3) An indication whether or not bumping rights exist;

(4) The name and telephone number of an employing office official to contact for further information.

The notice may include additional information useful to the employees such as information on available dislocated worker assistance, and, if the planned action is expected to be temporary, the estimated duration, if known.

§639.8 How is the notice served?

Any reasonable method of delivery to the parties listed under §639.6 of this part which is designed to ensure receipt of notice of at least 60 days before separation is acceptable (e.g., first class mail, personal delivery with optional signed receipt). In the case of notification directly to affected employees, insertion of notice into pay envelopes is another viable option. A ticketed notice, i.e., preprinted notice regularly included in each employee's pay check or pay envelope, does not meet the requirements of WARN.

§639.9 When may notice be given less than 60 days in advance?

Section 3(b) of WARN, as applied by section 205 of the CAA, sets forth two conditions under which the notification period may be reduced to less than 60 days. The employing office bears the burden of proof that conditions for the exceptions have been met. If

one of the exceptions is applicable, the employing office must give as much notice as is practicable to the union and non-represented employees and this may, in some circumstances, be notice after the fact. The employing office must, at the time notice actually is given, provide a brief statement of the reason for reducing the notice period, in addition to the other elements set out in §639.7.

(a) The "unforeseeable business circumstances" exception under section 3(b)(2)(A) of WARN, as applied under the CAA, applies to office closings and mass layoffs caused by circumstances that were not reasonably foreseeable at the time that 60-day notice would have been required.

(1) An important indicator of a circumstance that is not reasonably foreseeable is that the circumstance is caused by some sudden, dramatic, and unexpected action or condition outside the employing office's control.

(2) The test for determining when circumstances are not reasonably foreseeable focuses on an employing office's business judgment. The employing office must exercise such reasonable business judgment as would a similarly situated employing office in predicting the demands of its operations. The employing office is not required, however, to accurately predict general economic conditions that also may affect its operations.

(b) The "natural disaster" exception in section 3(b)(2)(B) of WARN applies to office closings and mass layoffs due to any form of a natural disaster.

(1) Floods, earthquakes, droughts, storms, tidal waves or tsunamis and similar effects of nature are natural disasters under this provision.

(2) To qualify for this exception, an employing office must be able to demonstrate that its office closing or mass layoff is a direct result of a natural disaster.

(3) While a disaster may preclude full or any advance notice, such notice as is practicable, containing as much of the information required in §639.7 as is available in the circumstances of the disaster still must be given, whether in advance or after the fact of an employment loss caused by a natural disaster.

(4) Where an office closing or mass layoff occurs as an indirect result of a natural disaster, the exception does not apply but the "unforeseeable business circumstance" exception described in paragraph (a) of this section may be applicable.

§639.10 When may notice be extended?

Additional notice is required when the date or schedule of dates of a planned office closing or mass layoff is extended beyond the date or the ending date of any 14-day period announced in the original notice as follows:

(a) If the postponement is for less than 60 days, the additional notice should be given as soon as possible to the parties identified in §639.6 and should include reference to the earlier notice, the date (or 14-day period) to which the planned action is postponed, and the reasons for the postponement. The notice should be given in a manner which will provide the information to all affected employees.

(b) If the postponement is for 60 days or more, the additional notice should be treated as new notice subject to the provisions of §§639.5, 639.6 and 639.7 of this part. Rolling notice, in the sense of routine periodic notice, given whether or not an office closing or mass layoff is impending, and with the intent to evade the purpose of the Act rather than give specific notice as required by WARN, is not acceptable.

§639.11 [Reserved]

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 11:56 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House having proceeded to reconsider the bill (H.R. 1561) to consolidate the foreign affairs agencies of the United States; to authorize appropriations for the Department of State and related agencies for fiscal years 1996 and 1997, and for other purposes, returned by the President of the United States with his objections, to the House of Representatives, in which it originated, the said bill did not pass, two-thirds of the House of Representatives not agreeing to pass the same.

The message also announced that the Houses has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1527. An act to further clarify the authorities and duties of the Secretary of Agriculture in issuing ski area permits on National Forest System lands and to withdraw lands within ski area permit boundaries from the operation of the mining and minerals leasing laws.

H.R. 1823. An act to amend the Central Utah Project Completion Act to direct the Secretary of the Interior to allow for prepayment of repayment contracts between the United States and the Central Utah Water Conservancy District dated December 28, 1965, and November 26, 1985, and for other purposes.

H.R. 3008. An act to amend the Helium Act to authorize the Secretary to enter into agreements with private parties for the recovery and disposal of helium on Federal lands, and for other purposes.

ENROLLED BILL AND JOINT RESOLUTION SIGNED

The message further announced that the Speaker has signed the following enrolled bill:

H.R. 2024. An act 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.

At 4:15 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled joint resolution:

S.J. Res. 53. Joint resolution making corrections to Public Law 104–134.

The enrolled bill and joint resolution were signed subsequently by the President pro tempore (Mr. THURMOND).

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent and referred as indicated:

H.R. 1823. An act to amend the Central Utah Project Completion Act to direct the Secretary of the Interior to allow for prepayment of repayment contracts between the United States and the Central Utah Water Conservancy District dated December 28, 1965, and November 26, 1985, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 3008. An act to amend the Helium Act to authorize the Secretary to enter into agreements with private parties for the recovery and disposal of helium on Federal lands, and for other purposes; to the Committee on Energy and Natural Resources.

MEASURE PLACED ON THE CALENDAR

The following measure was read the first and second times by unanimous consent and placed on the calendar:

H.R. 1527. An act to further clarify the authorities and duties of the Secretary of Agriculture in issuing ski area permits on National Forest System lands and to withdraw lands within ski area permit boundaries from the operation of the mining and minerals leasing laws.

ENROLLED JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on May 1, 1996 he had presented to the President of the United States, the following enrolled joint resolution:

S.J. Res. 53. Joint resolution making corrections to Public Law 104–134.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–2381. A communication from the Chair of the Federal Energy Regulatory Commission, transmitting, pursuant to law, the report of a package of final rules; to the Committee on Energy and Natural Resources.

EC–2382. A communication from the Director of the U.S. Office of Personnel Management, transmitting, pursuant to law, the report of a final regulation (RIN3206–AE80); to the Committee on Governmental Affairs.

EC–2383. A communication from the Deputy Associate Administrator for Acquisition Policy, General Services Administration, Office of Policy, Planning and Evaluation, transmitting, pursuant to law, the report of the Federal Acquisition Circular (Number 90–38); to the Committee on Governmental Affairs.

EC–2384. A communication from the Executive Director of the Committee for Purchase

From People Who Are Blind Or Severely Disabled, transmitting, pursuant to law, the report of additions of the Procurement List; to the Committee on Governmental Affairs.

EC-2385. A communication from the Regulatory Policy Officer of the National Archives at College Park, transmitting, pursuant to law, the report of a final and interim final rule (RIN3095-AA59); to the Committee on Governmental Affairs.

EC-2386. A communication from the Human Resources Manager of the National Bank for Cooperatives Retirement Plan, transmitting, pursuant to law, the report of the Plan for calendar year 1994; to the Committee on Governmental Affairs.

EC-2387. A communication from the Chairman of the Federal Trade Commission, transmitting, pursuant to law, the report under the Government in the Sunshine Act for calendar year 1995; to the Committee on Governmental Affairs.

EC-2388. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report on Federal agency drug-free workplace plans; to the Committee on Appropriations.

EC-2389. A communication from the Acting Administrator of the General Services Administration, transmitting, pursuant to law, the report of an informational copy relative to the Capital Investment and Leasing Program for fiscal year 1997; to the Committee on Environment and Public Works.

EC-2390. A communication from the Director of the Office of Personnel Management, transmitting, pursuant to law, the report of a final rule (RIN3206-AH36); to the Committee on Governmental Affairs.

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-568. A resolution adopted by the Southern Governors' Association relative to the strength of the National Guard; to the Committee on Appropriations.

POM-569. A resolution adopted by the Southern Governors' Association relative to an electronic benefits transfer system; to the Committee on Banking, Housing, and Urban Affairs.

POM-570. A resolution adopted by the Missouri Chapter of the American Fisheries Society relative to the Neosho National Fish Hatchery; to the Committee on Environment and Public Works.

POM-571. A resolution adopted by the Southern Governors' Association relative to Federal highway funds; to the Committee on Environment and Public Works.

POM-572. A resolution adopted by the Abilene Metropolitan Planning Organization relative to transportation trust funds; referred jointly, pursuant to the order of August 4, 1997, to the Committee on the Budget and to the Committee on Governmental Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mrs. KASSEBAUM, from the Committee on Labor and Human Resources, without amendment:

S. 295. A bill to permit labor management cooperative efforts that improve America's economic competitiveness to continue to thrive, and for other purposes (Rept. No. 104-259).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mrs. KASSEBAUM, from the Committee on Labor and Human Resources:

To be senior assistant engineer officer

Arthur M. Anderson
Shib S. Bajpayee
Robin A. Dalton
Thomas J. Heintzman
Michael S. Jensen
David I. McDonnel
Kenneth E. Olson II
Philip E. Rapp
John P. Riegel
Paula A. Simenauer
Mark A. Stafford
Mark R. Thomas
Michael B. Wich
Dominic J. Wolf

To be assistant engineer officer

James H. Ludington

To be scientist

Victor Krauthamer

To be senior assistant scientist

Lemyra M. Debruyn
Jeffrey S. Gift
Darcy E. Hanes
James E. Hoadley
Rosa J. Key-Schwartz

To be senior assistant sanitarian

Artis M. Davis
Mark A. Hamilton
Michael E. Herring
Steven G. Inserra
Theresa I. Kilgus
Cynthia C. Kunkel
Gailen R. Luce
Abraham M. Maekele
Mark D. Miller
Kelly M. Taylor
Michael D. Warren
Ronald D. Zabrocki

To be senior assistant veterinary officer

Victoria A. Hampshire
Ronald B. Landy

To be pharmacist

Dennis M. Alder
John T. Babb
Daryl A. Dewoskin
Cynthia P. Smith

To be senior assistant pharmacist

Lisa D. Becker
Kristi A. Cabler
Wesley G. Cox
Kathleen E. Downs
Richard C. Fisher
Jeffrey J. Gallagher
Syrena T. Gatewood
Lillie D. Golson
Douglas P. Herold
Rita L. Herring
Mary Ann Holovac
Carl W. Huntley
Michael D. Jones
Dennis L. Livingston
Robert H. McClelland
Connie J. McGowen-Cox
Steven K. Rietz
Margaret A. Simoneau
John F. Snow
Daniel R. Struckman
Earl D. Ward, Jr

To be assistant pharmacist

David A. Konigstein

To be senior assistant health services officer

Traci L. Galinsky
William D. Henriques
Richard R. Kauffman
Dorothy E. Stephens
Gene W. Walters

To be assistant health services officer

Carol E. Auten
Cherly A. Wiseman

The following candidates for personnel action in the regular corps of the Public Health Service subject to qualifications therefor as provided by law and regulations:

1. FOR APPOINTMENT

To be medical director

Richard J Hodes
William E Paul
Douglas G Peter

To be senior surgeon

Melinda Moore
Thomas R Hales
Scott F Wetterhall

To be senior assistant surgeon

Mary M Agocs
James P Alexander, Jr
Arturo H Castro
George A Conway
Theresa Diaz Vargas
Nina J Gilberg
Lana L Jeng
Philip R Krause
David E Nelson
Patrick J Oconnor
Carol A Pertowski
Rossanne M Philen
Steven G Scott
Jessie S Wing

To be senior assistant dental surgeon

Leonard R Aste
George G Bird
April C Butts
Lisa W Cayous
Sherwood G Crow
Bret A Downing
Scott K Dubois
Edward D Gonzales
Joseph G Hosek
Michael D Jones
Steven J Lien
Aaron R Means, Sr
Samuel J Petrie
Roy F Schoppert, III
Darlene A Sorrell
James N Sutherland
Charles S Walkley
Evan L Wheeler

To be nurse officer

Norma J Hatot

To be senior assistant nurse officer

Gary W Bangs
Robyn G Brown-Douglas
Priscilla A Coutu
Robin L Fiske
Colleen A Hayes
India L Hunter
Bradley J Husberg
Christopher L Lambdin
Wanda F Lambert
Michael D Lyman
Mary Y Martin
Sharon D Murrain-Ellerbe
Paul J Murter III
Steven R Oversby
Teresa L Payne
Ricky D Pearce
Candice S Skinner
Ernestine T Smartt
Yukiko Tani
Mary E Tolbert
Vien H Vanderhoof
Siona W Willie
Arnette M Wright

To be assistant nurse officer

Sandra A Chatfield
James M Simmerman

(The above nominations were reported with the recommendation that they be confirmed.)

Mrs. KASSEBAUM. Mr. President, for the Committee on Labor and Human Resources, I report favorably a nomination list in the Public Health Service which was printed in full in the CONGRESSIONAL RECORD of November 9, 1995, and ask unanimous consent, to save the cost of reprinting on the Executive Calendar, that this nomination lie at the Secretary's desk for the information of Senators.

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

(The nominations ordered to lie on the Secretary's desk were printed in the RECORD of November 9, 1995, at the end of the Senate proceedings.)

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 Mrs. HUTCHISON:

S. 1719. A bill to require the Secretary of the Interior to offer to sell to certain public agencies the indebtedness representing the remaining repayment balance of certain Bureau of Reclamation projects in Texas, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DOLE (for himself, Mr. KENNEDY, and Mr. KERRY):

S. 1720. A bill to establish the Nicodemus National Historic Site and the New Bedford National Historic Landmark; ordered held at the desk.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. HUTCHISON:

S. 1719. A bill to require the Secretary of the Interior to offer to sell to certain public agencies the indebtedness representing the remaining repayment balance of certain Bureau of Reclamation projects in Texas, and for other purposes; to the Committee on Energy and Natural Resources.

THE TEXAS RECLAMATION PROJECTS INDEBTED PURCHASE ACT

• Mrs. HUTCHISON. Mr. President, I introduce today a bill on behalf of the State of Texas and several major water supply authorities in Texas. It would transfer title for Bureau of Reclamation projects to local control.

The purpose of this bill is to give local public agencies the right to make decisions regarding their own local water supplies. In doing so we will reduce the size of the Federal Government and save taxpayers significant amounts of money.

Mr. President, I mentioned that I am introducing this legislation on behalf of the State of Texas. Our goal is to create a process to allow the State of Texas or its public agencies to purchase and accept title to the Bureau of Reclamation projects in the State.

I submit this measure with the full support of the State of Texas. The State legislature recently passed a resolution, endorsed and signed by the Governor, accepting the responsibility for this process of title transfer.

My interest in this effort goes back to the last Congress, when in June 1994, I introduced S. 2236 in an effort to correct a longstanding problem involving the U.S. Bureau of Reclamation and the city of Corpus Christi.

That legislation directed the Secretary of the Interior to enter into and complete negotiations with the city of Corpus Christi concerning the Nueces River project, also known as Choke Canyon Reservoir. A hearing was held on the legislation, but the Congress ended before the Senate could act.

This year, with title transfers being encouraged by both the administration and Congress, it makes sense for the Choke Canyon legislation to be included with the broader Bureau of Reclamation legislation as developed by the State of Texas.

In 1976 the city of Corpus Christi and the Nueces River authority contracted with the Bureau for construction of Choke Canyon Reservoir on the Frio River near Three Rivers, TX. The primary purpose of the project was to provide additional water to the city of Corpus Christi through the year 2040. Since project completion in 1982, however, subsequent studies have determined that the current supply to the city from the project is less than contracted for, and that additional water supplies likely will be required by the year 2003.

The local sponsors are proposing that the repayment agreements be renegotiated to reflect the diminished water supply derived from the project, as well as the unanticipated expenses that the local sponsors have incurred to obtain additional water to compensate for the projected shortfall in the Choke Canyon-Lake Corpus Christi system.

I have incorporated the Choke Canyon project into this legislation for two reasons:

First, to pursue the intent of the original contract—because the city still is not getting the water it was promised;

Second and most important, I have introduced this legislation because the area is facing a very real water shortage. Due to the lower than anticipated yield from the Choke Canyon Reservoir, projections show the 12-county region it serves will be short of water within 10 years. This will affect nearly 400,000 people and numerous major industries.

The discount and prepayment conditions which the Corpus Christi is asking be negotiated are extremely important to the city's ability to ensure adequate future water supplies at affordable prices. Congressman SOLOMON ORTIZ has introduced similar legislation on the House side.

Also included in this legislation is a project near Amarillo in the congressional district of Congressman MAC THORNBERRY: the Canadian River project. Construction of the Canadian River project by the BOR was authorized by Public Law 898 on December 29, 1950, to provide a source of municipal and industrial water to member cities of the Canadian River Municipal Water Authority in the Texas Panhandle and South Plains. The cities served include Amarillo, Borger, Brownfield, Lamesa, Levelland, Lubbock, O'Donnell, Pampa, Plainview, Slaton, and Tahoka. These currently comprise a combined population of nearly 500,000 persons.

The major project facilities include Sanford Dam on the Canadian River 35 miles northeast of Amarillo, Lake Meredith which is formed by the dam, and a 322-mile aqueduct system that transports water from the lake to the member cities. The project was built in the 1960's and has supplied water to the cities continuously since 1968. Responsibility for operation and maintenance of the entire complex of municipal water supply facilities, including Sanford Dam, was transferred to the authority on July 1, 1968.

The project authorization—section 2. (c)(3)—provides that title to the aqueduct shall pass to the project sponsor upon payment of all obligations arising from the legislation and contract.

Total project cost was about $83.8 million, of which about $76.9 million is reimbursable to the United States by the Authority. Non-reimbursable components paid for flood control and fish and wildlife benefits. Including interest during construction, the original reimbursable obligation was $83.7 million, repayable with interest at the rate of 2.632 percent over a term of 50 years. Twenty-six annual payments have been made.

Under this bill the outstanding balance would be purchased by the project sponsor, the Canadian River Municipal Water Authority. Title to the aqueduct would be transferred to the Authority. Title to the dam will not be transferred because of its flood-control functions, which need to remain under the supervision of the U.S. Corps of Engineers, and title to the land around the reservoir to remain with the National Park Service because it is designated a National Recreation Area.

Purchase of the debt would be accomplished by payment of the net present value of the cash stream which would be required to repay the current indebtedness, discounted at U.S. Treasury rates on the date of purchase contract execution, after adjustment to reflect unrealized project benefits and outstanding credits.

ADVANTAGES FOR FEDERAL INTERESTS

Recent changes in the mission of the Bureau of Reclamation have reduced emphasis on water resource development projects. Now, the BOR's activities are regulatory in nature, for the most part, as they relate to existing projects. Transfer of Federal ownership would eliminate the need for BOR participation in the oversight of operation and maintenance, and relieve the Federal Government of liability related to operation of transferred facilities.

The cash payment to the Government would make funds available to support new projects that create, jobs or which cannot be funded from present budget sources. Currently, BOR is considering the prospect of title transfer for selected projects, including the aqueduct system of the Canadian River Project. The debt purchase proposal in this legislation is similar to the process which would result from those activities, without extended negotiations and added administrative costs.

ADVANTAGES FOR LOCAL SPONSORS

Because of the water supply shortfall the Canadian River Project the Authority and its member cities are forced to seek replacement water. The savings that would accrue from purchasing the outstanding debt would allow the Authority and its member cities to finance needed replacement water without undue economic hardship.

Replacement supplies capable of providing the lost annual supply of 30,000

acre-feet or more are being sought at a probable cost of $76.5 million. That additional expenditure will be necessary even if the discounted debt purchase is accomplished.

Also included in the legislation is the Palmetto Bend project authorized by Congress in 1968.

The primary purpose of Palmetto Bend is to provide municipal and industrial water to a broad area along the Texas gulf coast. The project was completed by the BOR in 1985 and includes, as its main feature, Lake Texana.

Lake Texana is located near the gulf coast midway between Houston and Corpus Christi. It is operated by the Lavaca-Navidad River Authority. In essence, the reservoir's entire yield has been committed, including more than 42,000 acre-feet/year for municipal use in the cities of Corpus Christi and Point Comfort, and more than 32,000 acre-feet/year for industrial use largely in the regional petro-chemical-plastics industry. The city of Corpus Christi provides water service to a 10-county area. Two of the industries to which Lake Texana supplies water provide more than 3,000 jobs to the local region.

Currently, the authority and the Texas Water Development Board are obligated for repayment to the Federal Government of about $70.7 million, at an interest rate of 3.502 percent over a term of 50 years. The board has made 10 annual payments; the authority is scheduled to begin payment in 1996.

Under this bill, the outstanding balance of debt would be prepaid, and the project purchased by the authority and board as State project sponsors. Purchase would be accomplished by payment of the net present value of the cash stream required to repay the current contractual debt, discounted at U.S. Treasury rates on the date of purchase, after adjustment to reflect unrealized project benefits and outstanding credits.

Title to the Federal portion of the project would be transferred to the State sponsors, the authority, and the board.

Two clear benefits of the transfer of title to the State sponsors are avoidance of the cost of Federal oversight of the project and the release from liability of the Federal Government. Transfer of this obligation should result in a reduction in the size of the Federal bureaucracy required to support the projects.

Quantified advantages include an immediate infusion of approximately $34 million to the Federal Treasury, annual savings of $250,000 for project operation and upkeep expenses and an annual savings of about $12,000 by avoiding payments-in-lieu-of-taxes to Jackson County.

Annual debt service payments for Lake Texana will be reduced by approximately $1 million per year. Currently this cost is borne by the water users, so municipal and industrial water costs would be reduced.

It is estimated also that up to $50,000 in costs due to BOR reporting mandates and management assistance would be avoided.

More importantly, however, state sponsors will be able to manage their projects to achieve the maximum benefits without the delay, expense and uncertainty which is incurred currently by BOR management oversight.

This proposal is a mutually advantageous proposition that will provide economic benefits to both Federal and State interests, while reducing duplicative and unnecessary Government programs.

Mr. President, I urge my colleagues' strong support for this legislation. It is responsible. It addresses serious local interests. It fulfills the expressed goals of both the 104th Congress and the administration, and it makes sense.

Mr. President, I ask unanimous consent that recent testimony by a representative of the Texas Water Development Board before the House Subcommittee on Water and Power Resources Subcommittee supporting this legislation be entered into the RECORD.

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

TESTIMONY BY TOM BROWN, DEPUTY EXECUTIVE ADMINISTRATOR WATER RESOURCES DEVELOPMENT, TEXAS WATER DEVELOPMENT BOARD

Mr. Chairman and Members of the Committee, thank you for the opportunity to present the views of the Texas Water Development Board on the issue of transfer of Federal Reclamation facilities to local project beneficiaries. The Legislature of the State of Texas has passed Senate Concurrent Resolution 80 and the Governor has signed this resolution, supporting the transfer of Bureau of Reclamation projects in Texas to either the local sponsors or the State. Included in SCR 80 was the direction of the legislature to the Texas Water Development Board to work with local interests to purchase Bureau projects in Texas and to encourage Congress to adopt legislation to facilitate this acquisition. Under this legislation there are three projects being proposed to be purchased, the Canadian River Project, Palmetto Bend Project and the Nueces River Reclamation Project.

There are strong incentives for the Federal Government to sell these projects to local sponsors. These include: First, receiving lump sum cash payments totaling in excess of $100 million. Since the bill provides for the purchase of the facilities using a net present value of the outstanding debt, these payments will provide a direct cash infusion into the federal treasury while defeasing outstanding obligations of the Federal Government.

Second, the Federal Government would be able to transfer the liabilities associated with the projects to the purchaser.

Third, the Federal Government would not have to continually appropriate funds to pay for a portion of operations and maintenance of the transferred facilities.

Fourth, it would eliminate Federal overhead on these projects since oversight would not be required.

There are also significant local incentives for the purchase of these facilities. These incentives include:

1. Reducing annual debt service payments for local ratepayers.

2. Since local sponsors are currently operating and maintaining the facilities the purchase would eliminate duplication of management by both the Bureau and the local sponsor.

3. Allow for consistency in operating plans for the facilities. Since the State of Texas regulates the operation of these facilities, local or State ownership would streamline operations of the facilities through elimination of duplicative or contradictory operating plans'.

4. Eliminating the time and oversight required by the Bureau of Reclamation.

5. Eliminating additional cost associated with federal involvement. For example, The Texas Water Development Board has been working with local governments in developing water conservation plans to address local issues since 1985. In fact, under state law any applicant that borrows over $500,000 from the Board must have an approved water conservation plan. Given the recent push by the Bureau of Reclamation for the development of water conservation plans it will approve there are additional costs that should not have to be borne by local governments.

In addition, the State of Texas owns the surface water within its boundaries with rights to these surface waters being conveyed by the State to individuals and entities for beneficial uses. While the Federal Government has assisted local and State sponsors in constructing these projects to store and divert surface waters, the water rights for the projects have remained with local sponsors, not the Federal Government.

What is being proposed in this legislation, and what the Texas Water Development Board supports, is the ability of local sponsors to purchase the Federal interests in these facilities at a present value of the outstanding debt associated with the municipal and industrial uses in the projects, a transfer of all operations and maintenance and the transfer of title to the state or local sponsor. Furthermore, this legislation meets the Bureau of Reclamation's criteria for projects that could be transferred as single purpose projects: (1) A fair return to the taxpayers for Federal assets. (2) Compliance with all applicable Federal Laws. (3) That interstate compacts and interests are protected. (4) Native American assets are not affected. (5) No international treaties are affected. (6) The recipients shall maintain the public safety aspects of the project.

It is recognized that the non-reimbursable aspects of the projects such as recreational opportunities and fish and wildlife benefits are a significant public benefit. However, in the case of the projects referenced in this legislation both the Palmetto Bend and Nueces River projects, local sponsors and or the State of Texas operate all recreation and wildlife areas and the Bureau of Reclamation is not directly involved in the provision of these benefits, nor do they provide any specific or regular management function relative to these activities. The Canadian River Project transfer will not involve transfer of any facilities associated with the non-reimbursable aspects of the projects.

Through this legislation the Congress would affirm its support to the principle that the State have the primary responsibility for management and use of its water. This legislation also recognizes that it is the States responsibility to ensure that these transfers

will relieve the Federal Government of the financial liabilities associated with these projects and help Texas control its water destiny and meet the needs of its citizens.

Thank you for allowing me to issue this statement and support what we believe is needed legislation.●

ADDITIONAL COSPONSORS

S. 949

At the request of Mr. GRAHAM, the name of the Senator from Maryland [Mr. SARBANES] was added as a cosponsor of S. 949, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 200th anniversary of the death of George Washington.

S. 1035

At the request of Mr. DASCHLE, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 1035, a bill to permit an individual to be treated by a health care practitioner with any method of medical treatment such individual requests, and for other purposes.

S. 1129

At the request of Mr. ASHCROFT, the names of the Senator from Alabama [Mr. SHELBY] and the Senator from Texas [Mrs. HUTCHINSON] were added as cosponsors of S. 1129, a bill to amend the Fair Labor Standards Act of 1938 to permit employers to provide for flexible and compressed schedules, to permit employers to give priority treatment in hiring decisions to former employees after periods of family care responsibility, to maintain the minimum wage and overtime exemption for employees subject to certain leave policies, and for other purposes.

S. 1197

At the request of Mr. MACK, the names of the Senator from North Carolina [Mr. HELMS], the Senator from Kansas [Mrs. KASSEBAUM], and the Senator from New Hampshire [Mr. GREGG] were added as cosponsors of S. 1197, a bill to amend the Federal Food, Drug, and Cosmetic Act to facilitate the dissemination to physicians of scientific information about prescription drug therapies and devices, and for other purposes.

S. 1563

At the request of Mr. SIMPSON, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 1563, a bill to amend title 38, United States Code, to revise and improve eligibility for medical care and services under that title, and for other purposes.

S. 1624

At the request of Mr. HATCH, the names of the Senator from North Dakota [Mr. CONRAD] and the Senator from Maine [Ms. SNOWE] were added as cosponsors of S. 1624, a bill to reauthorize the Hate Crime Statistics Act, and for other purposes.

SENATE JOINT RESOLUTION 42

At the request of Mr. BREAUX, the names of the Senator from Pennsylvania [Mr. SPECTER] and the Senator from Pennsylvania [Mr. SANTORUM] were added as cosponsors of Senate Joint Resolution 42, a joint resolution designating the Civil War Center at Louisiana State University as the United States Civil War Center, making the center the flagship institution for planning the sesquicentennial commemoration of the Civil War, and for other purposes.

SENATE RESOLUTION 85

At the request of Mr. CHAFEE, the name of the Senator from Georgia [Mr. COVERDELL] was added as a cosponsor of Senate Resolution 85, a resolution to express the sense of the Senate that obstetrician-gynecologists should be included in Federal laws relating to the provision of health care.

SENATE RESOLUTION 226

At the request of Mr. DOMENICI, the names of the Senator from Delaware [Mr. BIDEN], the Senator from Colorado [Mr. BROWN], and the Senator from Louisiana [Mr. BREAUX] were added as cosponsors of Senate Resolution 226, a resolution to proclaim the week of October 13 through October 19, 1996, as "National Character Counts Week."

SENATE RESOLUTION 243

At the request of Mr. ROBB, the names of the Senator from Rhode Island [Mr. CHAFEE], the Senator from North Dakota [Mr. DORGAN], the Senator from California [Mrs. FEINSTEIN], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Wisconsin [Mr. KOHL], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Nevada [Mr. REID], the Senator from Pennsylvania [Mr. SPECTER], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of Senate Resolution 243, a resolution to designate the week of May 5, 1996, as "National Correctional Officers and Employees Week."

AMENDMENT NO. 3752

At the request of Mr. ABRAHAM the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of Amendment No. 3752 proposed to S. 1664, an original bill to amend the Immigration and Nationality Act to increase control over immigration to the United States by increasing border patrol and investigative personnel and detention facilities, improving the system used by employers to verify citizenship or work-authorized alien status, increasing penalties for alien smuggling and document fraud, and reforming asylum, exclusion, and deportation law and procedures; to reduce the use of welfare by aliens; and for other purposes.

AMENDMENT NO. 3780

At the request of Mr. LEAHY the names of the Senator from Oregon [Mr. HATFIELD] and the Senator from Massachusetts [Mr. KERRY] were added as cosponsors of Amendment No. 3780 proposed to S. 1664, an original bill to amend the Immigration and Nationality Act to increase control over immigration to the United States by increasing border patrol and investigation personnel and detention facilities, improving the system used by employers to verify citizenship or work-authorized alien status, increasing penalties for alien smuggling and document fraud, and reforming asylum, exclusion, and deportation law and procedures; to reduce the use of welfare by aliens; and for other purposes.

At the request of Mr. WELLSTONE his name was added as a cosponsor of amendment no. 3780 proposed to S. 1664, supra.

AMENDMENTS SUBMITTED

THE IMMIGRATION CONTROL AND FINANCIAL RESPONSIBILITY ACT OF 1966

GRAMM (AND OTHERS) AMENDMENT NO. 3948

Mr. SIMPSON (for Mr. GRAMM for himself, Mrs. HUTCHISON, and Mr. DOMENICI) proposed an amendment to amendment No. 3743 proposed by Mr. SIMPSON to the bill (S. 1664) to amend the Immigration and Nationality Act to increase control over immigration to the United States by increasing border patrol and investigative personnel and detention facilities, improving the system used by employers to verify citizenship or work-authorized alien status, increasing penalties for alien smuggling and document fraud, and reforming asylum, exclusion, and deportation law and procedures; to reduce the use of welfare by aliens; and for other purposes; as follows:

At the end, insert the following:

"SEC. . FINDINGS RELATED TO THE ROLE OF INTERIOR BORDER PATROL STATIONS.

The Congress makes the following findings:

(1) The Immigration and Naturalization Service has drafted a preliminary plan for the removal of 200 Border Patrol agents from interior stations and the transfer of these agents to the Southwest border.

(2) The INS has stated that it intends to carry out this transfer without disrupting service and support to the communities in which interior stations are located.

(3) Briefings conducted by INS personnel in communities with interior Border Patrol stations have revealed that Border Patrol agents at interior stations, particularly those located in Southwest border States, perform valuable law enforcement functions that cannot be performed by other INS personnel.

(4) The transfer of 200 Border Patrol agents from interior stations to the Southwest border, which would not increase the total number of law enforcement personnel at INS, would cost the federal government approximately $12,000,000.

(5) The cost to the federal government of hiring new criminal investigators and other

personnel for interior stations is likely to be greater than the cost of retaining Border Patrol agents at interior stations.

(6) The first recommendations of the report by the National Task Force on Immigration was to increase the number of Border Patrol agents at the interior stations.

(7) Therefore, it is the sense of the Congress that—

(A) the U.S. Border Patrol plays a key role in apprehending and deporting undocumented aliens throughout the United States;

(B) interior Border Patrol stations play a unique and critical role in the agency's enforcement mission and serve as an invaluable second line of defense in controlling illegal immigration and its penetration to the interior of our country;

(C) a permanent redeployment of Border Patrol agents from interior stations is not the most cost-effective way to meet enforcement needs along the Southwest border, and should only be done where new Border Patrol agents cannot practicably be assigned to meet enforcement needs along the Southwest border; and

(D) the INS should hire, train and assign new staff based on a strong Border Patrol presence both on the Southwest border and in interior stations that support border enforcement.

BRYAN AMENDMENT NO. 3949

Mr. KENNEDY (for Mr. BRYAN) proposed an amendment to amendment No. 3743 proposed by Mr. SIMPSON to the bill S. 1664, supra; as follows:

At the appropriate place in the matter proposed to be inserted by the amendment, insert the following:

SEC. . EXCLUSION OF CERTAIN ALIENS FROM FAMILY UNITY PROGRAM.

Section 301(e) of the Immigration Act of 1990 (8 U.S.C. 1255a note) is amended to read as follows:

"(e) EXCEPTION FOR CERTAIN ALIENS.—An alien is not eligible for a new grant or extension of benefits of this section if the Attorney General finds that the alien—

"(1) has been convicted of a felony or 3 or more misdemeanors in the United States,

"(2) is described in section 243(h)(2) of the Immigration and Nationality Act, or

"(3) has committed an act of juvenile delinquency which if committed by an adult would be classified as—

"(A) a felony crime of violence that has an element the use or attempted use of physical force against the person of another; or

"(B) a felony offense that by its nature involves a substantial risk that physical force against the person of another may be used in the course of committing the offense.".

HUTCHISON AMENDMENT NO. 3950

Mr. KENNEDY (for Mrs. HUTCHISON) proposed an amendment to amendment No. 3743 proposed by Mr. SIMPSON to the bill S. 1664, supra; as follows:

At the appropriate place, insert the following new section:

SEC. .—The Immigration and Naturalization Service shall, when redeploying Border Patrol personnel from interior stations, coordinate with and act in conjunction with State and local law enforcement agencies to ensure that such deployment does not degrade or compromise the law enforcement capabilities and functions currently performed at interior Border Patrol stations.

NOTICES OF HEARINGS

COMMITTEE ON SMALL BUSINESS

Mr. BOND. Mr. President, I wish to announce that the Committee on Small Business will hold a hearing on "Small Business Investment Company Reform Legislation" on Tuesday, May 7, 1996, at 10:00 a.m., in room 428A of the Russell Senate Office Building.

For further information, please contact Paul Cooksey 224-5175.

COMMITTEE ON RULES AND ADMINISTRATION

Mr. WARNER. Mr. President, I wish to announce that the Committee on Rules and Administration will meet in SR-301, Russell Senate Office Building, on Wednesday, May 8, 1996, at 9:30 a.m., to hold a hearing on Campaign Finance Reform.

For further information concerning this hearing, please contact Bruce Kasold of the Committee staff on 224-3448.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the information of the Senate and the public that an oversight hearing has been scheduled before the Committee on Energy and Natural Resources. The purpose of this hearing is to receive testimony on the recent increases in gasoline prices.

The hearing will take place Thursday, May 9, 1996 at 9:30 a.m. in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

Those wishing to submit written statements should write to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510. For further information, please call Judy Brown or Howard Useem at (202) 224-7556.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Committee on Armed Services and the associated subcommittees be authorized to meet at the following time Wednesday May 1, 1996 for markup of the fiscal year 1997 Defense Authorization bill.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be allowed to meet during the Wednesday, May 1, 1996 session of the Senate for the purpose of conducting a hearing on Airport Revenue Diversion.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Wednesday, May 1, 1996, for purposes of conducting a full committee business meeting which is scheduled to begin at 9:30 a.m. The purpose of this meeting is to consider pending calendar business.

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

COMMITTEE ON THE JUDICIARY

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Wednesday, May 1, 1996, at 10:00 a.m. to hold a hearing on "Review of the National Drug Control Strategy."

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet in executive session during the session of the Senate on Wednesday, May 1, 1996, at 9:30 a.m.

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

COMMITTEE ON SMALL BUSINESS

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Committee on Small Business be authorized to meet during the session of the Senate for two hearings on Wednesday, May 1, 1996, in room 428A of the Russell Senate Office Building. The first is a hearing regarding "President Clinton's Nomination of Ginger Ehn Lew to be Deputy Administrator of the United States Small Business Administration" which will begin at 9:30 a.m., with the second hearing focusing on "The United States Small Business Administration's Fiscal Year 1997 Budget" to immediately follow.

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

SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER DEVELOPMENT AND RELATED MATTERS

Mr. SIMPSON. Mr. President, I ask unanimous consent that the special committee to investigate Whitewater development and related matters be authorized to meet during the session of the Senate on Wednesday, May 1, 1996 to conduct hearings pursuant to Senate Resolution 120.

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

SUBCOMMITTEE ON AFRICAN AFFAIRS

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Subcommittee on African Affairs of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, May 1, at 2:00 p.m. to hold hearing.

ADDITIONAL STATEMENTS

WE THE PEOPLE, THE CITIZENS, AND THE CONSTITUTION

• Mr. WELLSTONE. Mr. President, today I would like to honor a group of high school students who have embarked on a project that not only enhances their educations but fosters their sense of civic responsibility. Between April 27 and April 29, more than 1,300 students from all over the country were in Washington, DC, to compete in the national finals of competition sponsored by a program called We the People, The Citizens, and the Constitution. I'm proud to announce that the class from Hutchinson High School in Hutchinson represented Minnesota in the competition. These young people have undergone a rigorous course of study and worked diligently to reach the national finals by winning local competitions in their home State.

The accomplished young people representing Minnesota are the following: Adam Brodd, Megan Carls, Eddy Cox, Chris Dahlman, Aaron Douglas, Ben Froemming, Aaron Hall, Eric Holtz, Rana Kasich, Kristen Mann, Aaron May, Mike Peek, Patrick Perrine, Terri Rennick, Chelle Robinson, John Sandberg, Dave Schaefer, Sara Sharstrom, Jill Shun, Kelly Watson, and Michelle Wulkan.

I would also like to recognize their teacher, Mike Carls, who deserves some of the credit for the success of the team. The district coordinator, Jerry Benson, and the State coordinator, Robert Wangen, also contributed a significant amount of time and effort to help the team reach the national finals.

The We the People program is specifically designed to educate young people about the Bill of Rights and the Constitution. An evaluation of this program has shown that students in the program display more political tolerance and feel more politically effective than most adults in America. Students become more interested in politics and they learn how to get politically involved.

The 3-day national competition simulates a congressional hearing in which the students' oral presentations are judged on the basis of their knowledge of constitutional principles and their ability to apply them to historical and contemporary issues. In short, these students are debating some of the very issues we've been debating on the Senate floor in recent months: the division of power between State and Federal Government, the balance of power among the branches of government, the right to privacy, the role of religion in public life.

Through the We the People program, students learn the constitutional values of freedom, equality and justice, the principles that bind our Nation together. These students have taken something that is an historical document and made it a part of their lives. In an era when so much of our public discourse is polarized, when there is so much discussion of "us" and "them," these young people learn to value the "we" of "we the people." I wish these students the best of luck in the future and look forward to their continued success in the years ahead.•

JEFFERSON COUNTY MEDICAL SOCIETY

• Mr. MCCONNELL. Mr. President, twice a year, the Jefferson County Medical Society conducts a mini-internship program to inform and educate those outside the medical professional about the practice of medicine. For 2 days, about 12 to 18 business professionals and government officials are matched up with several Louisville physicians to watch them perform their jobs. Recently, Melissa Patack, a member of my staff, had this unique and worthwhile opportunity. I ask that a summary of her experience be printed in the RECORD.

The material follows:

JEFFERSON COUNTY MEDICAL SOCIETY MINI-INTERNSHIP—APRIL 16–17, 1996

On April 16 and 17, 1996, I participated in the Jefferson County Medical Society's Mini-internship program. During the course of the two days, participants accompanied physicians in their usual activities and had the opportunity to observe first-hand the practice of medicine.

On Tuesday morning, I met Dr. Kathryn Cashner, an ob-gyn with a speciality in high risk pregnancies, at her office to watch her morning appointments with more than a dozen women. Dr. Cashner is a sole practitioner, with patients from all socio-economic backgrounds. About one-quarter to one-third of her patients receive Medicare benefits. This was a morning of unusual normalcy, Dr. Cashner remarked. Virtually all of the women were experiencing normal pregnancies, although several of the patients were 4 to 6 months into their pregnancies and seeing Dr. Cashner for the first prenatal visit. Dr. Cashner counseled one woman who had a negative test result, but who was immediately sent for a follow-up sonogram which turned out to be normal. When I left Dr. Cashner at Audubon Hospital, she was about to perform surgery on one of her high-risk patients which would enable the patient to carry her baby to full term. Dr. Cashner's practice brings her into close contact with the lives of her patients; on one wall of her office she displays pictures of all the babies she has brought into the world.

The afternoon brought me to Jewish Hospital to observe Dr. Thomas O'Daniel, a plastic surgeon, performing a face lift. Watching directly over his shoulder, I saw Dr. O'Daniel perform the delicate task of reconstructing a 57 year-old woman's face. The operation was a grueling, pain-staking procedure of more than 6 hours. Dr. O'Daniel concentrates on facial injuries and gets a great deal of satisfaction from the work he does on children. The next morning, he was operating to correct a child's clef palate. Last fall, he traveled to Guatemala, where he and his staff operated on 75 children who suffered from clef palates and other facial deformities.

In the evening, I went to University Hospital where I watched Dr. Robert Couch run the night shift of the emergency room. The evening brought everything from walk-ins seeking routine medical care to the airlift of two victims from a head-on automobile crash, probably caused by a driver who had too much to drink. The residents under Dr. Couch's supervision were poised for action when the helicopter landed and two women with broken bones, head injuries and internal bleeding were wheeled in to Room 9. Within moments, life-saving actions were taken to get one patient breathing. X-rays were immediately taken and the young doctors made snap decisions on the treatment for these endangered patients. These emergency room doctors don't have on-going relationships with their patients. They treat and move on to the next crisis with enormous dedication.

After an exhausting and exhilarating day, I returned the next morning at 7:15 a.m. to Jewish Hospital to observe Dr. Laman Gray perform a quadruple coronary bypass on a 67 year-old man. One stands in sheer amazement at the sight of the human heart beating in an open chest cavity. When it came time for Dr. Gray to stitch the new bypass vessels to the aorta, the heart was stopped and then brought back to its rhythmic beating when Dr. Gray completed his delicate work. Dr. Gray had another operation scheduled for the afternoon and in-between, he was dealing with 2 other emergencies, including arranging for the airlifting of a heart attack victim from another state to Jewish Hospital for care and treatment.

Wednesday afternoon, I accompanied Dr. Cindy Zinner on her appointments at the Portland Family Clinic, a federally-sponsored community health center. Dr. Zinner specializes in internal medicine and pediatrics, and that afternoon, was working as a pediatrician. The Portland facility fills a unique role by being accessible not only to those covered by health insurance (including Medicaid) but also to the working poor who lack employer-sponsored health insurance, and who do not qualify for Medicaid. In observing Dr. Zinner treat several seemingly routine ear infections and perform a number of well-child examinations, the highly important role for preventive medicine becomes readily apparent. Dr. Zinner becomes a positive force in the lives of these struggling families.

These doctors, the residents, nurses and other assistants with whom they work are dedicated to the care and treatment of individuals from every part of our society. Each of the doctors has chosen a very different career in medicine, but all are devoted to the good health and life of the people they treat. My experience was a significant educational opportunity and I was privileged to watch these men and women perform their work.•

PRISON LITERACY

• Mr. SIMON. Mr President, you may remember that a few weeks ago, I had an amendment on the floor to restore funding to the prison literacy program. I hope that will stay in the final appropriations that we agree to.

The need to do something on the question of illiteracy was emphasized in an editorial in the Chicago Tribune and by an excellent letter to the editor from George Ryan, the Secretary of State in Illinois who, I'm pleased to

say, has been a leader in literacy efforts.

I ask that the George Ryan letter be printed in the CONGRESSIONAL RECORD.

The letter follows:

LEARNING IN PRISON

SPRINGFIELD.—The March 25 editorial titled "The crime of prison illiteracy" correctly laid out the devastating problem of low literarcy levels among prisoners in Illinois and across the nation. Education is an important factor in keeping people out of jail and in reducing the number of repeat offenders swelling our prisons.

Boosting overall adult literacy levels has long been a goal of mine. To this end, the secretary of state's office has made a concerted effort to assist the Illinois Department of Corrections and local law-enforcement officials in offering literacy programs to as many inmates as possible.

Over the last three years, my office has funded volunteer literacy tutoring for 6,107 inmates. There are currently volunteer programs in 22 state correctional facilities and 30 county and municipal jails.

In 1995, 785 community volunteers and inmate/peer tutors helped Illinois prisoners raise their reading levels. More inmates can be helped to overcome their literacy difficulties, however, if more volunteer tutors were available. I urge the citizens of Illinois to donate a few hours of their time to a local literacy program.

In addition to these volunteer efforts, I have awarded a $64,400 literacy grant to the Illinois Department of Corrections School District 428 to fund reading programs at the Dwight, Kankakee, Pontiac and Sheridan facilities and to supplement literacy efforts at 13 other state correctional centers. More than 430 inmates were served by these programs. Test scores indicated that the reading levels of these prisoners improved at a faster rate than the levels of other adult literacy students.

As the Tribune pointed out, education is not a panacea for reducing recidivism. But it is a proven fact that raising the reading skills of inmates helps make them productive members of society after they serve their terms and reduces the chances that they will commit another crime.

GEORGE H. RYAN,
Secretary of State.•

THE 350TH ANNIVERSARY OF THE CITY OF NEW LONDON, CONNECTICUT

• Mr. DODD. Mr. President, I rise today in honor of a very special event in the State of Connecticut this year. On Monday, May 6, 1996, the town of New London will celebrate its 350th anniversary, marking a milestone of historic significance to both the State and our Nation.

And what a history New London has. The one-room schoolhouse in which patriot Nathan Hale taught prior to his hanging by the British as a Revolutionary War spy stands in Union Plaza as a testament to the New England grit with which the city has prospered for centuries.

Founded in 1646 by John Winthrop Jr., New London is situated in the area the Pequot Indians called "Nameaug," or "good fishing place." Indeed, after Winthrop negotiated with the Pequots, the new colony's locale, New London, grew rapidly into a prosperous fishing and seafaring city on the west side of the Thames River.

Throughout the 17th and 18th centuries, the port of New London bustled with trading vessels carrying merchants and their goods between the other colonies, Europe, and the Caribbean. With the barter of lumber and horses for sugar, molasses, and rum, as well active trade of other goods and plentiful fishing reserves, the local economy flourished. The whaling industry soon took hold, and by the mid 1800's whaling was the local economy's mainstay. While that industry died quickly after whales became scarce, New London's whaling heritage is still visible throughout town. New London later grew into a manufacturing center, with silk mills and machine shops, and became a major banking, industry, and transportation hub with easy railroad and ferry access up and down the East Coast.

New London's coastline location has not only been economically important, but also strategically key. In 1776 during the Revolutionary War, the first colonial naval expedition sailed from New London, and local privateers beat the British at sea during the war. Although the town was burned in retaliation, New London was rebuilt and the area became a vital test and training ground for America's maritime forces. The U.S. Coast Guard Academy has been based in New London since 1910, and the city contributes much to nuclear submarine and Naval technology research and development via the many defense contractors based in the area.

Today, Mr. President, New London remains a busy eastern seaport city that is home to a vibrant business community, several colleges, an arts center, and vacation resorts. And the same New England grit that brought New London through the darkest days of the Revolutionary War survives.

For 350 years, the city of New London has contributed to the economic, military, and cultural progress of the United States of America. Its history precedes the founding of our Nation. Few American cities can lay claim to such a rich heritage, and as the motto for the celebration indicates, this is a time for New London to rejoice in "Pride in the Past—Progress in the Future." I am proud to join the citizens of New London and all Connecticut's citizens in celebrating this special birthday.•

CONGRESSIONAL FIRE SERVICE INSTITUTE

• Mr. SARBANES. Mr. President, I rise today to recognize the significant efforts of the Congressional Fire Services Institute, including those of Executive Director Bill Webb and others, in organizing the Eighth Annual National Fire and Emergency Services Dinner last night. Due to the tireless commitment of CFSI, this terrific event provided a highly appropriate opportunity to honor and thank the men and women of the fire service who risk their own lives every day to protect the lives and property of others.

In the 8 years since its inception, the annual dinner has grown beyond expectations, attracting an increasingly large number of friends and members of the fire service from across the country. It has attracted scores of dignitaries over the past 8 years including President Clinton who spoke at last year's dinner. Last night's program featured Vice-President AL GORE and majority leader DOLE and a number of Congressional Caucus members from both sides of the aisle demonstrating a continued bipartisan commitment and expression of gratitude to the fire service.

Mr. President, I am pleased to have this opportunity to commend the Congressional Fire Institute for its efforts in promoting fire related issues and in honoring the men and women of the fire service in a way that reflects the grace and valor with which they protect us all.•

DONALD MINTZ

• Mr. BREAUX. Mr. President, America lost a real civic leader, Louisiana and New Orleans lost a political leader who believed in cooperation, not confrontation, and I lost a good friend far too early in his life.

Don Mintz lived a beautiful life, raised a beautiful family and had a wonderful wife Susan, who together contributed so much to so many.

I ask that an editorial on Donald Mintz that ran in the New Orleans Times Picayune on April 30, 1996, which expresses the feelings of so many, be printed in the RECORD.

The editorial follows:

DONALD MINTZ

Donald Mintz, who died unexpectedly Sunday of a heart attack, was a New Orleanian first and foremost. Though he never held public office, Mr. Mintz set a highly public example of how to be a citizen in our complex, multiracial community. He was as much at home in a corporate boardroom as in the humblest neighborhood.

He tried to connect our disparate worlds. He was a builder of bridges between his black and white friends, a man of faith nationally recognized for his work as a Jewish lay leader and, most importantly, a dreamer of dreams, which he worked with ferocious energy to realize. One of his fondest, of becoming mayor of New Orleans, was unfulfilled after unsuccessful campaigns in 1990 and 1994.

But even without the portfolio of office, Mr. Mintz was a doer, a relentless actor and producer on the city's stage. There was nothing lukewarm about him. Whatever caught his interest had him thoroughly absorbed.

And then he was relentless, driven, sometimes brazen, always dedicated, especially to New Orleans.

As Marc Morial, the man who defeated him most recently for mayor, said: "Above all, he was a committed New Orleanian."

By his death at age 53, Mr. Mintz had well beyond a lifetime's worth of accomplishments. He had been chairman of the Anti-Defamation League's advisory board and achieved national stature in this country's Jewish community; he had been a founder of a law firm; chairman of the Dock Board, the Downtown Development District, the United Way and the Criminal Justice Task Force on Violent Street Crime, and president of the Metropolitan Area Committee, Kingsley House, Touro Synagogue and the Jewish Federation of Greater New Orleans.

He was the managing partner of several Warehouse District renovations, a member of the Archbishop's Community Appeal campaign committee and a board member of The Chamber/New Orleans and the River Region and the New Orleans Symphony.

Between mayoral elections, he was passionate in his leadership of the statewide committee that set up the Louisiana Health Care Authority to run the Charity hospital system and became chairman of the authority's board.

The activities bespeak involvement and dynamism, but they don't describe Donald Mintz's spirit. With his wife, Susan, he exuded a love of people, a love of life, a love of community, a devotion to New Orleans. Coupled with this tireless drive, the result is that he made a difference in his hometown.•

GAMBLING IN THE SUNLIGHT

• Mr. SIMON. Mr. President, the New York Times has again hit the mark in a recent editorial supporting a national study of the economic and social impacts of gambling. The Gambling Impact Study Commission Act has received considerable attention as it makes its way through the committee process. Although the road has at times been bumpy, we are well on the way to creating a commission with the powers it needs to produce a balanced and fair analysis of legalized gambling.

In response to constructive criticism of the original bill, we have been hard at work crafting a substitute. Developed with bipartisan support, the substitute will take into account the legitimate interests of those whose livelihoods are invested in the industry as well as the concerns of those who would prefer to limit the expansion of gambling.

However, we are quickly running out of time. The American public deserves to know the advantages and disadvantages of legalized gambling. The Commission's report will be an important national resource for policymakers at all levels of government. In order to make this happen, we need to move quickly to make room on the Senate calendar and to insure the passage of the Gambling Impact Study Commission Act.

I urge my colleagues to read the editorial and to work with me to pass this act before it is too late.

I ask that the New York Times editorial be printed in the RECORD.

The editorial follows:

[From the New York Times, Apr. 27, 1996]

GAMBLING IN THE SUNLIGHT

Just a few weeks ago, Representative Frank Wolf's proposal to create a commission on the social and economic impact of the nation's gambling explosion seemed just the sort of virtuous idea that everyone in this partisan Congress could support. In early March the House approved the nine-member study panel without dissent. But the Virginia Republican's proposal is in trouble in the Senate and may die there unless the majority leader, Bob Dole, exerts leadership to rescue it.

A special interest group known for its generous campaign contributions—the Nevada-based gaming industry—has teamed up with prominent and well-compensated Republican lobbyists to try to stop the bill. With help from Nevada's Democratic Senator, Richard Bryan, and Alaska's Ted Stevens, the Republican chairman of the Governmental Affairs Committee, the effort seems to be succeeding.

Mr. Bryan blocked Senate action. Mr. Stevens, meanwhile, has produced a weak revision that would deny the commission the powers it needs to subpoena documents, convene investigative hearings and make recommendations that go beyond such obvious issues as native-American casinos and gambling on the Internet. Angered by criticism, Mr. Stevens last week decided, for now, against reporting any bill out of his committee. The delay increases the chance that the commission will die in the usual close-of-session legislative logjam.

The social and economic consequences of the rapid proliferation of casinos and state-run lotteries have received too little attention. There is room for a comprehensive look at the true costs and benefits for local economies and at the relationship between gambling and crime. There is also a need to look at the industry's role in creating gambling addicts and the extent to which earnings derive from problem gamblers. Even staunch supporters of legalized gambling cannot object to a fair effort to give localities the information they need to make informed decisions before turning to gambling as a source of new or increased revenue.

Although Mr. Dole has received hefty campaign contributions from the gambling industry, he has indicated his support for a national gambling study. To make it happen, though, he needs to move quickly to make room for the bill on the Senate calendar and to insure its passage with the commission's full investigative powers intact. Among other things the commission would study the gambling industry's ability to influence public policy. The Senate's timidity is a case in point.•

A RECIPE FOR GROWTH

• Mr. DODD. Mr. President, I rise today to bring to my colleagues' attention a recent article by Felix Rohatyn titled "Recipe for Growth," which appeared in the April 11, 1996, Wall Street Journal.

Although he is a traditional Democrat, Flex Rohatyn has long advocated economic solutions and ideas that transcend political affiliation. And in a time when economic change and rising job insecurity are causing more and more American families to find that the promise of the American dream is increasingly unattainable his views deserve particular recognition.

Throughout my State of Connecticut, and the Nation as a whole, thousands of families are sitting around the kitchen table wondering how are they going to pay their monthly bills. How are they going to make their mortgage payments?

But the issue runs even deeper—to people's vision of the future. Will they have the money to send their kids to college? What happens if they lose their health care? How can they prepare for retirement when they barely have enough right now? These painful choices are leaving workers anxious and scared for the future.

Let me be clear on one point: There are millions of Americans who are succeeding in this economy. Since this administration took Office, the American economy has seen the creation of 8.5 million new jobs, many of which are both full time and at an increased wage.

However, while a significant number of Americans are succeeding, this rising tide is not lifting all boats. Many Americans are still suffering, and we must do more to deal with their plight.

Surely, there are no easy solutions to America's problems. We need to have a debate on these issues. But, most important, we need to start finding ways to increase economic growth be it through balancing our budget, reforming our tax laws to create new jobs, relieving business of the burdens of wasteful regulation or lowering interest rates.

I share the view of many responsible members of the business community who believe that our current growth rate of 2.5 per cent is far below the Nation's true capacity for growth. Our economy is capable of enhanced growth, and we must do more to realize this goal.

The benefits of economic growth are clear: An increase of as little as one-half of 1 percent in the growth rate, would wipe out the deficit, provide millions of dollars for tax cuts and create enormous employment opportunities for millions of American workers. Additionally, increasing economic growth would allow us to balance the budget without the draconian cuts in education, the environment, Medicare, Medicaid, and other social programs that my colleagues across the aisle have advocated.

Expanding economic growth may be the most important issue that faces our country and it is a challenge we all must undertake. Americans understand that when we all work together, from the public and private sectors to employers and employees we can face any challenge.

Felix Rohatyn's "Recipe For Growth" serves as an excellent blueprint for bringing genuine and real growth to the American economy. If we are serious about expanding growth and bringing the promise of the American dream to all our people, then I believe every Member of this body should take the time to read this article and heed the advice of Felix Rohatyn.

I ask that Mr. Rohatyn's article be printed in the RECORD.

The article follows:

[From the Wall Street Journal, Apr. 11, 1996]

RECIPE FOR GROWTH

(By Felix G. Rohatyn)

The American economy is now constrained by a financial iron triangle, in part created by the Republican majority together with the Clinton administration, from which it is difficult to break out and which is beginning to generate serious social tensions.

The first leg of this triangle is the commitment to balance the budget in seven years. Even though there has never been a rational explanation for this time frame, it has now become part of the political theology. It would be as dangerous for either party to depart from it, say by suggesting that eight or nine years would be equally logical, as it was for George Bush to abandon his "No new taxes" pledge.

The second leg is an extension of the first and is more restrictive in its effect: It is the acceptance, by both parties and blessed by the Congressional Budget Office, that our economic growth rate will be 2.2% for the seven-year period. Even though projections are notoriously inaccurate even over much shorter periods, this particular projection is becoming both a prediction and a self-limitation. It implies that this rate of growth is the limit of what our economy is capable of without inflation. Since this view has the support of the Federal Reserve, the Treasury and the financial markets, it has become a de facto limit on economic growth. The markets and the Fed react to any appearance of acceleration with higher interest rates and the economy then falls back to 2.2% or below.

The third leg of this triangle is the impact of technology and global competition on incomes and employment. THe lethal political combination of corporation downsizing together with ever-increasing differentials in wealth and income among Americans of differing levels of education and skills, and the huge rewards to capital as the result of the boom in the securities markets, are creating serious social tensions and political pressures.

Unless we can somehow break out of this iron triangle, we could face serious difficulties, and the best hope for a breakout is to make a determined effort for a higher rate of economic growth. Only higher growth, as a result of higher investment and greater productivity, can make these processes socially tolerable. In order to deal constructively with the realities of technology and the global economy. Democrats and Republicans may have to abandon cherished traditional positions and turn their thinking upside down: Democrats may have to redefine their concept of fairness, while Republicans may have to rethink the role of Government.

ECONOMIC INSECURITY

The American economy is growing very slowly despite occasional upward blips. Growth and inflation are both around 2%. Our main trading partners, Europe and Japan, are undergoing serious economic strains of their own, with German unemployment nearing 10% and French unemployment near 12%. Fiscal contraction is taking place on both sides of the ocean as the Maastricht criteria are maintained in Europe and deficit reduction continues as a priority here, feeding a general sense of economic insecurity. The winds of deflation could be stronger than the winds of inflation.

At the same time, the Dow Jones Industrial Average is near its all-time high of 5700, mergers and restructurings are still taking place at a record pace, and layoffs and downsizing are continuing as the inevitable result of global competition and technological change. And Pat Buchanan has created a political groundswell, on the left as well as on the right, by identifying real problems but proposing solutions based on fear, xenophobia, isolationism and protectionism. It is frightening to think of the political impact of a Buchanan if unemployment were now 7.5 percent instead of 5.5 percent. All that it requires is the next recession.

The social and economic problems we face today are varied. They include job insecurity, enormous income differentials significant pressures on average incomes, urban quality-of-life and many others. Even though all of these require different approaches, the single most important requirement to deal with all of them is the wealth and revenues generated by a higher rate of economic growth. John Kennedy was right: A rising tide lifts all boats. Although it may not lift all of them at the same time and at the same rate, without more growth we are simply redistributing the same pie. That is a zero sum game and it is simply not good enough.

The fact that our 2 percent-2.5 percent present growth rate is inadequate is proven by the very problems we face. The question of when, and especially how, to balance the federal budget deserves a great deal more intelligent discussion than the political sloganeering we have heard so far. The budget is a document that reflects neither economic reality nor valid accounting practices. If the budget is to be balanced in order to satisfy the financial markets, only real justification of this goal, then it must be done with growth rather than with retrenchment. That higher growth, together with controlling costs of entitlement like Medicare, Medicaid and Social Security, will generate the capital needed to provide both private and public investment adequate to the country's needs.

Bringing the rate of growth from its present 2 percent-2.5 percent to a level of 3 percent-3.5 percent would generate as much as an additional $1 trillion over the next decade. It could provide both for significant tax cuts for the private sector as well as for the higher level of public investment in infrastructure and education required as we move into the 21st Century. It would obviously generate millions of new jobs. The present bipartisan commitment to balance the budget in seven years, based on the present anemic growth, is economically unrealistic and probably socially unsustainable. In all likelihood, higher growth is in fact the only way to achieve budget balance. The question is how to achieve it.

The conventional wisdom among most academic economists as well as the Treasury, the Federal Reserve Board and Wall Street is that our economy cannot generate higher growth without running the risk of triggering inflation. Now everyone shares that view. In particular, the leaders of many of this country leading industrial corporations believe that we could sustain significantly higher growth rates based on the very significant productivity improvements they are generating in their own businesses, year-after-year.

Economics is not an exact science as we have painfully learned over and over again. It is the product of the psychology of millions of consumers, of business leaders making long term investment decisions, of capital flows instantaneously triggered by events and ideas. We must do away with the false notion that we must choose between growth or inflation. Our experience, even in the more recent past, shows that technology and competition can produce growth without serious inflationary pressures. In the face of today's totally new environment of almost daily revolutions in technology combined with globalization, we should be willing to be bolder, both in fiscal and monetary policy.

As a traditional Democrat, I have always believed that freedom, fairness and wealth, basic to a modern democracy, required an essentially redistributionist philosophy of wealth, that a fairly steeply graduated income tax was required as a matter of fairness and that lower deficits would guarantee adequate growth and a fair distribution of wealth. The experience of the last two decades, with the advent of the global economy, has very much shaken that view.

Fairness does not require the redistribution of wealth; it requires the creation of wealth, geared to an economy that can provide employment for everyone willing and able to work, and the opportunity for a consistently higher standard-of-living for those employed. Only strong private sector growth, driven by higher levels of investment and superior public services, can hope to providing the job opportunities required to deal with technological change and globalization. Only higher growth will allow that process to take place within the farmework of a market economy and a functioning democracy.

We should have no illusions about the likelihood of reducing the level of present income and wealth differentials; they are likely to increase in the near future as the requirements for skills and education increase. The world is not fair; we must, however, make it better for those in the middle as well as at the lower end of the economic scale. The key is enough growth that, even if initially the lower end does not gain as rapidly as the upper, it can improve its absolute standard of living, and being a process of closing the gap.

Higher growth requires a tax system that promotes growth as its main objective. It must encourage higher investment and savings. That is not the case today. Today's tax system aims at a concept of fairness dictated by distribution tables. That may not be the best test. A tax system with growth as its main objective may be a variation of the flat tax; or it may be a national sales tax; or it may be another system aimed at taxing consumption instead of investment such as proposed by Sens. Sam Nunn and Pete Domenici.

The power and dominance of global capital markets in today's world would seem to aim in the latter direction. Lowering taxes on capital would at first blush seem to help the already wealthy, current holders of capital. But whatever its effect on the distribution tables, it could unleash powerful capital flows, both domestic and foreign, that would lower interest rates significantly and make investment in the U.S. even more competitive than it is today. At the same time, they

would maintain the strength of the dollar and maintain low rates of inflation.

Achieving the objective of higher growth could also include the gradual privatization of Social Security in order to create a massive investment pool with higher returns for the beneficiaries and greater investment capabilities for the private and the public sector. The key to economic success in the 21st Century will be cheap and ample capital, high levels of private investment to increase productivity, high levels of education and advanced technology. It also includes higher levels of public investment in building a national infrastructure supportive of the 21st century economy.

If the Democrats can redefine their concept of fairness, Republicans, on the other hand, may have to abandon their view of passive government. If growth and opportunity are to be the prime objectives of our society, the government must play an active role in some areas. The first is education; the second is higher levels of infrastructure investment; the third is in the maintenance of a corporate safety net.

Public school reform, driven by higher standards, is an absolute priority. Even though that is a state responsibility, it is a national problem. These standards, regardless of today's political conventional wisdom, will ultimately be national in scope. Access to higher education should be made available to any graduating high school senior meeting stringent national test levels and demonstrably in need of financial assistance. The equivalent of the GI Bill, providing national college scholarships to needy students, should be created and federally funded. It should be the primary affirmative action program funded by the federal government.

As part of a higher economic growth rate, state and local governments should provide higher levels of infrastructure investment. In addition to the creation of private employment, this could also provide public sector jobs to help meet the work requirements of welfare reform, as well as to provide the support to a high capacity modern economy. Financial assistance from the federal government would encourage the states in that endeavor. Higher growth would enable federal as well as state and local budgets to take on this responsibility.

A corporate safety net should be provided in order to deal with the inevitable dislocations which corporate downsizings and restructurings will continue to create. Business, labor and government should cooperate to create a system of portable pensions and portable health care to cushion the transition from one job to another. Incentives should be provided for business to make use of stock grants for employees laid off as a result of mergers and restructuring. If losing one's job creates wealth for the shareholders, the person losing his or her job should share in some of that wealth creation. Corporate pension funds, to the extent they are overfunded as a result of the stock market boom, could be part of a process to provide larger severance and retraining payments for laid-off employees.

Other than in areas such as pensions and health care, it is counterproductive to try to legislate the social side of "corporate responsibility"; it is almost impossible to define. To begin with, most large U.S. corporations are majority-owned by financial institutions including the pension funds of the very employees who are in danger of displacements. These institutions, driven by their own competitive requirements, were the source of the pressures on management which resulted in the dramatic restructuring of American industry over the last decade. Those restructurings have made American industry highly competitive in world markets; they must continue and we must continue the opening of world trade.

Boards of directors are not blind to the risks of political backlash. The issue of executive compensation, made starkly visible by its tie-in with the rise in stock market values, will be dealt with responsibly or boards will find themselves under great shareholder pressure. The use of profit-sharing, stock options and stock grants to practically all levels of the corporation will be significantly expanded and should create greater common interests between executives, shareholders and employees. However, the main role of the corporation must remain to be competitive, to grow, to invest, to hire and to generate profits for its shareholders; a significant portion of employee compensation should be related to the growing productivity of its employees.

The benefits to business in such an approach are obvious, but labor also has a large stake in such a re-examination. Some of the proposals put forth at present would have very negative results for working Americans. It is too late to return to a protected American economy; the only result would be to trigger a financial crisis that would harm America and our trading partners. It is impossible to stop the effect of global information, technology, capital and labor. What is important for working people, union or nonunion, is the creation of more well-paying jobs as a result of high levels of investment and high levels of education; to share in the profits of their employers through profit-sharing and stock ownership; to share in the benefit potential of pension funds vastly increased by the boom in the financial markets; to have access to permanent health care security and to high levels of education and training to deal with the 21st century requirements.

Business and labor, together, should hammer out such an agenda. If we are serious about balancing the budget in a responsible manner, the president and the congressional leadership could set a national objective that the economy's rate of growth reach a minimum sustainable level of 3% annually by the year 2000. They could ask the best minds in the country, from government, from business, from labor and from academia to provide a set of options which could lead to such a result. Many of these options would be politically difficult, both for Democrats and for Republicans, and some would probably be impossible. But the only way to abandon long-held notions that may no longer apply to today's world is to discuss them within the framework of a very simple and definite objective: higher growth.

A DIFFERENT PERSPECTIVE

Setting the U.S. on a path to higher growth will require coordination with our partners in the G-7. The Europeans should welcome such an initiative since they are in greater need for growth than we are. Nevertheless, the process will be slow and it must be put into motion.

The President's setting an objective of higher growth would have an important psychological impact; the economy is, after all, heavily influenced by psychological factors. If the president were to set an ambitious growth objective, then all elements affecting the economy would be subject to review from a different perspective. They would include fiscal and monetary policy; investments and savings; education and training; and international trade. Most importantly, these activities should take place within a framework in which the Democratic Party redefines its concept of fairness and the Republican Party redefines its concept of the role of government. At present, neither is appropriate for the revolution that technology, globalization and the inclusion of an additional one billion people to the global work force will bring about tomorrow.

Ultimately, a rising tide will float all ships, and both political parties can help bring this about. If they fail to do so, at a minimum the present malaise will turn uglier, and it is even conceivable that another tide will sweep away existing parties. If that were to happen, arguments about growth or fairness will be totally irrelevant.•

STEVEN P. AUSTIN—1996 FIRE SERVICE PERSON OF THE YEAR

• Mr. BIDEN. Mr. President, 30 years ago, President Lyndon Johnson stated,

The American firefighter today must meet the challenge of fires caused by numerous new chemicals, explosives, and combustible fibers, and other dangerous materials. He must be prepared to fight fires in crowded cities and giant buildings, as well as in remote rural communities.

Today, we know that these challenges to the fire services have grown considerably. The greatest example, of course, being the tragedy in Oklahoma City.

That is why today, Mr. President, I am honored to pay tribute to Steven P. Austin, who last night at the National Fire and Emergency Services Dinner, was named Fire Service Person of the Year.

Steve Austin serves as chairman of the National Advisory Committee for the Congressional Fire Services Institute, working countless hours to meet the challenges faced by the fire and emergency services. He works diligently helping those who help us in times of crisis.

Steve Austin may remember President Johnson's words back in 1966, because 3 years prior, Steve Austin began his service as a volunteer firefighter. Today, he continues to respond to emergency calls as a member of the Aetna Hose, Hook and Ladder Company of Newark, DE.

Along with his work as chairman and firefighter, Steve Austin, continues to serve as a fire claims superintendent for the State Farm Fire and Casualty Company, external affairs representative for the International Association of Arson Investigators, chairman of the NFPA Technical Committee on Fire Investigator Professional Qualifications, and as a member of the Delaware State Fire Police. In the past, he has been president of the New Castle County Volunteer Firemen's Association and also president of the Delaware Chapter International Association of Arson Investigators.

During his distinguished career, Steve Austin has received the George

H. Parker Distinguished Service Award, the Life Membership Award, and the Presidential Award from the International Association of Arson Investigators.

Steve Austin is committed to meeting the new challenges faced by the fire services. I am confident that as long as there are dedicated people like him, the fire service will continue to serve us with the heroism, bravery and professionalism that we have all come to expect. It is an honor to pay tribute to him today as a great leader, a great Delawarean, and a great friend.●

TRIBUTE TO PAUL D. BARNES

● Mr. SIMON. Mr. President, we are quick to criticize those who work for our Government but rarely recognize the people who have dedicated long careers to making Government work better and more cost effectively for all of us. For that reason, I want to pay tribute today to Paul D. Barnes.

Mr. Barnes is currently the Regional Commissioner for the Social Security Administration's Chicago region. His fine service in Chicago will end in late May, when he assumes his new position as Assistant Deputy Commissioner for Operations in Baltimore, MD. I am confident that Chicago's loss will be Baltimore's gain as Mr. Barnes brings his strong work ethic and demonstrated leadership to his new job.

Paul Barnes has served as Regional Commissioner for the Social Security Administration's Chicago region, which includes all six Midwestern States, since November 1990. As regional commissioner, he has been responsible for providing executive direction and leadership to the region's 7,500 Federal employees and the 2,200 State employees with whom they contract for disability determinations. These employees provide Social Security services as well as administer the Supplemental Security Income Program for the 45 million people who reside in the region.

Mr. Barnes began his career with the Social Security Administration in Columbia, TN in 1968. He has held a number of management positions since joining the agency, including serving as director of the southeastern Program Service Center in Birmingham, AL from July 1987 through May 1989. Before taking the top post in the Chicago region, he was serving as the deputy regional commissioner for the Atlanta region in Georgia.

He was a magna cum laude graduate of Lane College in 1968, and earned a master's degree in public administration from the University of Southern California. He currently serves as a member of the Executive Committee of Chicago's Federal Executive Board. He has served as the federal executive board's executive vice-president and in 1993, he led the metro-Chicago Combined Federal Campaign to the city's first ever $3 million charity drive.

In 1995, Mr. Barnes received a Presidential Distinguished Executive Award from President Clinton in recognition of his efforts to meet the national performance review objectives of producing a Government that works better and costs less. In 1992, he received a Meritorious Executive Award from President Bush and the Social Security Administration's National Leadership Award.

Mr. Barnes has touched many lives in Illinois and he will be missed. I wish him the best of luck in the future and thank him for his support and dedication to the people of Illinois and our entire region.●

CONGRATULATING THE POLISH PEOPLE

Mr. DOLE. Mr. President, I ask unanimous consent the Committee on the Judiciary be discharged from further consideration of Senate Joint Resolution 51, and further that the Senate proceed to its immediate consideration.

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

The clerk will report.

The legislative clerk read as follows:

A joint resolution (S. J. Res. 51) saluting and congratulating Polish people around the world as, on May 3, 1996, they commemorate the 205th anniversary of the adoption of Poland's first constitution.

The Senate proceeded to consider the joint resolution.

Mr. DOLE. Mr. President, May 3 is a very important day for the Polish people for it is on this day that they will celebrate the 205th anniversary of Poland's first constitution.

Last week, along with a number of my Senate colleagues on both sides of the aisles, I introduced a resolution commemorating this historic occasion. I am pleased that the Senate is acting today to unanimously pass this resolution.

The Polish Constitution was the first is Eastern Europe to secure individual and religious freedoms for all persons living under it. While it was short lived, its principles endured and it became the symbol around which a national consciousness was born. When the courageous people of Poland forced out their Communist oppressors, they returned to the basic freedoms and principles contained in this constitution.

Mr. President, this resolution is a manifestation of this Congress' strong support for a free independent Poland. It is also a reflection of the deep and abiding friendship between Poland and the United States.

I know that all of my colleagues join with me in congratulating Americans of Polish descent and Poles all around the globe on this important occasion.

Ms. MIKULSKI. Mr. President, I am proud to rise as a cosponsor of this resolution to commemorate the 205th anniversary of the adoption of the first Polish Constitution.

Democracy is not a new idea in Poland. The heart and soul of Poland have always been democratic. In 1791, the Polish people enacted the first liberal constitution in Europe since antiquity. It was the second constitution in the world, after the American Constitution. The Polish Constitution was similar to ours. It included the principles of individual liberty and a separation of powers. It stated that all power would be derived from the will of the people—a truly revolutionary idea in 18th century Europe.

The friendship between the United States and Poland goes back to the Revolutionary War, when the great Polish patriot Tadeusz Kosciuszko fought in our war of independence. In fact, he helped to defend Philadelphia as our constitution was being drafted. When he returned to Poland, Kosciuszko helped to defend his country from the invading Russians who feared their neighbor's growing commitment to democracy.

The Polish Constitution was in effect for less than 2 years. But its principles endured. Even while Poland was held captive behind the iron curtain, the Polish people remembered and longed for liberty. Theirs was the first country in Eastern Europe to free itself from communism and Russian domination.

Today, Poland is a free and independent nation—ready to take its rightful place as a member of NATO and the European Union.

Mr. President, I am so proud to be the first Polish American woman to be a Member of the U.S. Senate. I am proud of my heritage, and what it taught me about patriotism, loyalty and duty. And I am proud to join my colleagues in paying tribute to the Polish people for their contribution to democracy.

Mr. LEVIN. Mr. President, I rise today to commemorate the 205th anniversary of the adoption of Poland's first constitution, which will be celebrated on May 3, 1996. I am pleased to be a cosponsor of Senate Joint Resolution 51 which salutes and congratulates the Polish people on this historic milestone.

The Polish constitution of 1791 established that "all power in civil society should be derived from the will of the people." It marked the first attempt of a Central-Eastern European country to break free of the feudal system of government. It was also the first constitution in the region to uphold individual and religious rights for all people. Even though the constitution was in effect less than 2 years, the guiding principles that it put forth lived on in the hearts

of the people of Poland. These principles gave them strength in the dark years that followed for Poland.

It is heartening to see the strides Poland has made in the past few years as it reemerges into the community of free nations. I salute the people of Polish descent in America who have contributed so much to our democracy and those around the world for the principles their forebears established in Central-Eastern Europe 205 years ago.

Mr. DOLE. I ask unanimous consent the joint resolution be considered read a third time and passed, the preamble be agreed to, the motion to reconsider laid upon the table, and any statements appear at the appropriate place in the RECORD. I ask my statement be included.

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

The joint resolution (S.J. Res. 51) was considered read the third time, and passed.

The preamble was agreed to.

The joint resolution, with its preamble, reads as follows:

S.J. RES. 51

Whereas, on May 3, 1996, Polish people around the world, including Americans of Polish descent, will celebrate the 205th anniversary of the adoption of the first Polish constitution;

Whereas American Revolutionary War hero Thaddeus Kosciuszko introduced the concept of constitutional democracy to his native country of Poland;

Whereas the Polish constitution of 1791 was the first liberal constitution in Europe and represented Central-Eastern Europe's first attempt to end the feudal system of government;

Whereas this Polish constitution was designed to protect Poland's sovereignty and national unity and to create a progressive constitutional monarchy;

Whereas this Polish constitution was the first constitution in Central-Eastern Europe to secure individual and religious freedom for all persons in Poland;

Whereas this Polish constitution formed a government composed of distinct legislative, executive, and judicial powers;

Whereas this Polish constitution declared that "all power in civil society should be derived from the will of the people";

Whereas this Polish constitution revitalized the parliamentary system by placing preeminent lawmaking power in the House of Deputies, by subjecting the Sejm to majority rule, and by granting the Sejm the power to remove ministers, appoint commissars, and choose magistrates;

Whereas this Polish constitution provided for significant economic, social, and political reforms by removing inequalities between the nobility and the bourgeoisie, by recognizing town residents as "freemen" who had judicial autonomy and expanded rights, and by extending the protection of the law to the peasantry who previously had no recourse against the arbitrary actions of feudal lords;

Whereas, although this Polish constitution was in effect for less than 2 years, its principles endured and it became the symbol around which a powerful new national consciousness was born, helping Poland to survive long periods of misfortune over the following 2 centuries; and

Whereas, in only the last 5 years, Poland has realized the promise held in the Polish constitution of 1791, has emerged as an independent nation after its people led the movement that resulted in historic changes in Central-Eastern Europe, and is moving toward full integration with the Euro-Atlantic community of nations: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That—

(1) the people of the United States salute and congratulate Polish people around the world, including Americans of Polish descent, as on May 3, 1996, they commemorate the 205th anniversary of the adoption of the first Polish constitution;

(2) the people of the United States recognize Poland's rebirth as a free and independent nation in the spirit of the legacy of the Polish constitution of 1791; and

(3) the Congress authorizes and urges the President of the United States to call upon the Governors of the States, the leaders of local governments, and the people of the United States to observe this anniversary with appropriate ceremonies and activities.

ORDERS FOR THURSDAY, MAY 2, 1996

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 9 a.m. on Thursday, May 2; further, that immediately 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 there then be a period for morning business until the hour of 10 a.m., with Senators permitted to speak for up to 5 minutes each with the following Senators to speak for the designated times: Senator BURNS, 5 minutes; Senator GRASSLEY, 5 minutes; Senator GRAMS, 10 minutes; Senator DORGAN, 30 minutes; Senator BINGAMAN, 5 minutes. I further ask at the hour of 10 a.m. the Senate resume consideration of the immigration bill.

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

PROGRAM

Mr. DOLE. Mr. President, the Senate will resume consideration of S. 1664, the immigration bill, tomorrow morning, and Senators should be reminded there are still several amendments to be debated. Hopefully, some of those can be disposed of on voice votes. It is our expectation to complete action on the immigration bill by early tomorrow afternoon. Then we will determine what we will turn to. Hopefully, it can be something that might mean we might have debate on Friday but no votes on Friday, but I will make that announcement or Senator LOTT can make that announcement sometime tomorrow afternoon.

We would like to accommodate Members who are engaged in hearings tomorrow. So, for those who are offering amendments, if they will accommodate us, accommodate the managers, Senator KENNEDY and Senator SIMPSON, maybe we can postpone votes until 12 noon tomorrow.

Mr. FORD. Mr. President, will the distinguished majority leader yield for a question? Did I understand that we might be able to get out of here to see the greatest 2 minutes in sports?

Mr. DOLE. That would be the Kentucky Derby?

Mr. FORD. I think it is set on Friday.

Mr. DOLE. We will try to work it out.

WISCONSIN WORKS WELFARE LAW

Mr. DOLE. Mr. President, our current welfare system does not work because it is not based on the proven American formula for escaping poverty: A job. A strong family. A good education. Saving some money to buy a home.

Instead, it undermines almost every value that leads to self-reliance and success. Poverty persists and 3 out of every 10 births are out of wedlock. Unbelievably, the out-of-wedlock birth rate is 80 percent in some communities.

Within the past year, the U.S. Congress has twice passed Federal welfare reform. President Clinton has vetoed it both times. Face it, President Clinton has preserved the current system which is trapping another generation of Americans in despair and locking them out of the American dream.

Wisconsin Gov. Tommy Thompson refuses to allow this to happen. Last Thursday, he signed into law a program replacing in Wisconsin the failed national welfare system. It is called Wisconsin Works. The new program provides work opportunities and work programs. In order to help beneficiaries get a job, it makes available child care and health care to all low-income families who need it.

As Governor Thompson stated:

After almost a decade of welfare reform experiments, Wisconsin Works represents the end of welfare in Wisconsin. The current aid to families with dependent children [AFDC] program has become, for many families, a way of life. Because the program does not require work or provide incentives to become self-sufficient, it has trapped many families in dependency. Wisconsin Works aims to rebuild the connection between work and income and help families achieve self-sufficiency.

Due to his experience, Governor Thompson knows what he is talking about. He has made welfare reform a top priority by introducing more than 10 reform initiatives and by working hard to fix the current Welfare-to-Work Program called JOBS. During his administration Wisconsin's AFDC caseload has been reduced by more than 27 percent.

Wisconsin Works is the good news. Now let me give you the bad. The Governor and the Wisconsin Legislature

cannot deliver to the people of Wisconsin this replacement for the failed system until President Clinton and his administration give them permission. By twice vetoing Federal welfare reform passed by our Congress, the President has denied Wisconsin and many other States the opportunity to put into place needed reforms.

The status quo, which the President has preserved, requires Wisconsin to come to the Clinton administration on bended knee to ask Washington bureaucrats for permission to make adjustments to the current one-size-fits-all national welfare system.

No doubt about it, while welfare recipients remain trapped in the current system, President Clinton will claim he has helped reform welfare by granting States permission to experiment through controlled demonstration programs known as "waivers."

The reality is these waivers are not the solution. We all know waivers have brought us in the right direction. However, the waiver process perpetuates a flawed system. Real change will only occur when States are released from the burden of excessive Federal rules and regulations. The waiver process is too costly, time consuming, and burdensome, often requiring months and months of negotiating between a State and the relevant Federal Cabinet agency

Earlier this year, all 50 of the Nation's Governors rejected the waiver process in favor of comprehensive welfare reform. Their unanimously adopted policy would provide greater State flexibility to enhance States as "laboratories of democracy" while ensuring the necessary State accountability to promote work, family, and individual self-sufficiency among welfare beneficiaries.

The national bipartisan Governor's welfare policy reflects the principles contained in both welfare reform bills passed by the Congress and vetoed by the President. I remain committed to working with our Nation's Governors to accomplish real Federal welfare reform.

President Clinton has said that he is reluctant to return power to the States because it will lead to a "race to the bottom." As Governor Thompson and the Wisconsin Legislature have proved, however, compassion and innovation can go hand in hand. I congratulate them for their achievement, and I invite President Clinton to join with this Congress in moving power out of Washington and returning it to where it belongs—our States, our communities, and our people.

UNITED STATES LOSES FIRST WORLD TRADE ORGANIZATION CASE

Mr. DOLE. Mr. President, the World Trade Organization has just issued its first decision in a trade case brought under the new dispute settlement system.

The case was brought against the United States by Venezuela and Brazil. The allegation was that a U.S. environmental regulation, issued under the Clean Air Act, discriminated against imported gasoline.

On Monday, the United States lost the case. President Clinton must now decide whether to comply with the WTO decision. If he decides the United States should comply, he must announce a plan for doing so.

I believe the American people deserve an explanation from President Clinton about this case. They deserve an explanation about what this case might mean in the future for other U.S. laws and regulations.

Clearly there will be future WTO cases where the United States will be the losing party. We cannot expect to win every case. Perhaps Monday's case was properly decided.

But it seems to me that our laws should continue to be a matter for Americans, not international judges, to determine. We should decide what our environmental laws will be. We should decide what kinds of regulations are necessary to protect our environment. We should decide that our children deserve cleaner air and purer water, not some bureaucrat in Geneva.

We do not always agree, and that is part of our democratic process. But at least we work out for ourselves what laws and regulations are best for America.

Mr. President, I believe President Clinton has simply failed to tell the American people what his strategy is for defending other American laws in the future from potential wrongful attack in the WTO. As far as I know, President Clinton has been silent on this question, one that is deeply troubling to many Americans.

I have a strategy for defending American laws. I proposed a plan in January 1995 that would ensure that the United States could withdraw from the WTO if our laws, and our rights, were being trampled in Geneva.

Many, many Americans shared my concern—that the WTO might begin to operate out of control, might begin to issue rulings that were outside its mandate, in short, that the WTO might abuse its authority. I was concerned that if this were to happen, the United States would not have any adequate mechanism to deal with it. My proposal creates such a mechanism. It allows us to get all the benefits of the WTO, but protects us against the potential harm should the WTO fail to honor our rights.

Unfortunately, my proposal has not yet become law because of some opposition—not much. There is strong bipartisan support for this proposal, but one of my colleagues on the other side has had a hold on this bill several months, and we hope to move on it early this month or next month.

President Clinton supports my proposal. In fact, he endorsed my proposal when I endorsed the GATT at the White House nearly 2 years ago. I certainly would appreciate the President's help in getting this measure passed. I think it would be helpful to the President and to the country. It would answer a lot of concerns American workers have who are frustrated about the loss of American jobs.

So I hope we can have action on my proposal in the very near future with the President's support.

AFSA 35TH ANNIVERSARY

Mr. DOLE. Mr. President, the Air Force Sergeants Association [AFSA] marks the 35th anniversary of its founding today. I commend this association for all of its efforts on behalf of the entire military community but, in particular, the enlisted component.

In 1961, AFSA was founded as a nonprofit association to represent the interests of Air Force enlisted members, who, at that time, had no voice to speak for them. Over the years, AFSA's membership has grown to 160,000 with nearly 300 chapters around the world. Today, AFSA represents active and retire enlisted Air Force, Air Force Reserve, and Air National Guard members and their families.

In my view, AFSA's reputation on Capitol Hill is better than ever, a broker of honest information—whether through testimony, visits, or correspondence—working hand-in-hand with elected officials. AFSA has worked hard over the years to keep Members of Congress focused on the quality of the lives of the active and retired enlisted men and women AFSA represents.

AFSA was directly involved in championing improved pay and allowances for active duty members, dental and income insurance programs for reservists, the restoration of military cola equity, the end of source taxation, and the increase in the Social Security earnings limit.

Last fall, AFSA generated massive grassroots support to clearly show where military personnel stood on the "high-one" retirement recalculation proposal.

AFSA also provides awards, grants and scholarships through the Airmen Memorial Foundation, AMF, established in 1983. In addition, the AMF has a post-military employment program that aids Air Force members who are about to retire or separate.

AFSA also believes in preserving the heritage and accomplishments of Air Force enlisted personnel. In 1986, AFSA founded the Airmen Memorial Museum in Suitland, MD, which is a comprehensive reference center for Air Force enlisted history.

On the occasion of their 35th anniversary, I congratulate the Air Force Sergeants Association. I know that AFSA will continue to be an effective, strong, and dedicated voice for Air Force enlisted personnel, active, reserve, guard, retired members, and their families. I thank the association for its successful efforts and look forward to continuing to work with AFSA on matters of mutual concern.

ORDER FOR ADJOURNMENT

Mr. DOLE. Mr. President, I understand that the Senator from Massachusetts wishes to speak. I ask unanimous consent, after the Senator from Massachusetts completes his remarks, that the Senate stand in adjournment under the previous order.

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

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

MINIMUM WAGE

Mr. KENNEDY. Mr. President, on tomorrow, I expect the Senate to conclude its action on the illegal immigration bill. During the earlier discussion on the immigration bill, I tried to take advantage of the opportunity to offer an amendment that would have raised the minimum wage 90 cents—45 cents this year, 45 cents the next year—90 cents for working families. We were unable to get sufficient recognition to put that proposal before the U.S. Senate, and the cloture motion was put before us, which effectively restricted our opportunity to take any action on the minimum wage.

A further cloture motion was offered, which further prohibits us from having considered the minimum wage, even if we had extended the time, which under the rules would have permitted debate and discussion for some 30 hours.

So for this phase of the minimum wage debate, we will conclude tomorrow, through the decision of the Senate, action on the illegal immigration bill and any opportunity to have the minimum wage amendment before the Senate.

Then we will move on to other business and, as I have stated at other times, as the minority leader, Senator DASCHLE, has stated, and as others have stated—my colleagues Senator KERRY and Senator WELLSTONE—we will look for the first opportunity to offer that amendment.

It is a rather poignant time, Mr. President, as we are having this debate on the minimum wage, because in 1960, during the campaign of President Kennedy, one of the important issues was the issue of the increase in the minimum wage.

In the 1960 campaign against Richard Nixon, John Kennedy ran an ad in which he called for an increase in the minimum wage. And in the ad, he sat in front of the camera and said:

Mr. Nixon has said that a $1.25 minimum wage is extreme. That's $50 a week. What is extreme about that? I believe the next Congress and the President should pass a minimum wage for $1.25 an hour. Americans must be paid enough to live.

I am reminded of the same issue before us today. This Friday, May 3, is the 35th anniversary of BOB DOLE's vote against President Kennedy's legislation raising the minimum wage from $1 to $1.25.

BOB DOLE and Richard Nixon were wrong to oppose President Kennedy's minimum wage hike 35 years ago, and I believe BOB DOLE and RICHARD ARMEY are wrong to oppose President Clinton's minimum wage hike today.

Mr. President, this issue has been debated and discussed. It is as old as some 60 years of our history. We know what the issues are: Are we going to respect work? Are we going to honor work? Are we going to say to men and women who are working 40 hours a week, 52 weeks of the year that they ought to have a livable wage to be able to provide for their family, their children, to pay a mortgage, put food on the table, are we going to meet our responsibilities to those working families, which at other times we have done?

This issue will be before us again and again and again until we are able to meet our responsibilities to the working families in this country. That we pledge, that we commit ourselves to. And just as we found that we were successful in raising the minimum wage in the early 1960's from $1 to $1.25, all the way up to where it is at the present time, we are going to be successful in raising it to $5.15 an hour as well.

Mr. President, I yield the floor.

ADJOURNMENT UNTIL 9 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9 a.m. tomorrow morning.

Thereupon, the Senate, at 8:38 p.m., adjourned until Thursday, May 2, 1996, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate May 1, 1996:

FEDERAL MINE SAFETY AND HEALTH REVIEW

MARY LUCILLE JORDAN, OF MARYLAND, TO BE A MEMBER OF THE FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION FOR A TERM OF 6 YEARS EXPIRING AUGUST 30, 2002. (REAPPOINTMENT)

IN THE AIR FORCE

THE FOLLOWING-NAMED OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE, TO THE GRADE INDICATED, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 8373, 8374, 12201, AND 12212:

To be major general

BRIG. GEN. KEITH D. BJERKE [redacted]
BRIG. GEN. EDMOND W. BOENISCH, JR. [redacted]
BRIG. GEN. STEWART R. BYRNE [redacted]
BRIG. GEN. JOHN H. FENIMORE [redacted]
BRIG. GEN. JOHNNY J. HOBBS [redacted]
BRIG. GEN. STEPHEN G. KEARNEY [redacted]
BRIG. GEN. WILLIAM B. LYNCH [redacted]

To be brigadier general

COL. BRIAN E. BARENTS [redacted]
COL. GEORGE P. CHRISTAKOS [redacted]
COL. WALTER C. CORISH, JR. [redacted]
COL. JAMES V. DUGAR [redacted]
COL. FRED E. ELLIS [redacted]
COL. FREDERICK D. FEINSTEIN [redacted]
COL. WILLIAM P. GRALOW [redacted]
COL. DOUGLAS E. HENNEMAN [redacted]
COL. EDWARD R. JAYNE II [redacted]
COL. GEORGE W. KEEFE [redacted]
COL. RAYMOND T. KLOSOWSKI [redacted]
COL. FRED N. LARSON [redacted]
COL. BRUCE W. MACLANE [redacted]
COL. RONALD W. MIELKE [redacted]
COL. FRANK A. MITOLO [redacted]
COL. FRANK D. REZAC [redacted]
COL. JOHN P. SILLIMAN, JR. [redacted]
COL. GEORGE E. WILSON III [redacted]

IN THE NAVY

THE FOLLOWING-NAMED OFFICERS FOR PROMOTION IN THE NAVAL RESERVE OF THE UNITED STATES TO THE GRADE INDICATED UNDER TITLE 10, UNITED STATES CODE, SECTION 5912:

UNRESTRICTED LINE

To be rear admiral (lower half)

CAPT. JOHN NICHOLAS COSTAS [redacted]
CAPT. JOSEPH COLEMAN HARE [redacted]
CAPT. DANIEL LAWRENCE KLOEPPEL [redacted]
CAPT. HENRY FRANCIS WHITE, JR. [redacted]

UNRESTRICTED LINE (TAR)

To be rear admiral (lower half)

CAPT. JOHN FRANCIS BRUNELLI [redacted]

PUBLIC HEALTH SERVICE

THE FOLLOWING CANDIDATES FOR PERSONNEL ACTION IN THE REGULAR CORPS OF THE PUBLIC HEALTH SERVICE SUBJECT TO QUALIFICATIONS THEREFOR AS PROVIDED BY LAW AND REGULATIONS:

1. FOR APPOINTMENT

To be medical director

MICHAEL M. GOTTESMAN
HAROLD W. JAFFE

To be senior surgeon

JAMES F. BATTEY, JR.

To be surgeon

HELENE D. GAYLE
JEFFREY R. HARRIS
DOUGLAS B. KAMEROW
THURMA G. MCCANN
MICHAEL E. ST LOUIS

To be senior assistant surgeon

ROBERT T. CHEN
SUSAN L. CRANDALL
AHMED M. ELKASHEF
MICHAEL M. ENGELGAU
RICHARD L. HAYS
BROCKTON J. HEFFLIN
CLARE HELMINIAK
KATHLEEN L. IRWIN
CONNIE A. KREISS
BORIS D. LUSHNIAK
DOUGLAS L. MCPHERSON
MANETTE T. NIU
ROBERT J. SIMONDS
JONATHAN T. WEBER

To be senior assistant dental surgeon

THOMAS T. BARNES, JR.
MITCHEL J. BERNSTEIN
BRENDA S. BURGES
DEBORAH P. COSTELLO
DAVID A. CRAIN
RICHARD L. DECKER
JAMES V. DEWHURST III
DEBRA L. EDGERTON
PAUL J. FARKAS
JANIE G. FULLER
KENT K. KENYON
RUTH M. KLEVENS
EDWARD E. NEUBAUER
THOMAS A. REESE
JOSE C. RODRIGUEZ
ADELE M. UPCHURCH

To be dental surgeon

MICHAEL E. KORALE

To be nurse officer

CATHY J. WASEM

To be senior assistant nurse officer

DONNA N. BROWN
GRACIE L. BUMPASS
MARTHA E. BURTON
ANNETTE C. CURRIER
THOMAS E. DALY
TERENCE E. DEEDS
JOSEPH P. FINK
ROBERT C. FRICKEY
JUDY A. GERRY
ANNIE L. GILCHRIST
BYRON C. GLENN
MARGARET A. HOEFT
LORRAINE D. KELWOOD
MARY M. LEEMHUIS
SUSAN R. LUMSDEN
BRENDA J. MURRAY
MICHAEL J. PAPANIA
MONIQUE V. PETROFSKY
PATRICIA K. RASCH
LETITIA L. RHODES-BARD
THOMAS M. SCHEIDEL
RUTH A. SHULTS
JERILYN A. THORNBURG
SCOTT A. VANOMEN
ELLEN D. WOLFE

To be assistant nurse officer

SUSAN Z. MATHEW
TERRY L. PORTER
RICHARD M. YOUNG

To be senior assistant engineer officer

TERRY L. AAKER
CHERYL FAIRFIELD ESTILL
DEBRA J. HASSINAN
DONALD J. HUTSON
ALLEN K. JARRELL
JEFFREY J. NOLTE
MUTAHAR S. SHAMSI
GEORGE F. SMITH

To be assistant engineer officer

NATHAN D. GJOVIK

To be scientist

DELORIS L. HUNTER

To be Senior assistant scientist

ANNE T. FIDLER
PATRICK J. MCNEILLY
HELENA O. MISHOE
PAUL D. SIEGEL
WILLIAM H. TAYLOR III

To be sanitarian

THOMAS C. FAHRES
DANIEL M. HARPER
CHARLES L. HIGGINS
MICHAEL M. WELCH

To be senior assistant sanitarian

GAIL G. BUONVIRI
LARRY F. CSEH
ALAN J. DELLAPENNA, JR.
ALAN S. ECHT
THOMAS A. HILL
FLORENCE A. KALTOVICH
DAVID H. MCMAHON
NATHAN M. QUIRING
DAVID H. SHISHIDO
LINDA A. TIOKASIN
RICHARD E. TURNER
BERRY F. WILLIAMS

To be veterinary officer

STEPHANIE I. HARRIS

To be senior assistant veterinary officer

HUGH M. MAINZER
SHANNA L. NESBY
META H. TIMMONS

To be senior assistant pharmacist

SARAH E. ARROYO
EDWARD D. BASHAW
CHARLES C. BRUNER
VICKY S. CHAVEZ
SCOTT M. DALLAS
MICHELE F. GEMELAS
TERRY A. HOOK
ALICE D. KNOBEN
NANCY E. LAWRENCE
ANDREW J. LITAVECZ IV
JOSEPHINE A. LYGHT
WILLIAM B. MCLIVERTY
M. PATRICIA MURPHY
ANNA M. NITOPI
ROBERT G. PRATT
KURT M. RILEY

To be assistant pharmacist

GARY L. ELAM
JAMES A. GOOD
VALERIE E. JENSEN
KIMBERLY D. KNUTSON
SANDRA C. MURPHY
JILL A. SANDERS
PAMELA STEWART-KUHN

To be assistant pharmacist pharmacist

L. JANE DUNCAN

To be senior assistant dietitian

CELIA R. HAYES
DAVID M. NELSON

To be therapist

MICHAEL P. FLYZIK

To be assistant therapist

MARK T. MELANSON

To be health services director

JAMES H. SAYERS

To be health services officer

MAUREEN E. GORMLEY

To be senior assistant health services officer

CORINNE J. AXELROD
DEBORAH DOZIER-HALL
WILLIAM M. GOSMAN
JANET S. HARRISON
REBECCA D. HICKS
BRIAN T. HUDSON
RICHARD D. KENNEDY
EDWARD M. MCENERNEY
MICHAEL R. MILNER
ANNE M. PERRY
ELIZABETH A. RASBURY
RAY J. WEEKLY
CRAIG S. WILKINS

To be assistant health services officer

WILLARD E. DAUSE

HOUSE OF REPRESENTATIVES—*Wednesday, May 1, 1996*

The House met at 11 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

O God, our help in ages past,
Our hope for years to come,
Our shelter from the stormy blast,
And our eternal home.

With these stirring words of Isaac Watts we recall Your providence, O God, to us and to all people. Your abiding word has led us in days of old to acknowledge Your acts of creation and Your blessings to us as a nation. And as we anticipate the days ahead, Your gifts of justice and mercy give us hope and give us encouragement. For these and all Your gifts, O God, we offer this prayer of thanksgiving and praise. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

Mr. CHABOT. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

The SPEAKER. The question is on the Chair's approval of the Journal.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. CHABOT. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Pursuant to clause 5, rule I, further proceedings on this question are postponed.

The point of no quorum is considered withdrawn.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from Florida [Mr. WELDON] come forward and lead the House in the Pledge of Allegiance.

Mr. WELDON of Florida led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT AS MEMBERS TO MEXICO-UNITED STATES INTERPARLIAMENTARY GROUP FOR 2D SESSION OF 104TH CONGRESS

The SPEAKER. Pursuant to the provisions of 22 U.S.C. 276h, the Chair appoints the following Members of the House to the Mexico-United States interparliamentary group for the 2d session of the 104th Congress: Mr. KOLBE, Arizona, Chairman; Mr. BALLENGER, North Carolina, Vice Chairman; Mr. GILMAN, New York; Mr. DREIER, California; Mr. GALLEGLY, California; Mr. MANZULLO, Illinois; Mr. BILBRAY, California; Mr. DE LA GARZA, Texas; Mr. RANGEL, New York; Mr. MILLER, California; Mr. GEJDENSON, Connecticut; and Mr. FILNER, California.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair will entertain fifteen 1-minutes on each side.

WHATEVER HAPPENED TO THAT TAX CUT FOR AMERICAN FAMILIES?

(Mr. CHABOT asked and was given permission to address the House for 1 minute.)

Mr. CHABOT. Mr. Speaker, when I go back to Cincinnati every weekend, I get a chance to talk to a lot of working folks. It's amazing how many of them ask me this question: "Whatever happened to that middle-class tax cut my family was supposed to get this year? Didn't President Clinton promise us some relief?"

In fact, during his campaign, Mr. Clinton did indeed promise tax relief. Let me quote from his book, "Putting People First": "Middle-class taxpayers will have a choice between a children's tax credit or a significant reduction in their income tax rate."

So, whatever happened to that middle-class tax break? Well, somehow, our President forgot all about it, and instead, gave the American people something else; the largest tax increase in peacetime history including a hike in gasoline taxes. The only choice we got was between higher gas prices and not driving at all. Then, when the new Republican Congress did enact a $500 per child tax credit for working families, President Clinton killed it with his veto pen, calling it a tax cut for the rich. Mr. President, let's work together to give the American people tax relief.

TIME FOR A RAISE

(Ms. ROYBAL-ALLARD asked and was given permission to address the House for 1 minute.)

Ms. ROYBAL-ALLARD. Mr. Speaker, America's workers need a raise.

It has been almost 7 years since Congress raised the minimum wage.

Nearly all the benefits of that bipartisan effort have been eroded by inflation, reducing the value of the minimum wage to its lowest level since the early 60's.

Those who will benefit from a minimum wage increase are the 7 million working adults earning less than the President's proposed wage increase of $5.15 an hour, and the 40 percent of minimum wage workers who are the sole breadwinners of their family.

The additional $1,800 a year these workers will earn can pay for several months of groceries, health care services, household utilities, or go toward their children's education at a local community college.

Now is the time not for promises but for action.

If this Congress wants to encourage work we must reward working families by increasing the minimum wage and giving them hope for a better future.

It is time to give America's workers a raise.

SUPPORT THE INTERNATIONAL SPACE STATION

(Mr. WELDON of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WELDON of Florida. Mr. Speaker, the House will be considering the authorization bill for NASA next week, which includes funding for the international space station.

You will hear arguments from opponents of the space station. If their rhetoric sounds familiar, it should. They are the same arguments used last year, and the year before that, and the year before that. In fact, they are the same arguments used by opponents of any visionary project throughout history.

Space station opponents are trying to sink our country's investment in the future.

Opponents do not want you to hear that the space station is on schedule and on budget, or that nearly 90,000 pounds of hardware have been built by the United States and our international partners.

Opponents of the space station want you to cut it because they claim we cannot afford it.

I tell you now that we can't afford not to build the space station. We cannot turn our backs now on the men and women who have worked to make the space station and its promising future a reality.

I urge everyone to support the international space station—a vote for the space station is a vote for our children's future.

WHAT GOP REALLY STANDS FOR

(Mr. GUTIERREZ asked and was given permission to address the House for 1 minute.)

Mr. GUTIERREZ. Mr. Speaker, I drove by the gas station today. Premium was up. Unleaded was up. But the minimum wage—the salary earned by a lot of people who buy the gas and pump the gas—was stuck right where it had been.

Gas prices might be at their highest point in years, but the buying power of the minimum wage is soon to be at its lowest point in 40 years. Our lowest paid employees are getting gouged everywhere—at the gas station, at the grocery store. But, instead of giving minimum wage employees a break, the Republicans tell them to wait.

Yes, two bucks a gallon is a lot to pay—especially when you are only making four and a quarter an hour.

But, of course, the Republicans are careful not to cut into the profit margin of the oil companies. After all—that is the Republicans' profit margin, too. In the past few years, oil and gas companies have pumped millions of dollars into Republican campaign coffers. Now I finally realize what GOP stands for—gas, oil, and petroleum.

America's gas tanks are running on empty, but the Republican Party is out of gas.

REPEAL THE GAS TAX

(Mr. KINGSTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KINGSTON. Mr. Speaker, that last 1-minute was almost ridiculous. Why is your gas going up? Well, yes, it has to do with market, and perhaps there is a little too much coziness between the big oil companies, who have always been putting generous donations into Democratic campaign coffers. But one thing we must never forget is that gas, every single gallon, is 4.3 cents higher because Bill Clinton resides in the White House, and under a Democrat majority Congress they increased your gas prices 4.3 cents per gallon and Americans have been paying that for 2½ years.

I ask my Democrat colleagues who are so concerned about America's working class to join me in asking the President to repeal his excessive 4.3-cents-per-gallon gas tax and let us give Americans a little help this summer.

LET THE CHIPS FALL

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, the Department of Agriculture spends $200 million a year on the Environmental Quality Incentives Program known as EQUIP. Now the focus of the purpose of EQUIP is manure. That is right, manure. And after years of studies and reports and after hundreds and hundreds of millions of dollars, the Department of Agriculture has come to several conclusions.

No. 1, big farm animals produce more manure than small farm animals. And, No. 2, manure stinks. Beam me up. Mr. Speaker—$200 million to determine that manure stinks.

I think these environmentalists over at the Department of Agriculture have been smelling too many methane fumes. Why not just let the chips fall where they may, stockpile a little of it, and tell these monarchs and dictators overseas if they keep jacking around with oil prices, we are going to turn Elsie loose.

I yield back the balance of this methane.

WELFARE INVITES COMPARISONS TO SLAVERY

(Mr. FRANKS of Connecticut asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FRANKS of Connecticut. Mr. Speaker, in slavery people worked but were not paid. In our current welfare system people do not work but they are paid. Neither system can be condoned. It took a Republican President, Abraham Lincoln, to end slavery and it appears as though it will take a Republican President to end welfare as we know it.

When President Clinton had a Democrat-controlled Congress, there was no welfare bill to vote on. Now that the Republicans control Congress, President Clinton has repeatedly vetoed welfare reform.

But unlike then-Governor Clinton's 12-year failure to do what 48 other States did easily, pass a State civil rights bill, we should not wait on welfare reform. We should not continue to have a system that has been like a 20th century version of slavery. Welfare and slavery have both provided the basic necessities while leaving their victims filled with despair.

CALL FOR IMPOSITION OF WINDFALL PROFITS

(Mr. MARKEY asked and was given permission to address the House for 1 minute.)

Mr. MARKEY. Mr. Speaker, the Republicans want to repeal the 4.3-cent gasoline tax. Let us debate that. But there is no guarantee that the oil companies are going to lower prices by 4.3 cents, so the consumer would just ride over to the gasoline station, pay the extra 4.3 cents that the oil companies had in lower prices and they wind up with no extra money in their pocket. The only way in which we can be sure that the consumer gets a break is if we impose a windfall profits tax on oil companies.

□ 1115

In that way, the consumer, as taxpayer, will get that 4 cents back into their pocket.

In addition, down in Texas, Koch and Citgo and Coastal have closed down 300,000 barrels of oil refinery gasoline per day as of last Friday. Up in New Jersey, there is another 190,000 barrels that Tosco is not producing.

We need the President to move in, to use his Executive power, to jawbone these energy executives, so that the 500,000 barrels of idle gasoline refining capacity is put back on line by this weekend, so that we flood the marketplace with gasoline. That drops the price of oil in the global and American marketplace.

TAX INCREASES NOT A SOLUTION

(Mr. HAYWORTH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HAYWORTH. Well, Mr. Speaker, there they go again.

Mr. Speaker, it is indeed a tragedy when our liberal friends on the other side again, despite an excess of rhetoric, use as their main bone of contention that the way to solve problems is to impose a new tax. And you heard my good friend from Massachusetts, even as he called, properly I believe, for the expansion of the use of our fossil fuels, although certain friends over there will try to have it both ways, in the heat now of seeing a problem, the key to what he talked about was a tax increase.

Mr. Speaker, the way we solve these problems should be based on this acknowledgment: The American people work hard for the money they earn, and all Americans should hang onto more of that hard-earned money and send less of it to Washington.

So no to all tax increases, roll back the Clinton gas tax, and let that be not an end to itself, but the start of the rollback of the assault of Washington on the pocketbooks of Mr. and Mrs. America.

THE DRAMATIC PRICE INCREASE IN GAS PRICES

(Mr. SCHUMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SCHUMER. Mr. Speaker, there is one big question in relation to the gas tax, and that is if we are going to repeal the 4.3 cent gasoline tax, how much of the reduction, if any, will the consumer see?

If the market is not working, then consumers will not see much of it at all, and there are indications that the free market in the area of big oil is not working.

Today I will be sending a letter to the Justice Department seeking answers to three questions: First, why did the prices spike so quickly, when we all knew there was cold winter months ago and when this idea that Iraq would dump oil has been known for several months as well? That does not explain a 1-week dramatic rise.

Second, if there is a true free market, why did not a couple of the companies, at least one of the big ones, decide to keep the price low and compete on price and increase their market share? That is what Adam Smith would tell us they would do.

Third, most vexing of all, when the price of crude goes up, the price of gasoline goes up immediately. But when the price of crude on the wholesale market goes down, the price of gasoline hardly goes down at all, and if it does, it is slow and grudging.

Until we answer these questions, Mr. Speaker, we are not going to know if the consumers would benefit. And if we can answer these questions, drivers will save hundreds of dollars at the pump, not just the 4.3 cents of the gas tax.

REPEAL GAS TAX OF 1993

(Mr. KIM asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KIM. Mr. Speaker, here we go again, attacking the free market. I guess we need a bigger government to control more and more.

Mr. Speaker, I represent a portion of southern California where people are paying almost $2 a gallon for gasoline. That is right, $2. That is ridiculous.

The people are angry. The people are even angrier when they find out that Congress slapped a tax on gasoline to pay for numerous social programs. That is right, Congress increased the gasoline tax in 1993 to pay for numerous additional social programs.

In the past, the gas tax worked fine because all of the moneys went to fixing highways and potholes. What happens today? Only a fraction of the gas tax money is spent on highways and bridges. That is the problem.

My position is simple. If we are not going to fix the highways, then we should not collect this gas tax money.

Let me tell you how we are going to lower the cost of gasoline. It is simple. Let us repeal the Clinton gas tax increase of 1993.

CONGRESS SHOULD BRING MINIMUM WAGE INCREASE TO A VOTE

(Mr. ENGEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ENGEL. Mr. Speaker, the 104th Congress has been on now for a little over a year and let us look at the extreme Republican agenda.

They have spent the whole year trying to cut Medicare and Medicaid, to pay for a tax break for the rich. The Democrats and the President has stopped it. They want to give us the largest education cuts in the history of the United States. Can you imagine that? And they want to gut the environment and make air dirtier and water dirtier.

Now they lecture us about family values, but they do not want to increase the the minimum wage. We cannot even get a vote on the floor of this House to say whether or not we want to increase the minimum wage by a lousy 90 cents an hour, up or down. Give us a vote. The American people want an increase in the minimum wage. Do not tell us you are for family values, Republicans. You do not give a darn about the American family. You will not even allow us to have a vote to raise the minimum wage 90 cents. When 84 percent of all Americans, 84 percent, say they want an increase in the minimum wage, including 71 percent of Republicans, the House leadership here will not even give us a vote.

The minimum wage ought to be raised 90 cents; 90 cents is all we are asking. Give us a vote.

AMERICAN PEOPLE WILL SEE THROUGH DISINFORMATION CAMPAIGN

(Mr. HOKE asked and was given permission to address the House for 1 minute.)

Mr. HOKE. Mr. Speaker, once again we hear what is the pithy disinformation campaign that is the basis of the Democrats' political hope in the future. What they are betting is they are betting that the American people will not see through this disinformation campaign and they are betting that in fact they will be confused and deceived and disinformed by it.

I and those who believe in the future of America are convinced that in fact the American people will see through it, and I am betting the American people will know what the truth is.

Just to be specific, a $700 billion increase in Medicare can hardly be called a cut. A 50-percent increase in student loan funding can hardly be called a cut.

Mr. Speaker, I want to bring to your attention something in the Washington Times this morning in an editorial that I thought was very interesting. It had to do with a poll conducted regarding the AFL–CIO's decision to spend $35 million in dues supporting Democratic candidates to defeat Republicans. We find out that 62 percent of the union members oppose the political use of their dues in that way. I thought that should be brought to your attention.

PERFECTING THE CASH-AND-CARRY GOVERNMENT

(Ms. MCKINNEY asked and was given permission to address the House for 1 minute.)

Ms. MCKINNEY. Mr. Speaker, last week, the Senate voted unanimously in favor of a health care reform bill that did not include costly medical savings accounts. In fact, the other body voted explicitly on April 18 to keep medical savings accounts out of the bill.

Now the presumptive Republican nominee for President wants to appoint to the conference committee Senators whose sole purpose will be to force MSA's into the bill when no one is looking. You can tell a lot about a man the way they act when they think no one is watching.

I guess we're supposed to ignore the fact that the Golden Rule Insurance Co. has given $1.4 million in campaign contributions to Republicans. And that Golden Rule also happens to be the premier company peddling MSA's. Regardless of how the Senate voted, Golden Rule will get its way through the back door.

Mr. Speaker, this buyout is just one more fine example of how the GOP has perfected the art of cash-and-carry Government.

ALLOWING CHOICE IN HEALTH CARE

(Mr. EWING asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. EWING. Mr. Speaker, I yield to the gentleman from Arizona [Mr. HAYWORTH].

Mr. HAYWORTH. Mr. Speaker, as we take a look at what has been said in the preceding speech, I think it is the proper question to ask, or the proper contention to make, are——

PARLIAMENTARY INQUIRY

Mr. GENE GREEN of Texas. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. GENE GREEN of Texas. Mr. Speaker, is it permissible to yield in 1-minutes?

The SPEAKER pro tempore (Mr. GUTKNECHT). The gentleman from Illinois [Mr. EWING] controls the time. The Chair is informed by the Parliamentarian he may yield to the gentleman from Arizona [Mr. HAYWORTH] while remaining on his feet.

Mr. GENE GREEN of Texas. Just so we all understand the rules.

Mr. HAYWORTH. Mr. Speaker, reclaiming my time, I would simply make this point: The American people are watching, not for partisan squabbling, but asking this question: What works? And the notion that medical savings accounts, where people control their own destiny, where people are able to visit the doctors they want to see and seek the treatment they feel is best, is at the very heart of our American system. And to suggest that it is some sort of cheap political ploy is once again to at least ignore the facts or to engage in deliberate disinformation and distortion to cloud the picture and to again try to confuse the American public, instead of allowing the American public what they deserve, and that is choice health care.

PARLIAMENTARY INQUIRY

Ms. McKINNEY. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentlewoman will state it.

Ms. McKINNEY. Mr. Speaker, is it not correct that $1.4 million was given to the Republican candidates by the Golden Rule Insurance Co. and now the Republicans are trying to put——

Mr. HAYWORTH. Mr. Speaker, objection. That is not a parliamentary inquiry. She is making a political speech.

The SPEAKER pro tempore. The Chair would inform the gentlewoman that that is not a parliamentary inquiry.

WELFARE PAYING MORE THAN MINIMUM WAGE

(Mr. GENE GREEN of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GENE GREEN of Texas. Mr. Speaker, last week the Houston Chronicle ran a story about how welfare pays more than the minimum wage. We hear a lot of rhetoric about moving people off welfare and into work, but the Republican leadership refuses a simple up or down vote on providing a liberal wage.

Using the current minimum wage, workers putting in their 40 hours a week for 52 weeks would earn just over $8,800. A working family supported by a minimum wage earner is below the national poverty level and is eligible to collect welfare benefits.

A minimum wage increase will give my constituents and other working Americans the ability to move off the welfare rolls, but Republicans continue to oppose a minimum wage increase. Instead of bringing this issue to a vote, they have proposed yet another Government subsidy for businesses. This measure is nothing more than a huge entitlement and more public assistance, more welfare, when what we need is a job that pays enough to put food on the table.

The Washington Post said today that the Senate majority leader wants to cut the gas tax and raise the minimum wage. Let us do it. I think that is a good bill.

Let us do it, Mr. Speaker. Democrats want working families to work their way off welfare. It is time for the Republicans to do the same. Support a minimum wage increase.

REPEAL 1993 GAS TAX

(Mrs. SEASTRAND asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SEASTRAND. Mr. Speaker, we keep hearing all this handwringing from the other side about gas prices. But what you won't hear from the liberal Democrats on the other side is how they raised the gas tax in 1993.

Not one single Republican in this body supported that Democrat-sponsored tax increase. Thanks to President Clinton and his liberal allies, the American people now pay $4.8 billion a year more for gas. That's on top of the ever-increasing prices that they pay today.

If Democrats are really concerned about the plight of the average motorist, then they should support the repeal of their 1993 increase on the gas tax. That may not cure everything, but it's a very good start.

Earlier this year, Bill Clinton and the Democrats had the opportunity to cut taxes for the Americans. But they were committed to protecting Washington spending.

I believe they should be given another opportunity to reduce the tax burden on the American people. Let's repeal the 1993 Clinton gas tax.

DROP IDEA OF MEDICAL SAVINGS ACCOUNTS

(Mrs. CLAYTON asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. CLAYTON. Mr. Speaker, our colleagues on the right continue to press for inclusion of the medical savings account proposal in the health insurance bill currently pending in Congress.

Once again, they want to burden average, working Americans to benefit the wealthy and influential.

According to the Urban Institute, if the medical savings account proposal is a part of the health insurance bill, premiums for a standard policy could skyrocket by as much as 60 percent.

If the Republicans have their way, employers win big and employees lose; high income individuals win big and those earning less than $30,000 a year lose; influential insurance companies win big and average citizens lose.

In addition, according to the Urban Institute, workers may be forced into a single insurance, losing their right to choose.

Mr. Speaker, we have shaped a bipartisan health insurance plan where no citizen loses and all citizens win.

I urge my colleagues on the right to drop this idea of MSA's—an idea which cases many to lose, and support the proposal where all Americans win.

□ 1130

RISING OIL PRICES AND OIL EXPORTS

(Mr. METCALF asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. METCALF. Mr. Speaker, the President of the United States yesterday released oil from the Strategic Petroleum Reserve in an effort to counter inflating gas prices. But last Friday President Clinton lifted the ban on exporting oil from Alaska. At a time when gas prices are soaring, he chose to sell United States gasoline to Asian nations instead of to American citizens.

The ban on exporting oil from Alaska was part of an agreement that allowed the building of the pipeline that supplies the United States. As we face soaring oil prices at home, we are preparing to reduce domestic supplies of oil by shipping it overseas.

Mr. Speaker, the President's decisions contradict each other. He is opening the Strategic Petroleum Reserves to lower the price of oil at the same time he prepares to expand shipments of American oil to foreign consumers. He is making the problem worse than it needs to be. The American public is paying the bill.

Mr. Speaker, I would say to the President, "Mr. President, will you please try to be consistent?"

PUT FAMILIES FIRST RATHER THAN SPECIAL INTERESTS

(Ms. DELAURO asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. DELAURO Mr. Speaker, House Republicans continue to work overtime on behalf of the special interests rather than the hard-working families who need our help.

Look at health care reform. House Republicans are insisting on a bad idea rejected by the Senate: Tax shelters to help the rich pay their medical bills. Giving tax breaks to the healthy and the wealthy could doom the type of health reform that working families need.

These health care tax breaks hurt working families. They will expose millions of families to increased health care costs. Estimates say that health care premiums will rise as much as 60 percent.

Once again, I urge the House Republican leadership to reject these tax breaks for the wealthy. Simply adopt the Senate bill which President Clinton has said he will sign and which puts families first, rather than special interests. That is what we need, health care relief for working families in this Nation.

MEDICAL SAVINGS ACCOUNTS A GOOD IDEA

(Mr. McCOLLUM asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McCOLLUM. Mr. Speaker, I must respond to the gentlewoman's comments about the medical savings accounts. I happen to think they are a terrific idea for families in America. They are the one way in the future, with all of the costs we have associated with health care, that a moderate income family in the United States can save money. If we adopt it, they will be able to still choose their own doctor and not be forced into an HMO or another organized plan.

I have very, very strong convictions about that. I think this is the most innovative and creative thing to help health care in the United States that is under consideration today at all. I really feel that that is a very important thing.

I want to consider one other point during this 1-minute, though. When we are talking about these gas prices going up right now, I am told by those involved that one of the primary reasons that the gas prices in this country are going up is because there is uncertainty about whether the U.N. sanctions against Iraq will be lifted or not. We should be opposed to that.

This administration, the Clinton administration, should make it unequivocally clear that we will veto in the United Nations any effort to lift the oil embargo and allow people to purchase Iraqi oil. I think once that is done, stability will return to the oil prices in the world market and we will see the gas prices go back to their normal way again.

This President needs to make that statement now. He has not made it.

IMPROPER USE OF COMMITTEE STAFF

(Mr. WARD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WARD. Mr. Speaker, today I want to alert the House to a call I have made, along with eight of my fellow freshmen Democrats this morning, to ask the Speaker, we have asked Speaker GINGRICH to rescind and repudiate a request that was made in the name of the office of the House majority leader to all the subcommittees in this House. That request was a partisan effort to use House staff improperly.

The request, very simply, was sent to all House committee staffs asking them to look for specific material that could be used to attack organized labor or the Clinton administration. In an unprecedented institutionalized effort to use House staff to do the bidding of the leader's office, the Republican leadership has shown again that they are not about putting the House in order, they are not about using the House for what it is intended, the furtherance of the people's business. It was, in fact, waste, fraud, and abuse on the highest level.

RAISING MINIMUM WAGE WILL DESTROY SMALL BUSINESS

(Mr. WALKER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WALKER. Mr. Speaker, I have been very interested over the last several days to listen to Members of the Democratic Party telling us how committed they are to raising the minimum wage, and it is very interesting because one would wonder why, when the President of the United States himself has said this is a bad idea, and when Members of his administration have said this is a terrible way to treat poor people, why the Democrats in the House of Representatives are so insistent upon it.

Now we find out why. It is because they are doing the bidding of the union bosses who are making absolutely certain that they get this kind of debate going, because the union bosses have contract negotiations coming up this fall, and they would like to see the Federal Government raise wages by 20 percent so that they can use that as the base of what they do in their negotiations.

And guess what? Every American will suffer as a result of that because that will set off an inflationary spiral that will be a tax on every American family, but particularly low income families. If my colleagues think that kind of callous disregard of the American family is a good idea, then listen intently to the Democrats, who claim they want to raise the minimum wage.

The fact is in raising the minimum wage what they are doing is undermining small business in the country, and they are undermining the basic income of the American family. It is a shame and they should be called for what they are doing.

MINIMUM WAGE INCREASE MORE IMPORTANT THAN REPEALING GAS TAX OF 1993

(Mr. VOLKMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. VOLKMER. Mr. Speaker, I stand here today requesting the Republican leadership, NEWT GINGRICH, to schedule the minimum wage bill for the House to vote on. I am not here on behalf of any union, I am here on behalf of a lot of people in my district and all over this Nation that work every day at $4.25 an hour. What do I ask for them? I ask we raise that minimum wage in a 2-year cycle for 90 cents. That means $1,800 a year more for those people.

Now, their answer, the Republicans' answer, is no, we are going to cut the gas tax 4.5 cents. We will repeal the part of the gas tax that was in the 1993 deficit reduction package. Well, how much will that give to my people? To most of my people that is $45 year. They want to give $45 a year to help my people get through the hard times, buy a pair of shoes for the kids.

I say let us give them the minimum wage. Let us give them really something that will benefit them—$1,800 a year is a lot better than $45 a year.

ASSAULT ON WORKING FAMILIES AND GAS TAX CUT ARE SEPARATE ISSUES

(Mr. HILLIARD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HILLIARD. Mr. Speaker, every American has the right to a livable wage. The Republicans have offered what they say is an alternative to increasing the minimum wage. They want to talk about cutting the gas tax and they claim that this will benefit the working poor.

This is a sham. The 4-cent gas tax is not designated to help working folks; it is calculated to bail out the oil and gas industry. The industry increased gas prices. If the prices are too high, the industry should reduce them.

Rising prices at the gas pump should not be offset with a tax cut that will cost the U.S. Treasury more than $4 billion this year. Republicans claim that they want to balance the budget, but then they go out and cut programs that the working poor depend on. The Republicans' assault on the working families should not be confused with a gas tax cut. They are separate issues.

We should keep the minimum wage debate clean and we should vote to increase the minimum wage. If a tax cut is necessary, then we should do that also, but they are separate issues.

AMERICANS DESERVE AN INCREASE IN MINIMUM WAGE

(Mr. MILLER of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MILLER of California. Mr. Speaker, hard working Americans deserve a raise. They deserve an increase

in the minimum wage. Many of our colleagues on the Republican side of the aisle do not want to provide that increase in the minimum wage because they say that, in fact, people who earn the minimum wage earn much more than that because they get food stamps, they get AFDC payments, they get medical benefits.

The question I have to ask is, Why should the taxpayers have to subsidize these people's jobs? Why should the marketplace not provide a livable wage so that these people can support their families, can support their children without the taxpayers subsidizing this through the welfare system?

When we increase the minimum wage we save a substantial amount of money for those individuals because we no longer have to subsidize their jobs as much as we did before we increased the minimum wage. We ought to make sure that, in fact, we are not asking the taxpayers to subsidize jobs where employers simply choose not to pay the minimum wage.

It is not that they cannot afford to, they just know that they do not have to pay it because the welfare system will subsidize that job. That ought not to be allowed. That ought not to be done anymore. We ought to in fact require those people to pay people for the hard work that they engage in.

RAISING MINIMUM WAGE WILL COST JOBS

(Mr. HUTCHINSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HUTCHINSON. Mr. Speaker, let me just say in response to the gentleman who just spoke, Republicans are in favor of helping the working poor, but we are in favor of doing it in a way that will truly lift their take-home pay, to lift their wages. Raising the minimum wage will not have that effect.

The fact is economists, 90 percent of them, agree that raising the minimum wage will, in fact, cost jobs; it will cost the jobs of those that we most want to help, the low-skilled worker. The last time we raised the minimum wage, in 1991, only 17 percent of the new benefits went to people living under the poverty level. That is not the effective way of helping those who are the working poor.

Raising the minimum wage will not only cost jobs, it will be inflationary, costing those whom we want to help more in their goods and services that they need to purchase. It is the wrong way to help those who are the working poor. There is a better way of doing it. We can do it.

I suspect the gentleman who just spoke supported the increased funding for EITC 2 years ago, and there is a better way of doing it, as we take that proposal that has had the support of Republicans and Democrats and focusing it upon those who are truly in need, the working poor, the families with children. We want to help them, but we want to help them in a way that will not hurt the economy and take jobs away from the most needy.

PERMISSION FOR SUNDRY COMMITTEES AND THEIR SUBCOMMITTEES TO SIT TODAY DURING 5-MINUTE RULE

Mr. HAYWORTH. Mr. Speaker, I ask unanimous consent that the following committees and their subcommittees be permitted to sit today while the House is meeting in the Committee of the Whole House under the 5-minute rule: The Committee on Banking and Financial Services, the Committee on Commerce, the Committee on Economic and Educational Opportunities, the Committee on House Oversight, the Committee on International Relations, the Committee on National Security, the Committee on Science, the Committee on Small Business, the Committee on Transportation and Infrastructure, and the Permanent Select Committee on Intelligence.

It is my understanding that the minority has been consulted and that there is no objection to these requests.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

THE JOURNAL

The SPEAKER pro tempore (Mr. GUTKNECHT). Pursuant to clause 5, rule I, the pending business is the question of the Speaker's approval of the Journal of the last day's proceeding.

The question is on the Chair's approval of the Journal.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. HAYWORTH. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 358, nays 51, answered "present" 1, not voting 23, as follows:

[Roll No. 139]

YEAS—358

Ackerman
Allard
Andrews
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Becerra
Bentsen
Bereuter
Bilbray
Bilirakis
Bishop
Bliley
Blute
Boehlert
Boehner
Bonilla
Bonior
Bono
Boucher
Brewster
Browder
Brown (OH)
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cardin
Castle
Chabot
Chambliss
Christensen
Chrysler
Clayton
Clement
Clinger
Clyburn
Coble
Coburn
Coleman
Collins (GA)
Collins (MI)
Combest
Condit
Conyers
Cooley
Costello
Cox
Coyne
Cramer
Crane
Crapo
Cremeans
Cubin
Cummings
Cunningham
Danner
Davis
Deal
DeLauro
DeLay
Dellums
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Doggett
Dooley
Doolittle
Dornan
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Eshoo
Evans
Ewing
Farr
Fattah
Fawell
Fazio
Fields (LA)
Flake
Foglietta
Foley
Forbes
Ford
Fowler
Fox
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Furse
Gallegly
Ganske
Gejdenson
Gekas
Geren
Gilchrest
Gilman
Gonzalez
Goodlatte
Goodling
Gordon
Goss
Graham
Green (TX)
Greene (UT)
Greenwood
Gunderson
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hancock
Hansen
Hastert
Hastings (FL)
Hastings (WA)
Hayworth
Hefner
Herger
Hinchey
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hoyer
Hunter
Hutchinson
Hyde
Inglis
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (CT)
Johnson, E.B.
Johnson, Sam
Johnston
Jones
Kanjorski
Kasich
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kim
King
Kingston
Kleczka
Klink
Klug
Knollenberg
Kolbe
LaHood
Lantos
Largent
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas
Luther
Maloney
Manton
Manzullo
Markey
Martinez
Mascara
Matsui
McCarthy
McCollum
McCrery
McDade
McHale
McHugh
McInnis
McIntosh
McKeon
McKinney
McNulty
Meehan
Metcalf
Meyers
Mica
Millender-McDonald
Miller (FL)
Minge
Mink
Mollohan
Montgomery
Moorhead
Moran
Morella
Murtha
Myers
Myrick
Nadler
Neal
Nethercutt
Neumann
Ney
Norwood
Nussle
Obey
Olver
Ortiz
Orton
Owens
Oxley
Packard
Parker
Paxon
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Petri
Pomeroy
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Rahall
Ramstad
Rangel
Reed
Regula
Richardson
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Roukema
Roybal-Allard
Royce
Salmon
Sanford
Sawyer
Saxton
Scarborough
Schaefer
Schiff
Schumer
Scott
Seastrand
Sensenbrenner
Serrano
Shadegg
Shaw
Shays
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slaughter
Smith (MI)

Smith (TX)	Tejeda	Waters
Smith (WA)	Thomas	Watt (NC)
Solomon	Thompson	Watts (OK)
Souder	Thornberry	Waxman
Spence	Thornton	Weldon (FL)
Spratt	Thurman	Weldon (PA)
Stearns	Tiahrt	White
Stenholm	Torres	Whitfield
Stokes	Torricelli	Wicker
Studds	Towns	Williams
Stump	Traficant	Woolsey
Stupak	Upton	Wynn
Tanner	Vucanovich	Yates
Tate	Walker	Young (AK)
Tauzin	Wamp	Young (FL)
Taylor (NC)	Ward	Zeliff

NAYS—51

Abercrombie	Hefley	Pickett
Borski	Heineman	Pombo
Brown (CA)	Hilleary	Rush
Brown (FL)	Hilliard	Sabo
Chenoweth	Jacobs	Schroeder
Collins (IL)	LaFalce	Smith (NJ)
DeFazio	Latham	Stark
Durbin	Levin	Stockman
Engel	Lewis (GA)	Talent
Ensign	Longley	Taylor (MS)
Everett	Martini	Torkildsen
Filner	McDermott	Velazquez
Flanagan	Meek	Vento
Funderburk	Menendez	Visclosky
Gephardt	Miller (CA)	Volkmer
Gillmor	Oberstar	Weller
Gutierrez	Pallone	Zimmer

ANSWERED "PRESENT"—1

Harman

NOT VOTING—23

Beilenson	Frost	Pastor
Berman	Gibbons	Rivers
Bevill	Hayes	Sanders
Bryant (TX)	Johnson (SD)	Walsh
Chapman	Kaptur	Wilson
Clay	Livingston	Wise
de la Garza	Moakley	Wolf
Fields (TX)	Molinari	

□ 1201

So the Journal was approved.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. PASTOR. Mr. Speaker, during rollcall vote number 139 on the Journal I was unavoidably detained. Had I been present, I would have voted "yes." I ask unanimous consent that my statement appear in the RECORD immediately following rollcall vote number 139.

U.S. MARSHALS SERVICE IMPROVEMENT ACT OF 1996

Ms. PRYCE. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 418 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 418

Resolved, That at any time after adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into Committee of the Whole House on the state of the Union of consideration of the bill (H.R. 2641) to amend title 28, United States Code, to provide for appointment of United States marshals by the Director of the United States Marshals Service. The first reading of the bill shall be dispensed with. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. After general debate the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill. Each section of the committee amendment in the nature of a substitute shall be considered as read. During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional Record designated for that purpose in clause 6 of rule XXIII. Amendments so printed shall be considered as read. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

SEC. 2. After passage of H.R. 2641, it shall be in order to take from the Speaker's table the bill S. 1338 and to consider the Senate bill in the House. It shall be in order to move to strike all after the enacting clause of the Senate bill and to insert in lieu thereof the provisions of H.R. 2641 as passed by the House. If the motion is adopted and the Senate bill, as amended, is passed, then it shall be in order to move that the House insist on its amendments to S. 1338 and request a conference with the Senate thereon.

The SPEAKER pro tempore (Mr. GUTKNECHT). The gentlewoman from Ohio [Ms. PRYCE] is recognized for 1 hour.

Ms. PRYCE. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Ohio [Mr. HALL], pending which I yield myself such time as I might consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

GENERAL LEAVE

Ms. PRYCE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on this resolution, and that I may be permitted to insert extraneous materials into the RECORD following debate on the rule.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

Ms. PRYCE. Mr. Speaker, House Resolution 418 provides for the consideration of H.R. 2641, the U.S. Marshals Service Improvement Act of 1996, under a completely open rule. The rule provides for 1 hour of general debate equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary.

The rule also makes in order the Judiciary Committee amendment in the nature of a substitute now printed in the bill as original text for the purpose of amendment, and provides that each section will be considered as read.

The Chairman of the Committee of the Whole may give priority in recognition to Members who have preprinted their amendments in the CONGRESSIONAL RECORD prior to their consideration, and such amendments will also be considered as read. As is customary, the rule provides for one motion to recommit, with or without instructions.

Finally, after House passage of the bill, the rule provides for the necessary steps to consider the Senate bill, S. 1338, to insert the House-passed provisions, and to request a conference with the Senate.

Mr. Speaker, let me emphasize that this is a wide open rule. Any Member can be heard on any germane amendment to the bill at the appropriate time. Although there is no preprinting requirement contained in this rule, preprinting of amendments in the RECORD is an option that is encouraged, and I hope more Members will consider that option in the future. We on the Rules committee continue to believe that making amendments available for our colleagues to read in advance of floor action serves a very useful purpose and contributes to improving the overall quality of debate.

Mr. Speaker, H.R. 2641, which this open rule makes in order, is a simple, straightforward bill that seeks to take the politics out of appointments to the U.S. Marshals Service by changing the selection of marshals from that of appointment by the President, with the advice and consent of the Senate, to selection by the Attorney General based on relevant criteria such as an individual's law enforcement and administrative expertise.

As a former judge and prosecutor, I worked very closely for many years with highly qualified and well-trained law enforcement officials, at the local, State, and Federal levels. Naturally, I was very surprised to learn that under current law, there is no criteria for the selection of U.S. marshals.

As was noted in the Judiciary Committee report on H.R. 2461, in some instances, appointed marshals lack the law enforcement experience and qualifications necessary to carry out the often multifaceted law enforcement missions currently performed by the U.S. Marshal Service. Today, those missions involve such demanding and sensitive tasks and fugitive apprehension, prisoner transportation, witness protection, the disposal of seized assets, and providing judicial security.

To address these concerns, H.R. 2641 provides that after the year 2000, new marshals will be selected on a competitive basis among career managers within the Marshals Service, rather than simply being nominated by a home State Senator.

In the meantime, marshals selected between the date of enactment of this bill and the year 2000 would continue to be appointed by the President with the advice and consent of the Senate, but would only be permitted to serve 4-year terms.

As one of my Rules Committee colleagues said yesterday, this legislation would take an important step toward professionalizing the overall Marshals Service by ensuring that only knowledgeable, qualified, career managers who have risen through the ranks of the Service will be considered for the important position of U.S. marshal. The quality of justice is based, in part, on the public's perception of fundamental fairness throughout the judicial system, and the changes advocated in this legislation will help restore fairness to the Marshals Service by taking political cronyism out of the appointments process.

For many in the Nation's law enforcement community, these are trying times, and there seems to be an ever-increasing burden placed on the entire judicial system—not just on the courts or on the local police department, but across the vast spectrum of law enforcement.

As a result, the need for capable, professional law enforcement personnel who have demonstrated outstanding expertise in their fields is very great.

Mr. Speaker, the public at large expects law enforcement positions to be filled by qualified professionals, and not by individuals with convenient political contacts. I believe this legislation makes important and necessary changes to the process by which U.S. marshals are appointed, and hopefully its enactment will serve to improve and enhance public confidence in the ability of Federal law enforcement agencies to effectively protect and defend its citizens.

H.R. 2641 was favorably reported out of the Judiciary Committee by voice vote, as was the rule by the Rules Committee yesterday. I urge my colleagues to support this wide open rule, and continue the spirit of openness and deliberation that we have attempted to restore to this body.

Mr. Speaker, I reserve the balance of my time.

Mr. HALL of Ohio. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I yield myself such time as I may consume and I thank my colleague from Ohio, Ms. PRYCE, for yielding me the time.

House Resolution 418 is an open rule which will allow full and fair debate on H.R. 2641, a bill to change the way U.S. marshals are appointed.

As my colleague from Ohio described, this rule provides 1 hour of general debate, equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary.

Under this rule amendments will be allowed under the 5-minute rule, the normal amending process in the House. All Members, on both sides of the aisle, will have the opportunity to offer amendments.

The U.S. Marshals Service is the Nation's oldest Federal law enforcement agency, dating back to 1789. The Service has critical responsibilities, including providing protection for the Federal courts and responding to emergencies.

I am particularly proud of the U.S. marshals who are based in the Dayton, OH, Federal building, where I maintain my district office.

This bill will require the U.S. marshals be appointed on a merit-based, competitive process, instead of the current political appointment process. This will improve the professional status of this extremely important Federal agency. It is a long-overdue improvement.

Mr. Speaker, while I do not oppose the rule, I urge a "no" vote on the previous question. If the previous question is defeated, I shall offer an amendment to the rule which would make in order a new section in the rule. This provision would direct the Committee on Rules to report a resolution immediately that would provide for consideration of a bill to incrementally increase the minimum wage from its current $4.25 an hour to $5.15 an hour beginning on July 4, 1997.

This provides for a separate vote on the minimum wage. Let me make it clear to my colleagues, both Democrats and Republicans, defeating the previous question will allow the House to vote on the minimum wage increase. That is what 80 percent of Americans want us to do. That is the right thing to do. So let's do it.

□ 1215

Mr. Speaker, I urge Members to vote "no" on the previous question, and I reserve the balance of my time.

PARLIAMENTARY INQUIRY

Ms. PRYCE. Mr. Speaker, under House Rule XIV, which requires that a Member must confine himself to the question under debate, is it relevant to the debate on either this rule or the debate it makes in order to engage in a discussion of the merits of the minimum wage?

This is in the nature of a parliamentary inquiry, Mr. Speaker,

The SPEAKER pro tempore (Mr. GUTKNECHT). The gentlewoman from Ohio [Ms. PRYCE] has made a parliamentary inquiry. The Chair would advise the body that clause 1 of rule XIV requires Members to confine themselves to the question under debate in the House.

As explained on page 529 of the manual, debate on a special order providing for consideration of a bill may range to the merits of the bill to be made in order, but should not range to the merits of a measure not to be considered under that special order.

Mr. HALL of Ohio. Mr. Speaker, I yield myself 1 minute.

I would like to address also what my friend, the gentlewoman from Ohio, has suggested under her parliamentary inquiry.

This rule on this issue has been talked about a number of times in recent years, and probably the clearest guidelines that we have had came during a speech during consideration of a rule under the Speaker's ruling of September 27, 1990.

I am quoting here by saying that "the Chair has ruled that it is certainly within the debate rules of this House to debate whether or not this rule ought to be adopted or another procedure ought to be adopted by the House. But when debate ranges onto the merits of the relative bills not yet before the House, the Chair would admonish the Members that that goes beyond the resolution."

So, Mr. Speaker, it is within the guidelines and many rulings that we have had in the past to bring the issue up to debate the procedure within the rule relative to having a vote on minimum wage. I have tried to confine my remarks thus far to the merits of the rule itself in voting, if, in fact, the previous question would be defeated, bringing up the minimum wage. I offer that to the House.

Mr. Speaker, I yield 5 minutes to the gentleman from Michigan [Mr. BONIOR], our leader.

Mr. BONIOR. Mr. Speaker, I thank my friend for yielding time to me.

Mr. Speaker, I am hopeful that Members will vote against the previous question, which will then open up the opportunity for us to offer a rule that will make in order an increase in the minimum wage for literally 12 million people across this country. These are people who clean the toilets, who clean the offices, who work hard for a living; who chose work over welfare, and who are living in this country at a wage that is less than the poverty level in this country; $8,500 a year, if you make the minimum wage. You cannot raise a family on that.

What do many of these people do? They end up, Mr. Speaker, working overtime. They work second jobs and third jobs. As a result of that, they are not there at home when their kid comes home from school. They are not there for bedtime stories, they are not there to teach them right from wrong. The father is not there for Little League. He is not there for other issues.

POINT OR ORDER

Ms. PRYCE. Regular order. Mr. Speaker, I ask the House for regular order.

The SPEAKER pro tempore. For what purpose does the gentlewoman rise?

Ms. PRYCE. To ask the House for regular order, Mr. Speaker.

The SPEAKER pro tempore. Does the gentlewoman make a point or order?

Ms. PRYCE. Pursuant to the House's rulings, I call for regular order: that the gentleman confine his remarks to the resolution at hand.

The SPEAKER pro tempore. Does any other Member wish to be heard on the point of order?

The Chair recognizes the gentleman from Texas [Mr. DOGGETT].

Mr. DOGGETT. Mr. Speaker, I would like to be heard on the point or order.

Mr. Speaker, we find ourselves this morning in exactly the same procedural setting and procedural context as when this House considered the omnibus appropriations bill when we met last week. At that time, recognizing that the majority leader, the gentleman from Texas [Mr. ARMEY], had said that he would oppose a minimum wage with every fiber in his body, and that the Speaker of the House had made clear that the American people would have no opportunity to be considered for a raise on this floor by bringing any bill our of committee, we had a procedural context in which the omnibus appropriations bill was before the House, and many Members of this body, indeed, a majority of the Members of this body, having already publicly expressed their support for a minimum wage increase, and so the majority party, the Democrats, on a previous question, decided to raise this issue.

We devoted most of our limited half hour, and unfortunately, we only had a half hours, and we should have been able to devote, indeed, a full day to debating the merits of the need for the American people for a raise. But in exactly the same situation that we find ourselves this morning, we considered the plight of minimum wage families, discussed fully that issue, and today we have the same situation.

Unless the standard has changed, Mr. Speaker, or unless the Republicans are simply fearful that the 10 of their Member who voted against the minimum wage last week, after having had a press conference saying they were in favor of the minimum wage, might this way not have their arms twisted enough, then we ought to be able to have a full and fair debate of this minimum wage issue today in exactly the same situation we were in last week.

The SPEAKER pro tempore. Does the gentleman from California [Mr. MILLER] wish to give advice to the chair on the point of order.

Mr. MILLER of California. Mr. Speaker, on the point or order, I would hopefully advise the Chair against the point of order. The purpose of calling for a vote on the previous question is to open up the rule so that alternatives may be provided. Once that rule is opened up, it is obviously within the authors of that rule to connect unrelated matters, because you can create a rule that is self-enacting, waiving points of order against germaneness or what have you, as does the Committee on Rules.

So for the purpose of us raising for the Members of the House the alternatives which might present themselves also with respect to the minimum wage, it is necessary to do so now as we discuss the rule and discuss the vote on the previous question, because if is this exact opportunity that gives the minority, which does not control the Committee on Rules, which cannot bring these matters to the floor except under extraordinary procedures, and this being one of them, a vote against the previous question, we are at liberty to explain to the House under the Rules of the House why we need to have this extraordinary procedure to present to the country an up-or-down vote on the minimum wage.

The gentleman from Michigan in the well has made the point that one of the results of that vote is in fact to try and raise the minimum wage of 12 million people who go to work every day, go to work year round, and end up at the end of the year below the poverty line. The vote on the previous question is the opportunity that allows this.

So when the gentlewoman suggest that somehow the debate around whether or not to vote for the rule and to vote for the previous question is limited to the matter at hand, in terms of the subject matter of the bill that would then be considered after the rule is adopted, that is to limit the debate and to stifle the minority, and prevent the minority from having an opportunity to voice its concerns and to voice legislative alternatives; in this case, the minimum wage.

Why does it have to be done at this point? The reason we have to ask for a vote against the previous question and why the point of order should not be sustained is because that point of order then enforces what we have been told by the Republican majority leader, and that is that he will not allow this vote to come to the floor, that he will fight it with every fiber in his body. That precludes the minority from offering that alternative.

So when the Chair considers the point of order raised by the gentlewoman from Ohio——

Ms. PRYCE. Mr. Speaker, there is no point of order made.

Mr. WALKER. Mr. Speaker, there is a point of regular order before the House.

Ms. PRYCE. Mr. Speaker, I did not ask for a point of order, I had asked for regular order.

The SPEAKER pro tempore. The Chair asked the gentlewoman from Ohio if she was making a point of order, and it was not clear.

Ms. PRYCE. There is no point of order. I was trying to enforce regular order, that we would conform to the rules of this debate as previously announced by the Chair.

The SPEAKER pro tempore. The Chair must treat this as a point of order.

Ms. PRYCE. Mr. Speaker, if that is the case, I withdraw my point of order.

The SPEAKER pro tempore. The gentlewoman from Ohio [Ms. PRYCE] withdraws her point of order.

The gentleman from Michigan [Mr. BONIOR] is recognized for 3 more minutes.

Mr. BONIOR. Mr. Speaker, I thank my friends, the gentleman from California [Mr. MILLER] and the gentleman from Texas [Mr. DOGGETT], for making it clear to those who are listening to us this afternoon how important this issue is with respect to not only the rights of the minority to put forward a question of great importance to the people of this country, but also for the substantive value of the issue itself, which will affect the lives directly of 12 million people, and, indeed, perhaps many, many more.

When we raise the minimum wage, when we raise the minimum wage, it will not only affect people who make $4.25 to $5.15 an hour, about 12 million people, it is going to affect people who make above that, people who make $5.50, $6, $6.50, $7 an hour, because in fact they will probably be in for a raise as well.

In addition to that, this money will get circulated throughout the economy of the local area, the hardware store, the grocery store, at the gas station. This is one way, one small way, but one way in which we could have what we call the bubble-up effect in the economy, instead of the old trickle-down theory that my colleagues on this side of the aisle have adhered to now for the past 15 or 20 years; which is a theory, by the way, which has not yielded rewards for those at the lower end of the economic strata in our society today.

My colleague, the gentleman from California [Mr. MILLER], was absolutely right. The gentleman from Texas [Mr. ARMEY], the distinguished majority leader, has said that he will fight having a vote on the minimum wage with every fiber of his being. The distinguished majority whip, the gentleman from Texas [Mr. DELAY], is reported to have said that working families trying to exist on $4.25 an hour do not really exist. They do exist. They are out there. We have heard from them. We have talked to them. The gentleman from Ohio [Mr. BOEHNER], who chairs their conference, said "I will commit suicide before I vote on a clean minimum wage bill."

Mr. Speaker, this is an important issue for the country and for people who are struggling to make work pay. There are a number of States, 10 of them, that have increased the minimum wage above $4.25 an hour, and

there has been no retraction in employment. Oregon has done it, Washington has done it, the District of Columbia has done it, New Jersey has done it.

In fact, there was a recent study done in New Jersey in the restaurant industry by two gentlemen from Princeton, Mr. Card and Mr. Kruger, and their findings were basically when the minimum wage was raised in the State of New Jersey, in the restaurant industry, employment actually increased.

We need to do this. These people work too hard, they give too much of their lives for their families, and it is incumbent upon us to make sure that they get a fair, decent, livable wage.

As I said earlier, Mr. Speaker, when they do not make this wage, when this $4 or $5 an hour, they are working two or three jobs, and that has a detrimental impact on their ability to be there for their kids when they get home.

Mr. Speaker, I would urge my colleagues, and I want to first of all congratulate the 13 Members of the other side of the aisle who stood with us on this issue the last time we had it up on the floor. We invite more of you to come over. This is an issue that will not go away. We will bring it up until we get a clean vote, because we understand and I think you understand a clean vote is going to pass this body. It will pass the Senate. The President will indeed sign it.

I encourage my colleagues, vote "no" on the previous question so we have an opportunity to offer a clean vote on raising the minimum wage for literally millions of workers in this country.

□ 1230

Ms. PRYCE. Mr. Speaker, I yield 5 minutes to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, let us talk first about the proposition that the minority party has before the House, and that is that somehow what they will do is defeat the previous question so that they can amend the rule to make in order another piece of language about the rule which is entirely out of order because it is nongermane to the rule before us.

Then what they would intend to do, I assume, is appeal the ruling of the Chair, which would have ruled in an entirely predictable and an entirely legitimate way that what they are attempting to do is totally nongermane. They would then attempt to overrule the ruling of the Chair, which was in fact a proper ruling.

All of this is done in the name of raising the minimum wage. That is an interesting ploy, and I know it comes out of the frustration of the fact that they no longer control the Rules Committee where they used to send down all kinds of outrageous rules for this House to consider, but now finding themselves in the minority, are willing to put aside virtually anything that borders upon a proper decorum in the House in order to do the things that they want to get done. It is really interesting.

Then they go out and parade this as a vote on the issue of minimum wage. There is no vote on the issue of minimum wage here. Virtually everything they are trying to do is out of order, nongermane and completely ludicrous. So the fact is that this is an exercise designed to play games in the House of Representatives.

Mr. WATT of North Carolina. Mr. Speaker, will the gentleman yield?

Mr. WALKER. No, I am going to finish my statement first. I have listened to all of you.

The fact is that they are attempting to tell the American people that they are so interested in this subject that they will go to any lengths, break the rules if necessary, in order to make their case.

Let us understand what the case is they are trying to make. What they want to do is, they want to raise taxes, because the Democrats always want to raise taxes. They love taxes. They love big government.

And the minimum wage is in fact a tax. It is a tax that is particularly cruel to working middle-class families because what it is is a huge inflationary tax within the economy.

This means that you will pay up to 20 percent more for every meal you buy at a restaurant. You will pay up to 20 percent more for that which you buy as food on your table at home. You will pay up to 20 percent more for that which you buy in a store, because what they are doing is imposing an unfunded mandate which is in fact a tax. In fact, it is a big enough tax that the bulk of the minimum wage increase that they are talking about, the minimum wage tax, goes to State and local government: a billion dollars.

Ms. JACKSON-LEE of Texas. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I would prefer to finish my statement if I could. The fact is, I am obviously getting to you. This is obviously of concern to you, to have the truth told.

The fact is that minimum wages imposed upon the States will cost this country an extra billion dollars in State and local taxes. That is a huge tax increase upon the American people, and in my view the fact is that the Democrats know exactly what they are doing.

They detest the idea that we have been trimming back government. They hated the idea that the other day we passed a bill on the floor that cut $23 billion out of the spending of government, because the fact is they want more government and they want to raise taxes.

This is a tax increase. What the Democrats are proposing, every time they stand up and talk about minimum wage increases, is a tax increase on the American people. They want to impose more and more and more taxes so that they get more and more and more spending. That is what they are talking about here. They would bend the rules of the House, they would make illegitimate appeals of the rulings of the Chair, they will do everything possible to try to bring this minimum wage tax increase before the American people.

Middle-class families ought to look at this and be appalled. This is the way they ran the House when they were in the majority. They cared little about the rights of anyone. They simply did what it is they wanted to do at any given time. The fact is Government spending rose for a period of 25 straight years. We had bigger and bigger Government, we had bigger and bigger taxes. They in fact undermined and destroyed the economy during the period of time that they were in charge, and now they want to get back to it. They want more inflation, they want to reinflate the economy, they want to increase taxes and do the kinds of things that Democrats are always good at doing.

Do not let this happen. Do not allow them, through some ploy here of the rules, to try to undermine the entire rules process of the House. The rules are here to protect the rights of both majority and minority. The attempt by the minority to overthrow the rules so they can make a clever political point on the House floor I think is totally appalling.

But middle-class America should be particularly concerned about this, because what middle-class America is going to get out of this is a massive tax increase which is going to go to the bottom of their pocketbooks. So I would suggest that anytime we hear the Democrats come to the floor seeking to overthrow the rules of the House so that they can bring forth the minimum wage tax, then it is a real definition of who they are. This is their attempt to make certain that the taxes of the American people go up, not down.

Mr. HALL of Ohio. Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. GENE GREEN].

Mr. GENE GREEN of Texas. Mr. Speaker, I join my colleague from Ohio and friend in also urging all my colleagues to oppose the previous question.

It was interesting to hear the gentleman from Pennsylvania, his creative thinking, talking about an increase in the minimum wage is an increase in taxes. I guess he had to get that. A lot of us Democrats last week voted for that same budget that he was bragging about.

But let me talk about what we need to do today, and the rules of the House permit this. If the previous question is defeated, my colleague from Ohio will

have an amendment that will be offered to increase the minimum wage. This amendment would direct the Committee on Rules to immediately consider that, to provide for a minimum wage increase.

We hear a lot of rhetoric about moving people off welfare but the Republican leadership and I guess my colleague from Pennsylvania is scared of an up-or-down vote on a livable wage because this will move people off welfare. We hear about working families do not really exist on $4.25 an hour, but they do. We in the Democratic Party hope that we will see that increase in the purchasing power.

Last week we talked about this, and I had the opportunity to quote a late and great U.S. Senator from Texas, Ralph Yarborough. All this amendment would require is just to put the jam on the lower shelf for the little people. We are talking about $4.25 an hour for people that are working hard to support their families, yet they cannot reach up to that top of the shelf to get those tax cuts that the Republican want to give to them.

All we want is to increase their minimum wage a buck an hour, 90 cents an hour. In fact I am a cosponsor of a Republican's bill to increase it by a buck an hour. I am glad they have taken the leadership to do that. This is a bipartisan effort. Last week we saw, as my colleague from Pennsylvania said, 13 members on the Republican side support it. I know there are more than that as cosponsors of my colleague from New York's bill that I am a cosponsor of.

All we are asking for is a fair, clean vote on a minimum wage increase. Even today in the Washington Post the majority leader in the Senate talked about let us eliminate this gas tax increase from 1993 that goes for budget reduction and deficit reduction, and at the same time increase the minimum wage. Let us do it, Mr. Speaker. I think that is a great idea. That way the little people can reach it not only in their taxes they save on their gas tax, but they get a pay raise at the same time.

Ms. PRYCE. Mr. Speaker, I reserve the balance of my time.

Mr. HALL of Ohio. Mr. Speaker, I yield 1 minute to the gentlewoman from North Carolina [Mrs. CLAYTON].

Mrs. CLAYTON. Mr. Speaker, I urge my colleagues to vote "no" on the previous question so the rule will allow us, then, to have an amendment that would offer the opportunity to talk and discuss the minimum wage.

I would say further that on the other side as we talk about the Republicans not wanting us to do this, Republicans have voted for a minimum wage. I would remind Members the last time, 1989, 135 Republicans voted in this House for the minimum wage increase, including our now Speaker GINGRICH. Thirty-six Republicans voted for it on the Senate side, including the now majority leader, Mr. DOLE, the Presidential nominee for the Republicans. This has been a bipartisan action.

Why can we not have this amendment that will allow us to discuss it? Since that increase in 1989, we all know the price of living has increased and has increased by some 13 percent. Yet we have not done anything about raising the wages of those who are least among us. We need a bipartisan action. Just as we did in 1989, we need it at this time.

I urge a vote against the previous question so we can be allowed an opportunity to discuss what we should discuss for all Americans, a livable minimum wage.

Ms. PRYCE. Mr. Speaker, I reserve the balance of my time.

Mr. HALL of Ohio. Mr. Speaker, I yield 2 minutes to the gentleman from Montana [Mr. WILLIAMS].

Mr. WILLIAMS. Mr. Speaker, the Republican men and women in this Chamber who are opposed to an increase in the minimum wage earn more salary from the taxpayer every 15 days than people on the minimum wage earn all year long. Yet they still do not want to provide an additional 25 cents to those workers. We are in charge of that here. People who earn more in 15 days will not give another 25 cents to the working poor in this country.

What President Clinton's proposal would do is buy 6 months of groceries for a family on a minimum wage. No wonder the American people overwhelmingly support this increase in the minimum wage and reject the stinginess of our colleagues on the Republican side.

Ms. PRYCE. Mr. Speaker, I reserve the balance of my time.

Mr. HALL of Ohio. Mr. Speaker, I yield 2 minutes to the gentlewoman from Texas [Ms. JACKSON-LEE].

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank very much the Rules Committee member Mr. HALL for his leadership and I rise to ask that we defeat the previous question. I am sorry that my good friend did not yield to me, the gentleman from Pennsylvania, because I wanted to remind him of our American history.

I am proud to stand in the well of the House with a desperate act of seeking to defeat the previous question. Americans applaud when we desperately try to help other people. It was the American Founding Fathers who dumped their tea in the Boston Harbor, a desperate economic act to be able to say, "No more; no more." And so I am proud to ask to defeat the previous question so that we can do something about raising the minimum wage.

Again, I am sorry the gentleman from Pennsylvania has left the floor because let me tell Members, when New Jersey raised the minimum wage in 1992, it increased the jobs in New Jersey and there was no job loss. There is nothing to say that increasing the minimum wage to $5.15 per hour, simply 90 cents, will do anything to the American economy but help those who are in need.

Will it help those who are in fact at the bottom rung? Yes, it will. Will it help those who are in fact middle class? Yes, it will.

Let me share with Members, if you have ever worked an 8-hour shift as a dishwasher, or fry cook or if you have never walked miles in 1 day picking peas, beans, lettuce or corn and if you have never cared for the elderly or sick and you have never experienced not affording health care for yourself, then you may not understand the need to raise the minimum wage. At the same time if you are part of a family with four children who work every day, you may understand the need for the increase in the minimum wage because it impacts your wage: increases and how you ultimately will be able to provide for paying for your bills.

This is a time to listen to 80 percent of the American public. This is a time to do a desperate act. We are procedurally correct because what we are asking to do is to defeat the previous question so that we can bring to the House floor a clean bill to raise the minimum wage 90 cents.

I am for the repeal of the Btu tax, and what I would like to see is that the money goes directly back to the consumer. Let us help the consumer today, take the gas tax off, give it back to the consumer and likewise let us raise the minimum wage for the American people, those who do the work that is part of this American economy. This will promote growth. We need to raise the minimum wage. A clean bill to raise the minimum wage 90 cents is what we need now.

Ms. PRYCE. Mr. Speaker, I yield 2 minutes to the gentleman from Florida [Mr. MICA].

Mr. MICA. Mr. Speaker, I do not have a little standard here but it is interesting to hear the other side rant and rail and rave about the minimum wage.

This sort of says it all, Bill Clinton, our President, in Time Magazine, February 6, 1995, that was last year, I believe, said, "Raising the minimum wage is the wrong way to raise the income of low-wage earners."

□ 1245

This is just one quote. There are other quotes with the President saying the same thing.

Now, I have only been here 3 years, Mr. Speaker. The first 2 years, the other side of the aisle controlled, as I recall, the House, the other body, the U.S. Senate, and the White House. They controlled it in very large numbers. They could have brought this issue up at any time.

Instead, as I recall, and I was here for that time, what they did was they

passed the largest tax increase in history, and they said it would not have any effect on folks. But if you have not been to the gas station lately, I advise these people that are earning $4.25 an hour, low-income people, to look at their gasoline prices. They raised those gasoline taxes that they are paying, and it hurts the poorest of the poor.

They there is another report, I submit to my colleagues, out today by the Heritage Commission. Look at that report. That report says that people have less money in their pockets, and that is the result of these policies that they did their first 2 years.

This is what the President said. That is what they did. And today they are out here saying that we are not giving this issue a good opportunity to be heard. It will be heard, and we will have a solution. But this is what they said, and that is what they did.

Mr. HALL of Ohio. Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. DOGGETT].

Mr. DOGGETT. Mr. Speaker, America needs a raise. The minimum wage, its purchasing power, is approaching a 40-year low, almost as old as I am, since the minimum wage has had purchasing power with as little capability as it does at present.

The gentleman from Pennsylvania says that it is not germane to this debate to talk about the minimum wage, the need for the American people to have a raise. Well, let me tell you, it is mighty germane to the working people of this country that they get a raise. It may not be germane to the elitist, but it is germane to the people that are out there scrubbing the floors, tending to the nursing homes, picking the peas, as my colleague from Texas said, serving the meals at the fast food restaurants. It is very germane to them. For many it is a question of whether or not they can get out of poverty by having the means to do that.

All that stands between us today and getting a raise for the American people are 10 Members of the Republican side coming over and joining a few of their colleagues from last week and so many Democrats, because it was a mere 10 Republican votes that defeated the raise for America when we considered this issue last week.

If they will simply have the courage to vote the same way they spoke at the press conference when they were facing the TV cameras and said they wanted to give even more than a 90-cent raise, if they will simply vote with us today, those 10 Members who defected, with all the arm twisting that occurred from the Republican leadership last week, then America will get a raise.

Of course, I realize not every Republican Member is going to do that. In fact, the one thing that has changed since last week is that Mr. BOEHNER, the chair of the Republican Conference, has said, "I will commit suicide before I vote on a clean minimum wage bill."

Can you imagine that, hari-kari right here on the floor of the House, falling on their sword? True, the Republicans have been falling on their political swords for the last 16 months, but we finally have a chance for them today to see the light, to join us in doing something to give the people of America a raise that they very much deserve.

Ms. PRYCE. Mr. Speaker, I yield 2 minutes to my good friend, the gentleman from the great Commonwealth of Pennsylvania [Mr. GEKAS].

Mr. GEKAS. Mr. Speaker, the gentleman from Texas, who just addressed the House most eloquently, showed his powerful advocacy for a minimum wage. This gentleman, I am sure if I search the CONGRESSIONAL RECORD, when he was in the majority just 2 years ago, along with the President of the United States, did not make such an eloquent speech.

Mr. DOGGETT. Mr. Speaker, will the gentleman yield to a freshman Member who was not here 2 years ago and this is my first opportunity to raise the minimum wage?

Mr. GEKAS. Mr. Speaker, I said I was going to search the RECORD to determine if any similar speeches were made by his colleagues on his side. Do you understand? To see whether or not eloquent speeches of that type were made in favor of a minimum wage. But they could not, because the President of the United States was against the minimum wage, the Secretary of Labor was against the minimum wage elevation, and so were other functionaries of the Democrat Party.

Now, seeing that the Republicans have taken over in 1994, all of a sudden they see it as a grand scheme, do the Democrats, to embarrass the Republicans about a minimum wage controversy, which is not that great a controversy, yet it sounds good and makes people feel good to know that the Democrats, 2 years after they were in the majority, are in favor of a minimum wage.

What has happened to change the President's mind and all of a sudden he is an advocate of the elevation of the minimum wage, to the Secretary of Labor and to those on that side of the aisle who all of a sudden are minimum wage advocates?

Meanwhile, we have a bill on the floor, the one this rule governs, about trying to bring better government into the selection of U.S. marshals. That is what we ought to be debating ultimately, and to see whether or not we are strong enough to withstand the temptation to go into ultra-virus issues like the minimum wage and concentrating on bringing about better government in the election of U.S. marshals, part of our law enforcement, who do a wonderful job not in just helping the courts, but in helping the community.

Mr. HALL of Ohio. Mr. Speaker, I yield 2 minutes to the gentlewoman from Oregon [Ms. FURSE].

Ms. FURSE. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I was very interested to hear people talk about how this was going to be a tax increase. We are some of the few people who actually paid by taxes from the American people, and if we raise the minimum wage to $5.15, the minimum wage people working 40 hours a week would still make less than Members of this House make in 1 month. It is a shame, it is an outrage, that we are not able to get a vote on the minimum wage. That is why I am asking for a vote against the previous question.

I should point out that in Oregon, our legislature raised the minimum wage to $4.75, and, since 1992, since Bill Clinton has been in office, our unemployment rate has been halved in Oregon. We are doing very well in Oregon. We presently have an initiative from the people of Oregon to raise the minimum wage in Oregon to $6.50. Yet these people here on this side of the aisle are saying no, we cannot even talk about raising the minimum wage.

Seventy-five percent of people living on minimum wage, and let me tell you if you work 40 hours a week, if you lived on minimum wage today, you would make $8,840 a year, 75 percent of those people are women; 75 percent are women.

This is anti-women to not allow this vote to be brought to the House floor. How can we stand here, paid as we are by the American taxpayer, and not have the opportunity to raise the minimum wage for the women of this country who are living on less than $9,000 a year? A family of two is under the poverty level if they make $10,260, so somebody making $8,000 is way below the poverty level.

I urge my colleagues to vote "no" on the previous question. Let us give the American people a raise. They deserve it.

Ms. PRYCE. Mr. Speaker, I yield such time as he may consume to the gentleman from Georgia [Mr. LINDER].

Mr. LINDER. Mr. Speaker, this is silly season already. Usually it does not come until August. If this were really an important issue for people earning $9,000 a year or less, why did not the Democrats, who owned the House, the Senate, and the White House, mention it 2 years ago? Do you know how many times the President talked about the minimum wage in his first 2 years in office? Zero. Not one time.

He has talked about it over 50 times this year, because it is a political issue, and it is a crass and mean political issue, using as pawns in this political battle the very people they are pretending to help.

Raising the minimum wage is income redistribution among the poor. For

every four people you purport to give a $1 increase to, you take one person off the payroll.

That is not compassion. It is the striking difference between the two parties, that one party thinks government should set wages, and the other party believes the economy sets wages.

This argument should be over. There should be zero minimum wage. That is what the New York Times editorial said, a zero minimum wage. Let people who want to start on the first rung of the income ladder earn what they are worth.

Ninety percent of people on minimum wage are not there after 1 year. Many people on the minimum wage earn also tips that are not reported. This is a phony argument for phony political reasons, and, if it was serious, it would have been done 2 years ago.

In addition to that, the minimum wage is simply not germane to this bill and would not be added even if the previous question were defeated, because it is not germane to this bill. It is simply an effort to take up your time and America's time to make political points that they refused to deal with when they were in power.

Mr. HALL of Ohio. Mr. Speaker, I yield 1 minute to the gentleman from New Jersey [Mr. PALLONE].

Mr. PALLONE. Mr. Speaker, I really differ strongly with the previous speaker on this issue. First of all, I would say that I do not believe the minimum wage is a partisan issue. There are a lot of Republicans who support an increase in the minimum wage. The problem here is the Republican leadership, Speaker GINGRICH and the others, who do not want to bring this to the floor, because they know that if it comes to the floor, the majority of Democrats and enough Republicans will vote for it that it will actually pass this House, the Senate, and be signed by the President.

Let us bring it up. What do I care what President Clinton said or what whoever said in the previous Congress? The fact of the matter is now we know that this minimum wage is not keeping up with inflation, and with the people's ability or need and the purchasing power. So it should be passed now.

The reason the Democrats are doing this as often as we are on the previous question or on the rule or whatever, is because we are in the minority and we have no other way to bring it up. We have to keep raising it, so eventually this Republican leadership will wake up and recognize that even its own Members, even a lot of the Republicans, are willing and want this passed and want it brought to the floor.

The time has come. In my home State of New Jersey, we have raised the minimum wage, and it has been a success and it has not affected unemployment.

Mr. HALL of Ohio. Mr. Speaker, I yield 2 minutes to the gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I want to address the issue that has been raised by several of my colleagues that this bill is about the U.S. Marshals Service. The reason there is no debate about the bill itself is that it is an absolutely noncontroversial bill, and is brought to this floor for debate simply so my Republican colleagues can say, "We brought an open rule to the floor, and you can amend it in any way you want."

Well, we want to amend this bill. We want to amend it by attaching a minimum wage provision that will raise the wages of the American people.

So what is their response? The first time we say, "Hey, we have an amendment," they say, "Oh, no, this is not an open rule. You can't amend this bill that way. It is not even germane to talk about it on the floor."

They do not want to talk about it. You just heard the reason they do not want to talk about it, because you have got a bunch of extreme people, some of whom believe there ought not even be a minimum wage in this country, that people ought to be allowed to work for 5 cents an hour if the market dictates that. They do not care about what kind of conditions people are living in, in this country. All they care about is supporting their corporate, rich constituencies.

They talk about supporting a minimum wage, as long as they are on the television. They talk about supporting a gas tax cut, as long as they are on the television. What they will not admit is if we defeat the previous question on this rule, we can talk about both of those things in the context of this bill.

Democracy is about debate. Bring it off the television and onto the floor of Congress and let us debate it. Let us defeat the previous question on this rule.

Mr. HALL of Ohio. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania [Mr. KLINK].

□ 1300

Mr. KLINK. Mr. Speaker, I have heard time and time again that this is a phony argument. There were some of us 2 years ago on the Committee on Education and Labor who talked about the need then, 2 years ago in the previous Congress when our party was leading, that the minimum wage had to be raised. I would point out that now that the Republicans are in charge, there is no longer any committee in Congress with the name labor in its name, which shows, I think, the utmost contempt that that party has for working men and women.

I have heard my colleagues from the other side of the aisle come down and talk repeatedly about the fact we do not need a minimum wage. Well, I come from an area in southwestern Pennsylvania where we have coal fields and steel mills. And when we did not have workers' protection, when we did not have minimum wage, we saw people working for next to nothing. We saw them going into the coal mines. Children were forced to work. They would go in before the sun came up each morning, go into the mines, and come out at night when the sun was down, never seeing daylight. There were no worker protections for them. They had to shop at the company store, take whatever money they would get, and usually they ended up owing the company more at the store than they had made. So they were constantly working themselves into debt.

There is a reason that we have a minimum wage in this country. There is a reason that those on the lowest end need to make a livable wage, need to be able to buy food, need to be able to take care of their families. I will paraphrase a former Republican President, Teddy Roosevelt, who said that for a man or woman to be able to participate in this great country's democracy, they have to be able to afford the absolute minimum, and they have to be able to work and make the money to pay for the absolute minimum and still have time to dedicate to their family and dedicate time to their community.

We have seen this Republican Congress attempt to eliminate the minimum corporate income tax, attempt to cut way back on capital gains for the large corporations, but when it comes to giving a livable wage, lifting from beneath the poverty rate the lowest workers in this country, they constantly try to stifle us. Somewhere between Abraham Lincoln and NEWT GINGRICH, this party has reversed its position on slavery.

Ms. PRYCE. Mr. Speaker, I yield 5 minutes to the gentleman from Connecticut [Mr. SHAYS].

Mr. SHAYS. Mr. Speaker, I thank the gentlewoman from Ohio for yielding me this time.

Mr. Speaker, there are a large number of Republicans who believe that the minimum wage is destructive and that an increase would be harmful to our country. There are a number of Republicans who take a different view. My purpose for standing there today is to encourage my colleagues to vote to pass the motion for the previous question, but to say that time is running out.

I understand my colleagues on the other side have been forcing this issue each and every week. It does force others to deal with it more quickly than we may have wanted to. But our leadership on this side of the aisle needs the opportunity to see if there is a way to come forward with a package that meets the concerns of us to support a

minimum wage and also meets the legitimate concerns of some of my colleagues.

I would like to tell my colleagues why I support an increase in the minimum wage, why I agree with my colleague. It is at a 40-year low. If we do not increase the minimum wage, it will be at a 40-year low. The minimum wage in 1968 was at the high point in terms of its purchasing power. If we had indexed for inflation from 1968, that minimum wage would be $7.08 today, not $4.25.

I believe the modest increase that we voted on in 1989 was fair and right. I do not believe it caused unemployment, I do not believe it created higher prices. I believe it lifted up the bottom level. I make the argument with people on my side of the aisle, and anyone else who will listen, that I really believe that if we are looking to get people off of welfare and on to work, we need to lift the minimum wage. But these are all issues that will be debated and have to be debated, and I believe they will be debated, quite frankly.

The issue is, should it happen today? And I would encourage all my Republican colleagues to give our leadership the time to deal with this issue, to give them time to come and present to us their proposal and then we can decide if it meets the test. For me, it has to be passage of minimum wage.

I believe minimum wage will pass, I believe it should pass, and I look forward to voting for it. But on this procedural question on a bill that, quite frankly, is not a substantive bill, I would encourage my colleagues to not be enticed to vote for the minimum wage at this time.

Mr. HALL of Ohio. Mr. Speaker, I yield myself the balance of my time to say I do hope that we defeat the previous question. I will ask for a vote on it.

I look at raising the minimum wage very simply. I have just met a lot of people around the country, at different food banks and soup kitchens, and they are not making it. A lot of them are working poor, and sometime during the month they run out of money after they pay for their rent and pay for their food and they pay for other things. Two or three days every month, they run out of money.

In my own district I have 66 food banks, and many of these working poor have to go to these food banks and soup kitchens, most of which are women and children.

For that reason and other reasons, I would hope that we could get a chance to vote on the minimum wage. That is why I offered the chance to vote no on the previous question so we can make that an issue relative to offering an amendment on the floor on the minimum wage.

Mr. Speaker, I include for the RECORD the following:

FLOOR PROCEDURE IN THE 104TH CONGRESS; COMPILED BY THE RULES COMMITTEE DEMOCRATS

Bill No.	Title	Resolution No.	Process used for floor consideration	Amendments in order
H.R. 1*	Compliance	H. Res. 6	Closed	None.
H. Res. 6	Opening Day Rules Package	H. Res. 5	Closed; contained a closed rule on H.R. 1 within the closed rule	None.
H.R. 5*	Unfunded Mandates	H. Res. 38	Restrictive; Motion adopted over Democratic objection in the Committee of the Whole to limit debate on section 4; Pre-printing gets preference.	N/A.
H.J. Res. 2*	Balanced Budget	H. Res. 44	Restrictive; only certain substitutes; PQ	2R; 4D.
H. Res. 43	Committee Hearings Scheduling	H. Res. 43 (OJ)	Restrictive; considered in House no amendments	N/A.
H.R. 101	To transfer a parcel of land to the Taos Pueblo Indians of New Mexico.	H. Res. 51	Open	N/A.
H.R. 400	To provide for the exchange of lands within Gates of the Arctic National Park Preserve.	H. Res. 52	Open	N/A.
H.R. 440	To provide for the conveyance of lands to certain individuals in Butte County, California.	H. Res. 53	Open	N/A.
H.R. 2*	Line Item Veto	H. Res. 55	Open; Pre-printing gets preference	N/A.
H.R. 665*	Victim Restitution Act of 1995	H. Res. 61	Open; Pre-printing gets preference	N/A.
H.R. 666*	Exclusionary Rule Reform Act of 1995	H. Res. 60	Open; Pre-printing gets preference	N/A.
H.R. 667*	Violent Criminal Incarceration Act of 1995	H. Res. 63	Restrictive; 10 hr. Time Cap on amendments	N/A.
H.R. 668*	The Criminal Alien Deportation Improvement Act	H. Res. 69	Open; Pre-printing gets preference; Contains self-executing provision	N/A.
H.R. 728*	Local Government Law Enforcement Block Grants	H. Res. 79	Restrictive; 10 hr. Time Cap on amendments; Pre-printing gets preference	N/A.
H.R. 7*	National Security Revitalization Act	H. Res. 83	Restrictive; 10 hr. Time Cap on amendments; Pre-printing gets preference; PQ2	N/A.
H.R. 729*	Death Penalty/Habeas	N/A	Restrictive; brought up under UC with a 6 hr. time cap on amendments	N/A.
S. 2	Senate Compliance	N/A	Closed; Put on Suspension Calendar over Democratic objection	None.
H.R. 831	To Permanently Extend the Health Insurance Deduction for the Self-Employed.	H. Res. 88	Restrictive; makes in order only the Gibbons amendment; Waives all points of order; Contains self-executing provision; PQ.	1D.
H.R. 830*	The Paperwork Reduction Act	H. Res. 91	Open	N/A.
H.R. 889	Emergency Supplemental/Rescinding Certain Budget Authority	H. Res. 92	Restrictive; makes in order only the Obey substitute	1D.
H.R. 450*	Regulatory Moratorium	H. Res. 93	Restrictive; 10 hr. Time Cap on amendments; Pre-printing gets preference	N/A.
H.R. 1022*	Risk Assessment	H. Res. 96	Restrictive; 10 hr. Time Cap on amendments	N/A.
H.R. 926*	Regulatory Flexibility	H. Res. 100	Open	N/A.
H.R. 925*	Private Property Protection Act	H. Res. 101	Restrictive; 12 hr. time cap on amendments; Requires Members to pre-print their amendments in the Record prior to the bill's consideration for amendment, waives germaneness and budget act points of order as well as points of order concerning appropriating on a legislative bill against the committee substitute used as base text.	1D.
H.R. 1058*	Securities Litigation Reform Act	H. Res. 105	Restrictive; 8 hr. time cap on amendments; Pre-printing gets preference; Makes in order the Wyden amendment and waives germaneness against it.	1D.
H.R. 988*	The Attorney Accountability Act of 1995	H. Res. 104	Restrictive; 7 hr. time cap on amendments; Pre-printing gets preference	N/A.
H.R. 956*	Product Liability and Legal Reform Act	H. Res. 109	Restrictive; makes in order only 15 germane amendments and denies 64 germane amendments from being considered; PQ.	8D; 7R.
H.R. 1158	Making Emergency Supplemental Appropriations and Rescissions	H. Res. 115	Restrictive; Combines emergency H.R. 1158 & nonemergency 1159 and strikes the abortion provision; makes in order only pre-printed amendments that include offsets within the same chapter (deeper cuts in programs already cut); waives points of order against three amendments; waives cl 2 of rule XXI against the bill, cl 2, XXI and cl 7 of rule XVI against the substitute; waives cl 2(e) od rule XXI against the amendments in the Record; 10 hr time cap on amendments. 30 minutes debate on each amendment.	N/A.
H.J. Res. 73*	Term Limits	H. Res. 116	Restrictive; Makes in order only 4 amendments considered under a "Queen of the Hill" procedure and denies 21 germane amendments from being considered.	1D; 3R
H.R. 4*	Welfare Reform	H. Res. 119	Restrictive; Makes in order only 31 perfecting amendments and two substitutes; Denies 130 germane amendments from being considered; The substitutes are to be considered under a "Queen of the Hill" procedure; All points of order are waived against the amendments.	5D; 26R.
H.R. 1271*	Family Privacy Act	H. Res. 125	Open	N/A.
H.R. 660*	Housing for Older Persons Act	H. Res. 126	Open	N/A.
H.R. 1215*	The Contract With America Tax Relief Act of 1995	H. Res. 129	Restrictive; Self Executes language that makes tax cuts contingent on the adoption of a balanced budget plan and strikes section 3006. Makes in order only one substitute. Waives all points of order against the bill, substitute made in order as original text and Gephardt substitute.	1D.
H.R. 483	Medicare Select Extension	H. Res. 130	Restrictive; waives cl 2(1)(6) of rule XI against the bill; makes H.R. 1391 in order as original text; makes in order only the Dingell substitute; allows Commerce Committee to file a report on the bill at any time.	1D.
H.R. 655	Hydrogen Future Act	H. Res. 136	Open	N/A.
H.R. 1361	Coast Guard Authorization	H. Res. 139	Open; waives sections 302(f) and 308(a) of the Congressional Budget Act against the bill's consideration and the committee substitute; waives cl 5(a) of rule XXI against the committee substitute.	N/A.
H.R. 961	Clean Water Act	H. Res. 140	Open; pre-printing gets preference; waives sections 302(f) and 602(b) of the Budget Act against the bill's consideration; waives cl 7 of rule XVI, cl 5(a) of rule XXI and section 302(f) of the Budget Act against the committee substitute. Makes in order Shuster substitute as first order of business.	N/A.
H.R. 535	Corning National Fish Hatchery Conveyance Act	H. Res. 144	Open	N/A.
H.R. 584	Conveyance of the Fairport National Fish Hatchery to the State of Iowa.	H. Res. 145	Open	N/A.

FLOOR PROCEDURE IN THE 104TH CONGRESS; COMPILED BY THE RULES COMMITTEE DEMOCRATS—Continued

Bill No.	Title	Resolution No.	Process used for floor consideration	Amendments in order
H.R. 614	Conveyance of the New London National Fish Hatchery Production Facility.	H. Res. 146	Open	N/A.
H. Con. Res. 67	Budget Resolution	H. Res. 149	Restrictive; Makes in order 4 substitutes under regular order; Gephardt, Neumann/Solomon, Payne/Owens, President's Budget if printed in Record on 5/17/95; waives all points of order against substitutes and concurrent resolution; suspends application of Rule XLIX with respect to the resolution; self-executes Agriculture language; PQ.	3D; 1R.
H.R. 1561	American Overseas Interests Act of 1995	H. Res. 155	Restrictive; Requires amendments to be printed in the Record prior to their consideration; 10 hr. time cap; waives cl 2(1)(6) of rule XI against the bill's consideration; Also waives sections 302(f), 303(a), 308(a) and 402(a) against the bill's consideration and the committee amendment in order as original text; waives cl 5(a) of rule XXI against the amendment; amendment consideration is closed at 2:30 p.m. on May 25, 1995. Self-executes provision which removes section 2210 from the bill. This was done at the request of the Budget Committee.	N/A.
H.R. 1530	National Defense Authorization Act FY 1996	H. Res. 164	Restrictive; Makes in order only the amendments printed in the report; waives all points of order against the bill, substitute and amendments printed in the report. Gives the Chairman en bloc authority. Self-executes a provision which strikes section 807 of the bill; provides for an additional 30 min. of debate on Nunn-Lugar section; Allows Mr. Clinger to offer a modification of his amendment with the concurrence of Ms. Collins; PQ.	36R; 18D; 2 Bipartisan.
H.R. 1817	Military Construction Appropriations; FY 1996	H. Res. 167	Open; waives cl. 2 and cl. 6 of rule XXI against the bill; 1 hr. general debate; Uses House passed budget numbers as threshold for spending amounts pending passage of Budget; PQ.	N/A.
H.R. 1854	Legislative Branch Appropriations	H. Res. 169	Restrictive; Makes in order only 11 amendments; waives sections 302(f) and 308(a) of the Budget Act against the bill and cl. 2 and cl. 6 of rule XXI against the bill. All points of order are waived against the amendments; PQ.	5R; 4D; 2 Bipartisan.
H.R. 1868	Foreign Operations Appropriations	H. Res. 170	Open; waives cl. 2, cl. 5(b), and cl. 6 of rule XXI against the bill; makes in order the Gilman amendments as first order of business; waives all points of order against the amendments; if adopted they will be considered as original text; waives cl. 2 of rule XXI against the amendments printed in the report. Pre-printing gets priority (Hall) (Menendez) (Goss) (Smith, NJ); PQ.	N/A.
H.R. 1905	Energy & Water Appropriations	H. Res. 171	Open; waives cl. 2 and cl. 6 of rule XXI against the bill; makes in order the Shuster amendment as the first order of business; waives all points of order against the amendment; if adopted it will be considered as original text. Pre-printing gets priority.	N/A.
H.J. Res. 79	Constitutional Amendment to Permit Congress and States to Prohibit the Physical Desecration of the American Flag.	H. Res. 173	Closed; provides one hour of general debate and one motion to recommit with or without instructions; if there are instructions, the MO is debatable for 1 hr; PQ.	N/A.
H.R. 1944	Recissions Bill	H. Res. 175	Restrictive; Provides for consideration of the bill in the House; Permits the Chairman of the Appropriations Committee to offer one amendment which is unamendable; waives all points of order against the amendment; PQ.	N/A.
H.R. 1868 (2nd rule)	Foreign Operations Appropriations	H. Res. 177	Restrictive; Provides for further consideration of the bill; makes in order only the four amendments printed in the rules report (20 min. each). Waives all points of order against the amendments; Prohibits intervening motions in the Committee of the Whole; Provides for an automatic rise and report following the disposition of the amendments; PQ.	N/A.
H.R. 1977 *Rule Defeated*	Interior Appropriations	H. Res. 185	Open; waives sections 302(f) and 308(a) of the Budget Act and cl 2 and cl 6 of rule XXI; provides that the bill be read by title; waives all points of order against the Tauzin amendment; self-executes Budget Committee amendment; waives cl 2(e) of rule XXI against amendments to the bill; Pre-printing gets priority; PQ.	N/A.
H.R. 1977	Interior Appropriations	H. Res. 187	Open; waives sections 302(f), 306 and 308(a) of the Budget Act; waives clauses 2 and 6 of rule XXI against provisions in the bill; waives all points of order against the Tauzin amendment; provides that the bill be read by title; self-executes Budget Committee amendment and makes NEA funding subject to House passed authorization; waives cl 2(e) of rule XXI against the amendments to the bill; Pre-printing gets priority; PQ.	N/A.
H.R. 1976	Agriculture Appropriations	H. Res. 188	Open; waives clauses 2 and 6 of rule XXI against provisions in the bill; provides that the bill be read by title; Makes Skeen amendment first order of business, if adopted the amendment will be considered as base text (10 min.); Pre-printing gets priority; PQ.	N/A.
H.R. 1977 (3rd rule)	Interior Appropriations	H. Res. 189	Restrictive; provides for the further consideration of the bill; allows only amendments preprinted before July 14th to be considered; limits motions to rise.	N/A.
H.R. 2020	Treasury Postal Appropriations	H. Res. 190	Open; waives cl. 2 and cl. 6 of rule XXI against provisions in the bill; provides the bill be read by title; Pre-printing gets priority; PQ.	N/A.
H.J. Res. 96	Disapproving MFN for China	H. Res. 193	Restrictive; provides for consideration in the House of H.R. 2058 (90 min.) And H.J. Res. 96 (1 hr). Waives certain provisions of the Trade Act.	N/A.
H.R. 2002	Transportation Appropriations	H. Res. 194	Open; waives cl. 3 Of rule XIII and section 401 (a) of the CBA against consideration of the bill; waives cl. 6 and cl. 2 of rule XXI against provisions in the bill; Makes in order the Clinger/Solomon amendment waives all points of order against the amendment (Line Item Veto); provides the bill be read by title; Pre-printing gets priority; PQ. ***RULE AMENDED***.	N/A.
H.R. 70	Exports of Alaskan North Slope Oil	H. Res. 197	Open; Makes in order the Resources Committee amendment in the nature of a substitute as original text; Pre-printing gets priority; Provides a Senate hook-up with S. 395.	N/A.
H.R. 2076	Commerce, Justice Appropriations	H. Res. 198	Open; waives cl. 2 and cl. 6 of rule XXI against provisions in the bill; Pre-printing gets priority; provides the bill be read by title..	N/A.
H.R. 2099	VA/HUD Appropriations	H. Res. 201	Open; waives cl. 2 and cl. 6 of rule XXI against provisions in the bill; Provides that the amendment in part 1 of the report is the first business, if adopted it will be considered as base text (30 min.); waives all points of order against the Klug and Davis amendments; Pre-printing gets priority; Provides that the bill be read by title.	N/A.
S. 21	Termination of U.S. Arms Embargo on Bosnia	H. Res. 204	Restrictive; 3 hours of general debate; Makes in order an amendment to be offered by the Minority Leader or a designee (1 hr); If motion to recommit has instructions it can only be offered by the Minority Leader or a designee.	ID.
H.R. 2126	Defense Appropriations	H. Res. 205	Open; waives cl. 2(l)(6) of rule XI and section 306 of the Congressional Budget Act against consideration of the bill; waives cl. 2 and cl. 6 of rule XXI against provisions in the bill; self-executes a strike of sections 8021 and 8024 of the bill as requested by the Budget Committee; Pre-printing gets priority; Provides the bill be read by title.	N/A.
H.R. 1555	Communications Act of 1995	H. Res. 207	Restrictive; waives sec. 302(f) of the Budget Act against consideration of the bill; Makes in order the Commerce Committee amendment as original text and waives sec. 302(f) of the Budget Act and cl. 5(a) of rule XXI against the amendment; Makes in order the Bliely amendment (30 min.) as the first order of business, if adopted it will be original text; makes in order only the amendments printed in the report and waives all points of order against the amendments; provides a Senate hook-up with S. 652.	2R/3D/3 Bipartisan.
H.R. 2127	Labor/HHS Appropriations Act	H. Res. 208	Open; Provides that the first order of business will be the managers amendments (10 min.), if adopted they will be considered as base text; waives cl. 2 and cl. 6 of rule XXI against provisions in the bill; waives all points of order against certain amendments printed in the report; Pre-printing gets priority; Provides the bill be read by title; PQ.	N/A.
H.R. 1594	Economically Targeted Investments	H. Res. 215	Open; 2 hr of gen. debate. makes in order the committee substitute as original text	N/A.
H.R. 1655	Intelligence Authorization	H. Res. 216	Restrictive; waives sections 302(f), 308(a) and 401(b) of the Budget Act. Makes in order the committee substitute as modified by Govt. Reform amend (striking sec. 505) and an amendment striking title VII. Cl 7 of rule XVI and cl 5(a) of rule XXI are waived against the substitute. Sections 302(f) and 401(b) of the CBA are also waived against the substitute. Amendments must also be pre-printed in the Congressional record.	N/A.
H.R. 1162	Deficit Reduction Lock Box	H. Res. 218	Open; waives cl 7 of rule XVI against the committee substitute made in order as original text; Pre-printing gets priority.	N/A.
H.R. 1670	Federal Acquisition Reform Act of 1995	H. Res. 219	Open; waives sections 302(f) and 308(a) of the Budget Act against consideration of the bill; bill will be read by title; waives cl 5(a) of rule XXI and section 302(f) of the Budget Act against the committee substitute. Pre-printing gets priority.	N/A.
H.R. 1617	To Consolidate and Reform Workforce Development and Literacy Programs Act (CAREERS).	H. Res. 222	Open; waives section 302(f) and 401(b) of the Budget Act against the substitute made in order as original text (H.R. 2332), cl. 5(a) of rule XXI is also waived against the substitute. provides for consideration of the managers amendment (10 min.) If adopted, it is considered as base text.	N/A.

FLOOR PROCEDURE IN THE 104TH CONGRESS; COMPILED BY THE RULES COMMITTEE DEMOCRATS—Continued

Bill No.	Title	Resolution No.	Process used for floor consideration	Amendments in order
H.R. 2274	National Highway System Designation Act of 1995	H. Res. 224	Open; waives section 302(f) of the Budget Act against consideration of the bill; Makes H.R. 2349 in order as original text; waives section 302(f) of the Budget Act against the substitute; provides for the consideration of a managers amendment (10 min.) If adopted, it is considered as base text; Pre-printing gets priority; PQ.	N/A.
H.R. 927	Cuban Liberty and Democratic Solidarity Act of 1995	H. Res. 225	Restrictive; waives cl 2(L)(2)(B) of rule XI against consideration of the bill; makes in order H.R. 2347 as base text; waives cl 7 of rule XVI against the substitute; Makes Hamilton amendment the first amendment to be considered (1 hr). Makes in order only amendments printed in the report.	2R/2D
H.R. 743	The Teamwork for Employees and managers Act of 1995	H. Res. 226	Open; waives cl 2(l)(2)(b) of rule XI against consideration of the bill; makes in order the committee amendment as original text; Pre-printing get priority.	N/A.
H.R. 1170	3-Judge Court for Certain Injunctions	H. Res. 227	Open; makes in order a committee amendment as original text; Pre-printing gets priority	N/A.
H.R. 1601	International Space Station Authorization Act of 1995	H. Res. 228	Open; makes in order a committee amendment as original text; pre-printing gets priority	N/A.
H.J. Res. 108	Making Continuing Appropriations for FY 1996	H. Res. 230	Closed; Provides for the immediate consideration of the CR; one motion to recommit which may have instructions only if offered by the Minority Leader or a designee.	
H.R. 2405	Omnibus Civilian Science Authorization Act of 1995	H. Res. 234	Open; self-executes a provision striking section 304(b)(3) of the bill (Commerce Committee request); Pre-printing gets priority.	N/A.
H.R. 2259	To Disapprove Certain Sentencing Guideline Amendments	H. Res. 237	Restrictive; waives cl 2(l)(2)(B) of rule XI against the bill's consideration; makes in order the text of the Senate bill S. 1254 as original text; Makes in order only a Conyers substitute; provides a senate hook-up after adoption.	1D
H.R. 2425	Medicare Preservation Act	H. Res. 238	Restrictive; waives all points of order against the bill's consideration; makes in order the text of H.R. 2485 as original text; waives all points of order against H.R. 2485; makes in order only an amendment offered by the Minority Leader or a designee; waives all points of order against the amendment; waives cl 5© of rule XXI (⅗ requirement on votes raising taxes); PQ.	1D
H.R. 2492	Legislative Branch Appropriations Bill	H. Res. 239	Restrictive; provides for consideration of the bill in the House	N/A.
H.R. 2491 H. Con. Res. 109	7 Year Balanced Budget Reconciliation Social Security Earnings Test Reform.	H. Res. 245	Restrictive; makes in order H.R. 2517 as original text; waives all pints of order against the bill; Makes in order only H.R. 2530 as an amendment only if offered by the Minority Leader or a designee; waives all points of order against the amendment; waives cl 5© of rule XXI (⅗ requirement on votes raising taxes); PQ.	1D
H.R. 1833	Partial Birth Abortion Ban Act of 1995	H. Res. 251	Closed	N/A.
H.R. 2546	D.C. Appropriations FY 1996	H. Res. 252	Restrictive; waives all points of order against the bill's consideration; Makes in order the Walsh amendment as the first order of business (10 min.); if adopted it is considered as base text; waives cl 2 and 6 of rule XXI against the bill; makes in order the Bonilla, Gunderson and Hostettler amendments (30 min.); waives all points of order against the amendments; debate on any further amendments is limited to 30 min. each.	N/A
H.J. Res. 115	Further Continuing Appropriations for FY 1996	H. Res. 257	Closed; Provides for the immediate consideration of the CR; one motion to recommit which may have instructions only if offered by the Minority Leader or a designee.	N/A
H.R. 2586	Temporary Increase in the Statutory Debt Limit	H. Res. 258	Restrictive; Provides for the immediate consideration of the CR; one motion to recommit which may have instructions only if offered by the Minority Leader or a designee; self-executes 4 amendments in the rule; Solomon, Medicare Coverage of Certain Anti-Cancer Drug Treatments, Habeas Corpus Reform, Chrysler (MI); makes in order the Walker amend (40 min.) on regulatory reform.	5R
H.R. 2539	ICC Termination	H. Res. 259	Open; waives section 302(f) and section 308(a)	
H.J. Res. 115	Further Continuing Appropriations for FY 1996	H. Res. 261	Closed; provides for the immediate consideration of a motion by the Majority Leader or his designees to dispose of the Senate amendments (1hr).	N/A.
H.R. 2586	Temporary Increase in the Statutory Limit on the Public Debt	H. Res. 262	Closed; provides for the immediate consideration of a motion by the Majority Leader or his designees to dispose of the Senate amendments (1hr).	N/A.
H. Res. 250	House Gift Rule Reform	H. Res. 268	Closed; provides for consideration of the bill in the House; 30 min. of debate; makes in order the Burton amendment and the Gingrich en bloc amendment (30 min. each); waives all points of order against the amendments; Gingrich is only in order if Burton fails or is not offered.	2R
H.R. 2564	Lobbying Disclosure Act of 1995	H. Res. 269	Open; waives cl. 2(l)(6) of rule XI against the bill's consideration; waives all points of order against the Istook and McIntosh amendments.	N/A.
H.R. 2606	Prohibition on Funds for Bosnia Deployment	H. Res. 273	Restrictive; waives all points of order against the bill's consideration; provides one motion to amend if offered by the Minority Leader or designee (1 hr non-amendable); motion to recommit which may have instructions only if offered by Minority Leader or his designee; if Minority Leader motion is not offered debate time will be extended by 1 hr.	N/A.
H.R. 1788	Amtrak Reform and Privatization Act of 1995	H. Res. 289	Open; waives all points of order against the bill's consideration; makes in order the Transportation substitute modified by the amend in the report; Bill read by title; waives all points of order against the substitute; makes in order a managers amend as the first order of business, if adopted it is considered base text (10 min.); waives all points of order against the amendment; Pre-printing gets priority.	N/A.
H.R. 1350	Maritime Security Act of 1995	H. Res. 287	Open; makes in order the committee substitute as original text; makes in order a managers amendment which if adopted is considered as original text (20 min.) unamendable; pre-printing gets priority.	N/A.
H.R. 2621	To Protect Federal Trust Funds	H. Res. 293	Closed; provides for the adoption of the Ways & Means amendment printed in the report. 1 hr. of general debate; PQ.	N/A.
H.R. 1745	Utah Public Lands Management Act of 1995	H. Res. 303	Open; waives cl 2(l)(6) of rule XI and sections 302(f) and 311(a) of the Budget Act against the bill's consideration. Makes in order the Resources substitute as base text and waives cl 7 of rule XVI and sections 302(f) and 308(a) of the Budget Act; makes in order a managers' amend as the first order of business, if adopted it is considered base text (10 min)..	N/A.
H. Res. 304	Providing for Debate and Consideration of Three Measures Relating to U.S. Troop Deployments in Bosnia.	N/A	Closed; makes in order three resolutions; H.R. 2770 (Dorman), H. Res. 302 (Buyer), and H. Res. 306 (Gephardt); 1 hour of debate on each..	1D; 2R
H. Res. 309	Revised Budget Resolution	H. Res. 309	Closed; provides 2 hours of general debate in the House; PQ	N/A.
H.R. 558	Texas Low-Level Radioactive Waste Disposal Compact Consent Act	H. Res. 313	Open; pre-printing gets priority	N/A.
H.R. 2677	The National Parks and National Wildlife Refuge Systems Freedom Act of 1995.	H. Res. 323	Closed; consideration in the House; self-executes Young amendment	N/A.
			PROCEDURE IN THE 104TH CONGRESS 2D SESSION	
H.R. 1643	To authorize the extension of nondiscriminatory treatment (MFN) to the products of Bulgaria.	H. Res. 334	Closed; provides to take the bill from the Speaker's table with the Senate amendment, and consider in the House the motion printed in the Rules Committee report; 1 hr. of general debate; previous question is considered as ordered. ** NR; PQ.	N/A.
H.J. Res. 134 H. Con. Res. 131	Making continuing appropriations/establishing procedures making the transmission of the continuing resolution H.J. Res. 134.	H. Res. 336	Closed; provides to take from the Speaker's table H.J. Res. 134 with the Senate amendment and concur with the Senate amendment with an amendment (H. Con. Res. 131) which is self-executed in the rule. The rule provides further that the bill shall not be sent back to the Senate until the Senate agrees to the provisions of H. Con. Res. 131. ** NR; PQ.	N/A.
H.R. 1358	Conveyance of National Marine Fisheries Service Laboratory at Gloucester, Massachusetts.	H. Res. 338	Closed; provides to take the bill from the Speakers table with the Senate amendment, and consider in the house the motion printed in the Rules Committee report; 1 hr. of general debate; previous quesetion is considered as ordered. ** NR; PQ.	N/A.
H.R. 2924	Social Security Guarantee Act	H. Res. 355	Closed; ** NR; PQ	N/A.
H.R. 2854	The Agricultural Market Transition Program	H. Res. 366	Restrictive; waives all points of order against the bill; 2 hrs of general debate; makes in order a committee substitute as original text and waives all points of order against the substitute; makes in order only the 16 amends printed in the report and waives all points of order against the amendments; circumvents unfunded mandates law; Chairman has en bloc authority for amends in report (20 min.) on each en bloc; PQ.	5D; 9R; 2 Bipartisan.
H.R. 994	Regulatory Sunset & Review Act of 1995	H. Res. 368	Open rule; makes in order the Hyde substitute printed in the Record as original text; waives cl 7 of rule XVI against the substitute; Pre-printing gets priority; vacates the House action on S. 219 and provides to take the bill from the Speakers table and consider the Senate bill; allows Chrmn. Clinger a motion to strike all after the enacting clause of the Senate bill and insert the text of H.R. 994 as passed by the House (1 hr) debate; waives germaneness against the motion; provides if the motion is adopted that it is in order for the House to insist on its amendments and request a conference.	N/A.
H.R. 3021	To Guarantee the Continuing Full Investment of Social security and Other Federal Funds in Obligations of the United States.	H. Res. 371	Closed rule; gives one motion to recommit, which if it contains instructions, may only if offered by the Minority Leader or his designee. ** NR.	N/A.

FLOOR PROCEDURE IN THE 104TH CONGRESS; COMPILED BY THE RULES COMMITTEE DEMOCRATS—Continued

Bill No.	Title	Resolution No.	Process used for floor consideration	Amendments in order
H.R. 3019	A Further Downpayment Toward a Balanced Budget	H. Res. 372	Restrictive; self-executes CBO language regarding contingency funds in section 2 of the rule; makes in order only the amendments printed in the report; Lowey (20 min), Istook (20 min), Crapo (20 min), Obey (1 hr); waives all points of order against the amendments; give one motion to recommit, which if contains instructions, may only if offered by the Minority Leader or his designee. ** NR.	2D/2R.
H.R. 2703	The Effective Death Penalty and Public Safety Act of 1996	H. Res. 380	Restrictive; makes in order only the amendments printed in the report; waives all points of orer against the amendments; gives Judiciary Chairman en bloc authority (20 min.) on enblocs; provides a Senate hook-up with S. 735. ** NR.	6D; 7R; 4 Bipartisan.
H.R. 2202	The Immigration and National Interest Act of 1995	H. Res. 384	Restrictive; waives all points of order against the bill and amendments in the report except for those arising under sec. 425(a) of the Budget Act (unfunded mandates); 2 hrs. of general debate on the bill; makes in order the committee substitute as base text; makes in order only the amends in the report; gives the Judiciary Chairman en bloc authority (20 min.) of debate on the en blocs; self-executes the Smith (TX) amendment re: employee verification program; PQ.	12D; 19R; 1 Bipartisan.
H.J. Res. 165	Making further continuing appropriations for FY 1996	H. Res. 386	Closed; provides for the consideration of the CR in the House and gives one motion to recommit which may contain instructions only if offered by the Minority Leader; the rule also waives cl 4(b) of rule XI against the following: an omnibus appropriations bill, another CR, a bill extending the debt limit. ** NR.	N/A.
H.R. 125	The Gun Crime Enforcement and Second Amendment Restoration Act of 1996.	H. Res. 388	Closed; self-executes an amendment; provides one motion to recommit which may contain instructions only if offered by the Minority Leader or his designee. ** NR.	N/A
H.R. 3136	The Contract With America Advancement Act of 1996	H. Res. 391	Closed; provides for the consideration of the bill in the House; self-executes an amendment in the Rules report; waives all points of order, except sec. 425(a)(unfunded mandates) of the CBA, against the bill's consideration; orders the PQ except 1 hr. of general debate between the Chairman and Ranking Member of Ways and Means; one Archer amendment (10 min.); one motion to recommit which may contain instructions only if offered by the Minority Leader or his designee; Provides a Senate hookup if the Senate passes S. 4 by March 30, 1996. **NR.	N/A
H.R. 3103	The Health Coverage Availability and Affordability Act of 1996	H. Res. 392	Restrictive: 2 hrs. of general debate (45 min. split by Ways and Means) (45 split by Commerce) (30 split by Economic and Educational Opportunities); self-executes H.R. 3160 as modified by the amendment in the Rules report as original text; waives all points of order, except sec. 425(a) (unfunded mandates) of the CBA; makes in order a Democratic substitute (1 hr.) waives all points of order, except sec. 425(a) (unfunded mandates) of the CBA, against the amendment; one motion to recommit which may contain instructions only if offered by the Minority Leader or his designee; waives cl 5(c) of Rule XXI (requiring 3/5 vote on any tax increase) on votes on the bill, amendments or conference reports.	N/A
H.J. Res. 159	Tax Limitation Constitutional Amendment	H. Res. 395	Restrictive; provides for consideration of the bill in the House; 3 hrs of general debate; Makes in order H.J. Res. 169 as original text; allows for an amendment to be offered by the Minority Leader or his designee (1 hr) ** NR.	ID
H.R. 842	Truth in Budgeting Act	H. Res. 396	Open; 2 hrs. of general debate; Pre-printing gets priority	N/A
H.R. 2715	Paperwork Elimination Act of 1996	H. Res. 409	Open; Preprinting get priority	N/A
H.R. 1675	National Wildlife Refuge Improvement Act of 1995	H. Res. 410	Open; Makes the Young amendment printed in the 4/16/96 Record in order as original text; waives cl 7 of rule XVI against the amendment; Preprinting gets priority; **NR.	N/A
H.J. Res. 175	Further Continuing Appropriations for FY 1996	H. Res. 411	Closed; provides for consideration of the bill in the House; one motion to recommit which, if containing instructions, may be offered by the Minority Leader or his designee. **NR.	N/A
H.R. 2641	United States Marshals Service Improvement Act of 1996	H. Res. 418	Open; Pre-printing gets priority; Senate hook-up	N/A
H.R. 2149	The Ocean Shipping Reform Act	H. Res. 419	Open; Makes in order a managers amendment as the first order of business (10 min.); if adopted it is considered as base text; waives cl 7 of rule XVI against the managers amendment; Pre-printing gets priority; makes in order an Oberstar en bloc amendment..	N/A

*Contract Bills, 67% restrictive; 33% open. **All legislation 1st Session, 53% restrictive; 47% open. ***All legislation 2d Session, 90% restrictive; 10% open. ****All legislation 104th Congress, 61% restrictive; 39% open. *****NR indicates that the legislation being considered by the House for amendment has circumvented standard procedure and was never reported from any House committee. ******PQ indicates that previous question was ordered on the resolution. *******Restrictive rules are those which limit the number of amendments which can be offered, and include so-called modified open and modified closed rules as well as completely closed rules and rules providing for consideration in the House as opposed to the Committee of the Whole. This definition of restrictive rule is taken from the Republican chart of resolutions reported from the Rules Committee in the 103d Congress. N/A means not available.

Mr. HALL of Ohio. Mr. Speaker, I yield back the balance of my time.

Ms. PRYCE. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, let me stress that this is more than an open rule, it is, in fact, a wide open rule. Any Member can be heard on any germane amendment to the bill at the appropriate time. By ordering the previous question and adopting this fair resolution, the House will have an opportunity for a full and open debate on important legislation designed to improve the overall quality and level of professionalism in the U.S. Marshals Service.

I just want to remind everybody what we are talking about here. We are talking about the U.S. Marshals Service.

Mr. Speaker, let me point out that we have been through this same chicanery before, just last week. We checked with the appropriate nonpartisan parliamentary experts in this House and, to a person, they confirmed that the amendment that the Democrats want to make in order under this rule is completely nongermane to the rule and to the bill. So do not be fooled. The previous question vote is not a vote on the minimum wage, it is a vote on whether to close the debate and to vote for this rule.

Mr. Speaker, House rules and precedents make it very clear that it is not in order to amend a rule like this to make in order a nongermane amendment to the bill in question. In other words, even if the minority defeated the previous question and offered their amendment, this would be ruled out of order for violating the rules of this House.

At this point, Mr. Speaker, I insert for the RECORD the following material:

THE PREVIOUS QUESTION VOTE: WHAT IT MEANS

House Rule XVII ("Previous Question") provides in part that: There shall be a motion for the previous question, which, being ordered by a majority of the Members voting, if a quorum is present, shall have the effect to cut off all debate and bring the House to a direct vote upon the immediate question or questions on which it has been asked or ordered.

In the case of a special rule or order of business resolution reported from the House Rules Committee, providing for the consideration of a specified legislative measure, the previous question is moved following the one hour of debate allowed for under House Rules.

The vote on the previous question is simply a procedural vote on whether to proceed to an immediate vote on adopting the resolution that sets the ground rules for debate and amendment on the legislation it would make in order. Therefore, the vote on the previous question has no substantive legislative or policy implications whatsoever.

THE AMENDMENT PROCESS UNDER SPECIAL RULES REPORTED BY THE RULES COMMITTEE,[1] 103D CONGRESS V. 104TH CONGRESS

[As of April 30, 1996]

Rule type	103d Congress		104th Congress	
	Number of rules	Percent of total	Number of rules	Percent of total
Open/Modified-open[2]	46	44	64	60
Modified Closed[3]	49	47	26	24
Closed[4]	9	9	17	16

THE AMENDMENT PROCESS UNDER SPECIAL RULES REPORTED BY THE RULES COMMITTEE,[1] 103D CONGRESS V. 104TH CONGRESS—Continued

[As of April 30, 1996]

Rule type	103d Congress		104th Congress	
	Number of rules	Percent of total	Number of rules	Percent of total
Total	104	100	107	100

[1] This table applies only to rules which provide for the original consideration of bills, joint resolutions or budget resolutions and which provide for an amendment process. It does not apply to special rules which only waive points of order against appropriations bills which are already privileged and are considered under an open amendment process under House rules.

[2] An open rule is one under which any Member may offer a germane amendment under the five-minute rule. A modified open rule is one under which any Member may offer a germane amendment under the five-minute rule subject only to an overall time limit on the amendment process and/or a requirement that the amendment be preprinted in the Congressional Record.

[3] A modified closed rule is one under which the Rules Committee limits the amendments that may be offered only to those amendments designated in the special rule or the Rules Committee report to accompany it, or which preclude amendments to a particular portion of a bill, even though the rest of the bill may be completely open to amendment.

[4] A closed rule is one under which no amendments may be offered (other than amendments recommended by the committee in reporting the bill).

SPECIAL RULES REPORTED BY THE RULES COMMITTEE, 104TH CONGRESS

[As of April 30, 1996]

H. Res. No. (Date rept.)	Rule type	Bill No.	Subject	Disposition of rule
H. Res. 38 (1/18/95)	O	H.R. 5	Unfunded Mandate Reform	A: 350–71 (1/19/95).
H. Res. 44 (1/24/95)	MC	H. Con. Res. 17	Social Security	A: 255–172 (1/25/95).
		H.J. Res. 1	Balanced Budget Amdt	
H. Res. 51 (1/31/95)	O	H.R. 101	Land Transfer, Taos Pueblo Indians	A: voice vote (2/1/95).
H. Res. 52 (1/31/95)	O	H.R. 400	Land Exchange, Arctic Nat'l. Park and Preserve	A: voice vote (2/1/95).
H. Res. 53 (1/31/95)	O	H.R. 440	Land Conveyance, Butte County, Calif	A: voice vote (2/1/95).
H. Res. 55 (2/1/95)	O	H.R. 2	Line Item Veto	A: voice vote (2/2/95).
H. Res. 60 (2/6/95)	O	H.R. 665	Victim Restitution	A: voice vote (2/7/95).
H. Res. 61 (2/6/95)	O	H.R. 666	Exclusionary Rule Reform	A: voice vote (2/7/95).
H. Res. 63 (2/8/95)	MO	H.R. 667	Violent Criminal Incarceration	A: voice vote (2/9/95).
H. Res. 69 (2/9/95)	O	H.R. 668	Criminal Alien Deportation	A: voice vote (2/10/95).
H. Res. 79 (2/10/95)	MO	H.R. 728	Law Enforcement Block Grants	A: voice vote (2/13/95).
H. Res. 83 (2/13/95)	MO	H.R. 7	National Security Revitalization	PQ: 229–100; A: 227–127 (2/15/95).
H. Res. 88 (2/16/95)	MC	H.R. 831	Health Insurance Deductibility	PQ: 230–191; A: 229–188 (2/21/95).
H. Res. 91 (2/21/95)	O	H.R. 830	Paperwork Reduction Act	A: voice vote (2/22/95).
H. Res. 92 (2/21/95)	MC	H.R. 889	Defense Supplemental	A: 282–144 (2/22/95).
H. Res. 93 (2/22/95)	MO	H.R. 450	Regulatory Transition Act	A: 252–175 (2/23/95).
H. Res. 96 (2/24/95)	MO	H.R. 1022	Risk Assessment	A: 253–165 (2/27/95).
H. Res. 100 (2/27/95)	O	H.R. 926	Regulatory Reform and Relief Act	A: voice vote (2/28/95).
H. Res. 101 (2/28/95)	MO	H.R. 925	Private Property Protection Act	A: 271–151 (3/2/95).
H. Res. 103 (3/3/95)	MO	H.R. 1058	Securities Litigation Reform	
H. Res. 104 (3/3/95)	MO	H.R. 988	Attorney Accountability Act	A: voice vote (3/6/95).
H. Res. 105 (3/6/95)	MO			A: 257–155 (3/7/95).
H. Res. 108 (3/7/95)	Debate	H.R. 956	Product Liability Reform	A: voice vote (3/8/95).
H. Res. 109 (3/8/95)	MC			PQ: 234–191 A: 247–181 (3/9/95).
H. Res. 115 (3/14/95)	MO	H.R. 1159	Making Emergency Supp. Approps	A: 242–190 (3/15/95).
H. Res. 116 (3/15/95)	MC	H.J. Res. 73	Term Limits Const. Amdt	A: voice vote (3/28/95).
H. Res. 117 (3/16/95)	Debate	H.R. 4	Personal Responsibility Act of 1995	A: voice vote (3/21/95).
H. Res. 119 (3/21/95)	MC			A: 217–211 (3/22/95).
H. Res. 125 (4/3/95)	O	H.R. 1271	Family Privacy Protection Act	A: 423–1 (4/4/95).
H. Res. 126 (4/3/95)	O	H.R. 660	Older Persons Housing Act	A: voice vote (4/6/95).
H. Res. 128 (4/4/95)	MC	H.R. 1215	Contract With America Tax Relief Act of 1995	A: 228–204 (4/5/95).
H. Res. 130 (4/5/95)	MC	H.R. 483	Medicare Select Expansion	A: 253–172 (4/6/95).
H. Res. 136 (5/1/95)	O	H.R. 655	Hydrogen Future Act of 1995	A: voice vote (5/2/95).
H. Res. 139 (5/3/95)	O	H.R. 1361	Coast Guard Auth. FY 1996	A: voice vote (5/9/95).
H. Res. 140 (5/9/95)	O	H.R. 961	Clean Water Amendments	A: 414–4 (5/10/95).
H. Res. 144 (5/11/95)	O	H.R. 535	Fish Hatchery—Arkansas	A: voice vote (5/15/95).
H. Res. 145 (5/11/95)	O	H.R. 584	Fish Hatchery—Iowa	A: voice vote (5/15/95).
H. Res. 146 (5/11/95)	O	H.R. 614	Fish Hatchery—Minnesota	A: voice vote (5/15/95).
H. Res. 149 (5/16/95)	MC	H. Con. Res. 67	Budget Resolution FY 1996	PQ: 252–170 A: 255–168 (5/17/95).
H. Res. 155 (5/22/95)	MO	H.R. 1561	American Overseas Interests Act	A: 233–176 (5/23/95).
H. Res. 164 (6/8/95)	MC	H.R. 1530	Nat. Defense Auth. FY 1996	PQ: 225–191 A: 233–183 (6/13/95).
H. Res. 167 (6/15/95)	O	H.R. 1817	MilCon Appropriations FY 1996	PQ: 223–180 A: 245–155 (6/16/95).
H. Res. 169 (6/19/95)	MC	H.R. 1854	Leg. Branch Approps. FY 1996	PQ: 232–196 A: 236–191 (6/20/95).
H. Res. 170 (6/20/95)	O	H.R. 1868	For. Ops. Approps. FY 1996	PQ: 221–178 A: 217–175 (6/22/95).
H. Res. 171 (6/22/95)	O	H.R. 1905	Energy & Water Approps. FY 1996	A: voice vote (7/12/95).
H. Res. 173 (6/27/95)	C	H.J. Res. 79	Flag Constitutional Amendment	PQ: 258–170 A: 271–152 (6/28/95).
H. Res. 176 (6/28/95)	MC	H.R. 1944	Emer. Supp. Approps	PQ: 236–194 A: 234–192 (6/29/95).
H. Res. 185 (7/11/95)	O	H.R. 1977	Interior Approps. FY 1996	PQ: 235–193 D: 192–238 (7/12/95).
H. Res. 187 (7/12/95)	O	H.R. 1977	Interior Approps. FY 1996 #2	PQ: 230–194 A: 229–195 (7/13/95).
H. Res. 188 (7/12/95)	O	H.R. 1976	Agriculture Approps. FY 1996	PQ: 242–185 A: voice vote (7/18/95).
H. Res. 190 (7/17/95)	O	H.R. 2020	Treasury/Postal Approps. FY 1996	PQ: 232–192 A: voice vote (7/18/95).
H. Res. 193 (7/19/95)	C	H.J. Res. 96	Disapproval of MFN to China	A: voice vote (7/20/95).
H. Res. 194 (7/19/95)	O	H.R. 2002	Transportation Approps. FY 1996	PQ: 217–202 (7/21/95).
H. Res. 197 (7/21/95)	O	H.R. 70	Exports of Alaskan Crude Oil	A: voice vote (7/24/95).
H. Res. 198 (7/21/95)	O	H.R. 2076	Commerce, State Approps. FY 1996	A: voice vote (7/25/95).
H. Res. 201 (7/25/95)	O	H.R. 2099	VA/HUD Approps. FY 1996	A: 230–189 (7/25/95).
H. Res. 204 (7/28/95)	MC	S. 21	Terminating U.S. Arms Embargo on Bosnia	A: voice vote (8/1/95).
H. Res. 205 (7/28/95)	O	H.R. 2126	Defense Approps. FY 1996	A: 409–1 (7/31/95).
H. Res. 207 (8/1/95)	MC	H.R. 1555	Communications Act of 1995	A: 255–156 (8/2/95).
H. Res. 208 (8/1/95)	O	H.R. 2127	Labor, HHS Approps. FY 1996	A: 323–104 (8/2/95).
H. Res. 215 (9/7/95)	O	H.R. 1594	Economically Targeted Investments	A: voice vote (9/12/95).
H. Res. 216 (9/7/95)	MO	H.R. 1655	Intelligence Authorization FY 1996	A: voice vote (9/12/95).
H. Res. 218 (9/12/95)	O	H.R. 1162	Deficit Reduction Lockbox	A: voice vote (9/13/95).
H. Res. 219 (9/12/95)	O	H.R. 1670	Federal Acquisition Reform Act	A: 414–0 (9/13/95).
H. Res. 222 (9/18/95)	O	H.R. 1617	CAREERS Act	A: 388–2 (9/19/95).
H. Res. 224 (9/19/95)	O	H.R. 2274	Natl. Highway System	PQ: 241–173 A: 375–39–1 (9/20/95).
H. Res. 225 (9/19/95)	MC	H.R. 927	Cuban Liberty & Dem. Solidarity	A: 304–118 (9/20/95).
H. Res. 226 (9/21/95)	O	H.R. 743	Team Act	A: 344–66–1 (9/27/95).
H. Res. 227 (9/21/95)	O	H.R. 1170	3-Judge Court	A: voice vote (9/28/95).
H. Res. 228 (9/21/95)	O	H.R. 1601	Internatl. Space Station	A: voice vote (9/27/95).
H. Res. 230 (9/27/95)	C	H.J. Res. 108	Continuing Resolution FY 1996	A: voice vote (9/28/95).
H. Res. 234 (9/29/95)	O	H.R. 2405	Omnibus Science Auth	A: voice vote (10/11/95).
H. Res. 237 (10/17/95)	MC	H.R. 2259	Disapprove Sentencing Guidelines	A: voice vote (10/18/95).
H. Res. 238 (10/18/95)	MC	H.R. 2425	Medicare Preservation Act	PQ: 231–194 A: 227–192 (10/19/95).
H. Res. 239 (10/19/95)	C	H.R. 2492	Leg. Branch Approps	PQ: 235–184 A: voice vote (10/31/95).
H. Res. 245 (10/25/95)	MC	H. Con. Res. 109	Social Security Earnings Reform	PQ: 228–191 A: 235–185 (10/26/95).
		H.R. 2491	Seven-Year Balanced Budget	
H. Res. 251 (10/31/95)	C	H.R. 1833	Partial Birth Abortion Ban	A: 237–190 (11/1/95).
H. Res. 252 (10/31/95)	MO	H.R. 2546	D.C. Approps.	A: 241–181 (11/1/95).
H. Res. 257 (11/7/95)	C	H.J. Res. 115	Cont. Res. FY 1996	A: 216–210 (11/8/95).
H. Res. 258 (11/8/95)	MC	H.R. 2586	Debt Limit	A: 220–200 (11/10/95).
H. Res. 259 (11/9/95)	O	H.R. 2539	ICC Termination Act	A: voice vote (11/14/95).
H. Res. 261 (11/9/95)	C	H.J. Res. 115	Cont. Resolution	A: 223–182 (11/10/95).
H. Res. 262 (11/9/95)	C	H.R. 2586	Increase Debt Limit	A: 220–185 (11/10/95).
H. Res. 269 (11/15/95)	O	H.R. 2564	Lobbying Reform	A: voice vote (11/16/95).
H. Res. 270 (11/15/95)	C	H.J. Res. 122	Further Cont. Resolution	A: 229–176 (11/15/95).

SPECIAL RULES REPORTED BY THE RULES COMMITTEE, 104TH CONGRESS—Continued

[As of April 30, 1996]

H. Res. No. (Date rept.)	Rule type	Bill No.	Subject	Disposition of rule
H. Res. 273 (11/16/95)	MC	H.R. 2606	Prohibition on Funds for Bosnia	A: 239–181 (11/17/95).
H. Res. 284 (11/29/95)	O	H.R. 1788	Amtrak Reform	A: voice vote (11/30/95).
H. Res. 287 (11/30/95)	O	H.R. 1350	Maritime Security Act	A: voice vote (12/6/95).
H. Res. 293 (12/7/95)	C	H.R. 2621	Protect Federal Trust Funds	PQ: 223–183 A: 228–184 (12/14/95).
H. Res. 303 (12/13/95)	O	H.R. 1745	Utah Public Lands.	
H. Res. 309 (12/18/95)	C	H.Con. Res. 122	Budget Res. W/President	PQ: 230–188 A: 229–189 (12/19/95).
H. Res. 313 (12/19/95)	O	H.R. 558	Texas Low-Level Radioactive	A: voice vote (12/20/95).
H. Res. 323 (12/21/95)	C	H.R. 2677	Natl. Parks & Wildlife Refuge	Tabled (2/28/96).
H. Res. 366 (2/27/96)	MC	H.R. 2854	Farm Bill	PQ: 228–182 A: 244–168 (2/28/96).
H. Res. 368 (2/28/96)	O	H.R. 994	Small Business Growth	
H. Res. 371 (3/6/96)	C	H.R. 3021	Debt Limit Increase	A: voice vote (3/7/96).
H. Res. 372 (3/6/96)	MC	H.R. 3019	Cont. Approps. FY 1996	PQ: voice vote A: 235–175 (3/7/96).
H. Res. 380 (3/12/96)	MC	H.R. 2703	Effective Death Penalty	A: 251–157 (3/13/96).
H. Res. 384 (3/14/96)	MC	H.R. 2202	Immigration	PQ: 233–152 A: voice vote (3/21/96).
H. Res. 386 (3/20/96)	C	H.J. Res. 165	Further Cont. Approps	PQ: 234–187 A: 237–183 (3/21/96).
H. Res. 388 (3/20/96)	C	H.R. 125	Gun Crime Enforcement	A: 244–166 (3/22/96).
H. Res. 391 (3/27/96)	C	H.R. 3136	Contract w/America Advancement	PQ: 232–180 A: 232–177, (3/28/96).
H. Res. 392 (3/27/96)	MC	H.R. 3103	Health Coverage Affordability	PQ: 229–186 A: Voice Vote (3/29/96).
H. Res. 395 (3/29/96)	MC	H.J. Res. 159	Tax Limitation Const. Amdmt.	PQ: 232–168 A: 234–162 (4/15/96).
H. Res. 396 (3/29/96)	O	H.R. 842	Truth in Budgeting Act	A: voice vote (4/17/96).
H. Res. 409 (4/23/96)	O	H.R. 2715	Paperwork Elimination Act	A: voice vote (4/24/96).
H. Res. 410 (4/23/96)	O	H.R. 1675	Natl. Wildlife Refuge	A: voice vote (4/24/96).
H. Res. 411 (4/23/96)	O	H.J. Res. 175	Further Cont. Approps. FY 1996	A: voice vote (4/24/96).
H. Res. 418 (4/30/96)	O	H.R. 2641	U.S. Marshals Service	
H. Res. 419 (4/30/96)	O	H.R. 2149	Ocean Shipping Reform	

Codes: O-open rule; MO-modified open rule; MC-modified closed rule; C-closed rule; A-adoption vote; D-defeated; PQ-previous question vote. Source: Notices of Action Taken, Committee on Rules, 104th Congress.

Mr. CONYERS. Mr. Speaker, I rise to oppose the previous question so that we can finally get a vote on the minimum wage—an issue on which Speaker GINGRICH will not let the House speak its will. This despite repeated promises that the new GOP would let the House work the will of the people, and not bottle up legislation simply because they didn't like it.

All we are asking for is a vote on the minimum wage.

The facts are staggering when we look closely at the true value of our $4.25 per hour minimum wage: the current minimum wage is at its lowest value in 40 years and is 30 percent below its average level of the 1970's. Twelve million Americans earn less than $5.15 per hour, and 73 percent of minimum wage earners are adults and most are women. And it is estimated that one in five minimum wage earners live below the poverty line. It is clear that our minimum wage is too much minimum and not enough wage.

The last time the minimum wage was increased was 1991—and its value has eroded 50 cents since then. That is why the President has proposed, and I support, a 90 cent increase over 2 years, bringing the wage to $5.15 per hour.

During the two Government shutdowns, Members of Congress earned more than a minimum wage earner will make in an entire year. This Congress has spent the vast majority of its time trying to take away Medicare and other benefits from working Americans, while trying to find more tax breaks for the rich. Now we can't even have a vote on this most fundamental matter of basic decency and equity.

This is an outrage to all Americans, and most importantly the 12 million Americans who live on subminimum wages now.

I urge Members to defeat the previous question so that we can finally get a vote this issue which has been muzzled. And don't mistake it—your vote to defeat the previous question will be viewed as your vote on the minimum wage issue. Americans who work full time should be able to earn a livable wage. A full-time worker should not be forced to live in poverty. Americans who work hard and play by the rules deserve the opportunity to create a better future for their children, and an increase to the minimum wage will do just that. I urge all of my colleagues to vote "aye" on the previous question so that we can finally give 12 million workers a raise this year.

Ms. PRYCE. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. GUTKNECHT). The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. HALL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Pursuant to the provisions of clause 5 of rule XV, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the question of agreeing to the resolution.

The vote was taken by electronic device, and there were—yeas 219, nays 203, not voting 11, as follows:

[Roll No. 140]

YEAS—219

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Boehner
Bonilla
Bono
Brewster
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Cooley
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Davis
Deal
DeLay
Diaz-Balart
Dickey
Doolittle
Dornan
Dreier
Dunn
Ehlers
Ehrlich
Emerson
Ensign
Everett
Ewing
Fawell
Fields (TX)
Foley
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Funderburk
Gallegly
Ganske
Gekas
Gilchrest
Gillmor
Goodlatte
Goodling
Graham
Greene (UT)
Greenwood
Gunderson
Gutknecht
Hancock
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Moorhead
Morella
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Oxley
Packard
Parker
Paxon
Petri
Pombo
Porter
Portman
Pryce
Quillen
Radanovich
Ramstad
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stockman
Stump
Talent
Tate
Tauzin
Taylor (NC)
Thomas
Thornberry
Tiahrt
Upton
Vucanovich
Walker
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NAYS—203

Abercrombie
Ackerman
Andrews
Baesler
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Bevill
Bishop
Blute
Boehlert
Bonior
Borski
Boucher
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Cardin
Chapman
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Condit

Conyers
Costello
Coyne
Cramer
Cummings
Danner
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Duncan
Durbin
Edwards
Engel
English
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Forbes
Ford
Frank (MA)
Frisa
Frost
Furse
Gejdenson
Gephardt
Geren
Gibbons
Gilman
Gonzalez
Gordon
Green (TX)
Gutierrez
Hall (OH)
Hall (TX)
Hamilton
Harman
Hastings (FL)
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson (IL)
Jackson-Lee (TX)
Jacobs
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Leach
Levin
Lincoln
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
McCarthy
McDermott
McHale
McHugh
McKinney
McNulty
Meehan
Meek
Menendez
Millender-McDonald
Miller (CA)
Minge
Mink
Moakley
Mollohan
Montgomery
Moran
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Pickett
Pomeroy
Poshard
Quinn
Rahall
Rangel
Reed
Richardson
Rivers
Roemer
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Sisisky
Skaggs
Skelton
Slaughter
Spratt
Stark
Stenholm
Stokes
Studds
Stupak
Tanner
Taylor (MS)
Tejeda
Thompson
Thornton
Thurman
Torkildsen
Torres
Torricelli
Towns
Traficant
Velazquez
Vento
Visclosky
Volkmer
Walsh
Ward
Waters
Watt (NC)
Waxman
Williams
Wilson
Wise
Woolsey
Wynn
Yates

NOT VOTING—11

Berman
Bryant (TX)
Clay
Flanagan
Goss
Hayes
Kaptur
Lewis (GA)
Matsui
Molinari
Myers

□ 1327

The Clerk announced the following pair:

On this vote:

Mr. Goss for, with Ms. Kaptur against.

Mr. ORTON changed his vote from "yea" to "nay."

□ 1330

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. GUTKNECHT). The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore. Pursuant to House Resolution 418 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 2641.

□ 1330

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2641) to amend title 28, United States Code, to provide for appointment of United States marshals by the Director of the United States Marshals Service, with Mr. WICKER in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Florida [Mr. MCCOLLUM] and the gentleman from Michigan [Mr. CONYERS] each will be recognized for 30 minutes.

The Chair recognizes the gentleman from Florida [Mr. MCCOLLUM].

Mr. MCCOLLUM. Mr. Chairman, I yield myself such time as I may consume.

I want to thank all of my colleagues for allowing this discussion today. This is a very important piece of legislation, and I do not believe very controversial, but very important.

Mr. Chairman, H.R. 2641, the United States Marshals Service Improvements Act of 1995, changes the selection process of the Nation's 94 U.S. Marshals from that of appointment by the President with the advice and consent of the Senate, to appointment by the Attorney General. U.S. Marshals would be selected on a competitive basis, among career managers within the Marshals Service, rather than being nominated by the administration and approved or rejected by the Senate.

Incumbent U.S. marshals selected before enactment of this bill would perform the duties of their office until their terms expire and successors are appointed. Marshals selected between enactment of the bill and the year 2000 would be appointed by the President, with the advice and consent of the Senate, and serve for 4 years. H.R. 2641 was reported favorably out of the Judiciary Committee by voice vote, without amendment.

I might add that the bill does not change the provisions with respect to the Presidential appointment of the director of the U.S. Marshals Service who will continue just as the law presently reads.

I introduced this bill on behalf of the Federal Law Enforcement Officers Association which strongly desires to enhance the professionalism of the U.S. Marshals Service. The responsibilities of a U.S. marshal are varied and severely challenging. These duties range from maintaining the security of the Federal courts to tracking down fugitives from justice. Moreover, as complex criminal prosecutions continue to increase, the need to move essential witnesses around the country grows with it. This is also a duty of the Marshals Service. However, the current selection process does not take these responsibilities into consideration.

The current selection of U.S. marshals is as varied as the Senators who nominate them. Currently, there is no criteria for selection of a U.S. marshal. There is no age, physical fitness, educational, managerial, or law enforcement requirement or experience needed to become a U.S. marshal. In the past, U.S. marshal positions have been filled by undertakers, coroners, pig farmers, and even a host of a childrens' daytime television program, just to name a few. The only training a newly appointed marshal receives from the Marshals Service is a 40-hour orientation session. Unlike all other Marshals Service employees, the presidentially appointed marshal is not subject to disciplinary actions, cannot be reassigned, and can only be removed by the President or upon the appointment of a successor. This lack of accountability has resulted in a number of problems, including budgetary irresponsibility among individual marshals, and has created a double standard that has a negative impact on morale.

It is important to note that the current appointment process for U.S. marshals is unique among Federal law enforcement agencies. Both the FBI and the DEA select heads of their field offices based upon merit. Special agents in charge are not politically appointed. Instead, they are the best agents who have worked their way to the top. The Marshals Service should have nothing less.

It is my view that H.R. 2641 would be a commonsense approach to professionalizing the U.S. Marshals Service. The Justice Department supports this legislation, and it is similar to a recommendation of Vice President GORE's National Performance Review. This bill is a small but important step in this Congress' ongoing effort to improve the administration of Federal law enforcement, and I certainly urge my colleagues to support it.

And I might add that nothing of the criticism I have given today with respect to the problems that the U.S. Marshals Service has had from time to time should reflect adversely on the many U.S. marshals who perform their duties admirably and are doing so today, although the qualifications that they have been appointed under are not as strict as the qualifications, in the judgment of the committee, should be. And I believe that today's legislation will provide those kinds of opportunities for the Attorney General to set, by her regulation, standards for the appointment of U.S. marshals and make sure that professional law enforcement officers head our field offices in the future rather than having the opportunity for politics to be played with these very important law enforcement officers.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield myself as much time as I may consume.

Mr. Chairman, this is a bill that is not opposed in the House, but this is a bill that is opposed in the Senate. Oh yes, there is another body that has to say something about how a bill becomes law, and in the Senate this is not unanimously agreed to. Sorry to announce that, my colleagues. That just happens to be the case.

Mr. BISHOP. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Georgia.

Mr. BISHOP. Mr. Chairman, I just want to point out to the gentleman that it is not unanimous in this body either.

Mr. CONYERS. Mr. Chairman, this is the first I heard of that, because everybody told me this was a done deal. It was so put together that we did not even need to close the rule up in the Committee on Rules. They gave us an open rule, as many amendments as we want on something that is going through unanimously, I guess. But, no, I understand that that may not be the case, and so I just want to remind everybody that this generous Committee on Rules that allowed us an open rule, as many amendments as we want, is the same Committee on Rules in the 104th Congress that on about 45 other occasions, when we begged them for an open rule on things that were slightly more important than this, there was no way we could get it because the Democrats on the committee were outvoted every single time. But now on this, how many amendments do we have? Not a single one. But it is an open rule, showing, I guess, that the chairman and the Republican dominated Committee on Rules is doing us a real big favor on May 1, 1996.

Mr. Chairman, I reserve the balance of my time.

Mr. McCOLLUM. Mr. Chairman, I yield such time as he may consume to the gentleman from Georgia [Mr. COLLINS] for purposes of a colloquy.

Mr. COLLINS of Georgia. Mr. Chairman, I thank the gentleman for yielding this time to me, and my purpose for the colloquy is to be assured that there is nothing in this legislation that would prohibit any law enforcement officer who resides in the jurisdiction of the Marshals Service where the appointment will be made from not being considered for the employment. What I understand we are doing here is we are changing the appointment process from that of a nomination by Senator and a confirmation by the Senator as recommendations of the President.

Mr. Chairman, I yield to the gentleman from Florida [Mr. McCOLLUM].

Mr. McCOLLUM. Mr. Chairman, that is correct, I say to the gentleman. While it would be my opinion that the results of this law and the regulations the Attorney General promulgates, who will now have the power of the appointment instead of the President, will be that many of the marshals will be career service promotions. There is nothing that we are doing to put into the law now anything that will keep the Attorney General from being able to appoint a sheriff or another local law enforcement person if she or he wanted to do that, and there is no change in the underlying law either. The same basic law is true for the DEA or the FBI today.

Mr. COLLINS of Georgia. Mr. Chairman, I further inquire, too, about the qualifications for the person being considered for the nomination. Does the gentleman have any idea or suggestion or comments on the age or any type of retirement age or entry level age?

Mr. McCOLLUM. The bill is silent as to age, and the law that exists today is silent as to age or other qualifications. What I would assume is that the Attorney General will promulgate some guidelines with respect to the qualifications under her regulatory power which the gentleman and I would have a chance to comment on. But I do not see anything in the law that would present any impediment to the qualification of anyone based on the law.

It is just that I am expecting, with the Attorney General having this power instead of the President and having to go through the Senate where they play a lot of politics, that we will certainly have law enforcement people, professional law enforcement people, running these offices in the future. But with respect to any other qualifications, I do not have any preconceived notions.

Mr. COLLINS of Georgia. That also would include any formal law enforcement official.

Mr. McCOLLUM. That is correct. That is correct. That would be my assumption. But again it will be up to the Attorney General's discretion to the extent that the normal rules apply, the promulgation of regulations for qualifications.

Mr. COLLINS of Georgia. I know the intent of the gentleman from Florida is to take politics out of the appointment as much as possible, but I am concerned, too, that we may form some internal politics within the agency itself if we are not careful. That is where I want to make sure that no one is culled out from being considered as a nominee or as an appointee for the particular office, services, U.S. marshal.

We have in the central district of Georgia in the past, we have actually had a deputy marshal appointed as U.S. marshal. I know and I understand what the gentleman is trying to do. But any good law enforcement officer should be considered for this appointment, and I want to assure that that will be still available.

Mr. McCOLLUM. Mr. Chairman, in general I concur with the gentleman's perspective, but the law is silent in this regard. And given the qualifications and the decisions or the discretion is going to rest with the Attorney General, as it does with all other Federal law enforcement local field office appointments, which is what this will become.

□ 1345

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this is a very important bill. It is a big deal. We are going to strip the President of the ability to appoint U.S. marshals. What are we going to do with it? We are going to give it to the Attorney General who is appointed, I think, by the President of the United States. So this is very heavy, Mr. Chairman. We ought to think carefully about this. The Attorney General is better positioned to know who should be a U.S. marshal than the President of the United States, for whom he or she works. Very heavy. Follow carefully. This is not a light matter. Do not throw this one away. U.S. marshals must be appointed by the Attorney General, not the President.

Mr. Chairman, I yield such time as he may consume to the gentleman from New York [Mr. SCHUMER], ranking member of the Subcommittee on Crime of the Committee on the Judiciary.

Mr. SCHUMER. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in support of the bill. I also want Members to know why this simple bill is on the floor today and what it says about the failure of the leadership on the other side. I am referring, of course, not to the ranking member of the Subcommittee on Crime, or the Judiciary, or the Committee on the Judiciary, but by others who have constantly messed into the anticrime agenda.

Mr. Chairman, let there be no misunderstanding; in my view, this is a good bill and it should be enacted into law. It went through subcommittee and full committee without opposition. It has the support of all the major law enforcement organizations. It has the support of the Justice Department. In fact, Mr. Chairman, this bill is a perfect example of a bill that should have been brought to the floor on the Suspension Calendar and disposed of in 5 minutes.

So why is this bill on the floor today under an open rule? Why is the Republican leadership pretending that there is really something of substance for us to debate here? The answer, Mr. Chairman, is simple: The bill is on the floor today simply because the other side has nothing else to bring before the House, and it wants to boost its batting average for open rules.

The bill is here today because the other side's anticrime agenda is basically shipwrecked. America is crying

out for help in its fight against the proliferation of drugs and gangs and guns in the hands of children. Yet, this bill is the best thing that Speaker GINGRICH can come up with for the House to do today.

Just look at a few of the real problems, either ignored or actually made worse during this Congress: Every day, hundreds of children are being dragged into the spider's web of drug abuse. What has the Republican leadership done about that problem? It has gutted and defunded the juvenile prevention programs we passed in the last Congress and erected nothing, nothing in their place.

Every day scores of Americans are killed or injured by gun violence. What has the leadership done about that problem? It has tried to repeal the assault weapons ban we passed in the last Congress, a ban that more than two-thirds of the American people support.

Every day hundreds of thousands of law enforcement officers put their lives on the line in the fight against drugs and guns and gangs and terrorists. Just last week, the ATF uncovered a militia plot in the Speaker's own district, yet these law enforcement officers have been vilified by radical forces of the extreme right.

And what has the Republican leadership done about that problem? Instead of focusing its attention on the radical forces of hatred and extremism, it has encouraged those forces by engaging in a concerted program to bash law enforcement: to wit, 10 long days of hearings to pick through the ashes of Waco, and come up with not a single substantial new finding. By contrast, we only held 1 short day of hearings on the right-wing militias.

The Republican leadership bowed to its right wing and included in the terrorism bill an NRA-inspired commission, the whole purpose of which was to criticize law enforcement. The Republican leadership has blocked every attempt to amend the armor-piercing bullet laws so we can protect every cop in America from cop-killer bullets. We have to ask the same question thousands of cops throughout America are asking: Whose side are those guys on?

Mr. Chairman, I support this bill and I urge my colleagues to vote for it, but it is a sad day in America, Mr. Chairman, because while the American people call out for real help in fighting crime, both punishment and prevention, the Republican leadership plays legislative games with blue smoke and mirrors.

Mr. McCOLLUM. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I must say that I am disappointed in my colleagues on the other side. While they are supporting this legislation, they are mocking it and then using it for political speeches about what is and is not a Republican-Democrat position on the crime issue.

I, first of all, think this bill merits being out here solely today as it is, because it is a very significant change in law. It is not just that we are moving the appointment powers from the President to the Attorney General. It is a little more complicated than that. The appointment powers of the President require confirmation by the Senate, and as a matter of course when the Senators have that, just as with Federal judges, the appointments truly are the choices of the Senators, as much or more than they are of the President. They are never, or rarely at least, career professionals.

What we are doing today by giving the Attorney General the same power over the U.S. marshals appointments as she has today over the FBI and DEA field office heads and other law enforcement agency heads is making the U.S Marshals Service truly professional and taking a lot, if not all, of the politics out of it, the only exception being the director of the U.S. Marshals Service, which, like the director of the FBI, will remain a presidential appointment.

Mr. Chairman, this bill is not a minor bill. It is a very significant change in law. It should have been done a long time ago. If we want to play partisan politics, which was not my intent, I do not know why the Democratic majority for 40 years before this party took over this past January a year ago did not do this. It should have been done a long time ago.

Mr. Chairman, I would also respond to my colleagues about the work of this side of the aisle in the crime area. It seems to me that it would be obvious to any member of the Subcommittee on Crime, certainly the Committee on the Judiciary and this full body, that we have had 6 or 7 major crime bills that have become enacted into law and signed by the President in the past few weeks.

Granted, they were part of the terrorism bill and part of the appropriation bill, but six or seven of the Contract With America crime bills are now law. Some of them many of us have been fighting to get accomplished for years, the most significant of which, and which I will grant some of my colleagues over there do not agree with, but the most significant one is the reform of the so-called habeas corpus laws, which have allowed death row inmates to delay the carrying out of their sentences for years by procedural devices. They are not going to be able to do that anymore; a very significant provision that President Clinton, thank goodness, signed into law, that Democrat Congresses have refused to pass over the years and send to a Republican President to sign.

In addition to that, Mr. Chairman, we have prison litigation reforms that have eliminated the caps that have been strangling State prison wardens from being able to keep prisoners who should be in prison there. We have had Federal judges saying things are overcrowded that would not be overcrowded in Federal prison. Now we have removed those caps and we have set up procedures that means that we are not going to be able to strangle the wardens and we are going to keep a lot of these prisoners behind bars.

In addition to that, we have a provision that has gone into law that will change the litigation requirements for prisoner litigation. We are not going to see a lot of litigation over peanut butter sandwiches like we have seen before, and other frivolous matters.

We have also enacted into law the Republican provisions on truth-in-sentencing to make it really meaningful, as opposed to what the last Congress did, in encouraging the States to actually incarcerate violent repeat felons for at least 85 percent of their sentences. We are going to give them additional moneys to build the prison business with which to do that.

Last but not least, my friend complained about the drug program. Somehow we cut out some prevention programs. All we did, and I think this is very significant, Mr. Chairman, is that we enacted what we fought for for several years and could not get, and that is a block grant program with all that prevention money, for about $500 million for this year alone, that will now be a question of the local communities deciding how best to spend that, whether it is fighting drugs or fighting crime in any other way. If there is a high crime area, the cities and the county governments are going to get this money to spend as they see fit, because what is good for Spokane, WA, in my judgment, is not necessarily good for Charleston, SC; and Lord knows, Congress and Washington certainly do not know best when it comes to crime prevention programs and fighting crime.

Mr. Chairman, not only that, but next week on the floor we are going to have a bill out here on crimes against children and the elderly, mandatory notification of communities regarding sex offenders, an antistalking bill, a bill regarding retaliation against witnesses, and the list goes on.

This subcommittee has already, the Subcommittee on Crime and this Congress, produced more legislation and brought it to the floor, and will have, by the end of this month coming up, certainly than any other subcommittee of this Congress. I am proud of what we are doing. There is even more to come.

Mr. Chairman, I am sorry we got off into a partisan discussion but, quite frankly, my judgment is the President is a little bit late on a lot of this stuff, like with his drug program down here. I think what he announced earlier this week sounds terrific. It sounds just like Ronald Reagan and George Bush

with a new drug policy. It sounds great, but where was President Clinton for the last 3½ years? Where was he when he was cutting back on the drug czar's office in order to satisfy his commitment to reduce White House personnel, when he cut them by 60 percent or 80 percent earlier in his administration? For 3½ years we languished without a good drug policy. We saw the rate of usage of marijuana and cocaine among high school students double.

I am glad he is coming around to some of this now and maybe signing things into law. Again, I did not think this bill should be the forum for this kind of political discussion, but my colleague saw fit to raise it as a political issue about the general subject of crime, and I certainly am not going to sit back and not comment on it.

The bill itself, though, Mr. Chairman needs to be passed. It is an important bill. It does take the U.S. Marshals Service out of politics.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we are here today because this is an important bill. This bill is important because it takes politics out of U.S. marshals appointments. It takes politics out of the appointments by giving the appointments from the President to the Attorney General, so there are no more politics in the U.S. Marshals Service.

That is why a number of Members of both sides of the aisle in the other body are not very enthusiastic about this measure. It may not be going anywhere, as logical, inevitable, as perfect, as improving as this will be to the Department of Justice. Mr. Chairman, I do not know, if I had my druthers, I like Presidents to make appointments.

Mr. Chairman, by the way, why do we not have the Attorney General appoint the U.S. district attorneys, while we are at it, or whomever the Attorney General might be? I do not hear anybody talking about that. Would that not take the politics out of DOJ? Yes, no, maybe? Well, probably not, and probably not in this bill, either. Mr. Chairman, I do not see anything to crow about in this bill.

The one thing I do agree with my friend, the gentleman from Florida [Mr. MCCOLLUM], about is that his subcommittee has taken out the ability of prisoners to write and complain about peanut butter sandwiches. The way he did that is have the judges dismiss those as frivolous suits, which they have been doing long before he became the chairman of the Subcommittee on Crime.

Mr. Chairman, I yield back the balance of my time.

Mr. MCCOLLUM. Mr. Chairman, I yield 3 minutes to the gentleman from Colorado [Mr. MCINNIS].

Mr. MCINNIS. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I was over in my office watching this debate. Let me, first of all, address the issue of the rules. I saw the gentleman from New York, who still sits on the floor, and I am amazed.

The gentleman from New York complains when the Committee on Rules issues a closed rule. I understand his complaints. The gentleman from New York complains when the Committee on Rules issues a rule based on a modified closed rule. I understand, somewhat, the legitimacy of that type of complaint.

But now the only thing remaining, an open rule, and I am sitting in my office and the gentleman from New York is objecting to a rule that is an open rule. Mr. Chairman, I want to talk about that for a minute, from the gentleman from New York. What is going to make him happy? Complain, complain, complain. We issue an open rule.

Mr. Chairman, for those who do not clearly understand what an open rule means, it means we have completely opened debate. How can Members complain against that? The Committee on Rules, I think, acting in absolute good faith, has put this bill on the floor with an open rule so we can have the type of debate we are having today.

Mr. Chairman, let me move from the rule to the other issue at hand. Now let us talk about the bill.

□ 1400

Mr. Chairman, I used to be a cop. I know something about a good cop and a bad cop, and I can tell you the U.S. Marshals Service needs to be professionalized.

I am not embarrassed to stand up here in front of you and tell you that the Marshals Service worked a disgrace upon this country at Ruby Ridge. They were censured by the U.S. Senate. I have got the documentation right here. I am going to put it into the RECORD. They gave a black eye to all of us ex-cops and to all current cops.

That is not professionally run over there. Not only did they goof up and cost some people some lives at Ruby Ridge, then the director of the U.S. Marshals Service went out and gave the highest award possible under the U.S. Marshals Service to the agents involved at Ruby Ridge.

Should we crow about that? Absolutely not. Should we be embarrassed by it? Absolutely yes. Should we do something to reform the U.S. Marshals Service? The answer is clearly yes.

I am proud to say that BILL MCCOLLUM from the State of Florida has taken it upon himself to clean this agency up. This is a good bill. Why are we even debating? Why are you fighting this bill? This is a good bill. It does clean up the U.S. Marshals Service, and it cleans it up under an open rule.

I would urge all Members to support this bill, I would urge all Members to take a very critical eye and to look very carefully at what the U.S. Marshals Service has done and how we can professionalize it, because if we professionalize that agency, it is a plus for all of us.

Mr. Chairman, I include the following for the RECORD:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, March 13, 1996.

EDUARDO GONZALEZ,
Director, U.S. Marshals, Arlington, VA.

DIRECTOR: The granting of the U.S. Marshal's "Service Award for Valor" to the Marshals involved in the Ruby Ridge incident is wrong and you know its wrong.

It is clear from the trial, Senate hearings, and testimony from those involved that standards of "good judgment", "unusual courage" and "competence in hostile circumstances" were not met, even at a minimal level. It is also interesting that the Marshals "Information Sheet Randall Weaver Incident" conveniently excludes key facts surrounding the incident such as the censure of your agents' conduct.

Granting this prestigious award to the Marshals and calling them heroes, greatly discounts the history of the award and for that reason alone, I regret your decision and poor judgment.

Sincerely,

SCOTT MCINNIS,
Member of Congress.

THEY CALL THIS VALOR
(By James Bovard)

On March 1, the U.S. Marshals Service gave its highest award for valor to five U.S. marshals involved in the 1992 Ruby Ridge, Idaho, shoot-out, including the marshal who fatally shot a 14-year-old boy in the back and another marshal who provoked a firefight by killing the boy's dog. The award announcement sent shock waves across Capitol Hill.

The marshals received the award, according to U.S. Marshals Service Director Eduardo Gonzalez, for "their exceptional courage, their sound judgment in the face of attack, and their high degree of professional competence during the incident." Mr. Gonzalez labeled the men "heroes." This makes a mockery of the many brave marshals who serve their fellow citizens.

Randy Weaver, a white separatist who had attended a few Aryan Nation meetings, was charged in 1991 with selling illegal sawed-off shotguns to a federal informant. (A jury later concluded that Mr. Weaver had been entrapped.) The U.S. Marshals Service was assigned the job of bringing Mr. Weaver in. The marshals spent the next year and a half spying on Mr. Weaver, sneaking around his land dozens of times and erecting spy cameras to record all of his family's movements.

The marshals greatly exaggerated the threat from Mr. Weaver due in part to false information they had received from ATF agent Herb Byerly, who according to one U.S, marshal, told them that "Weaver is a suspect in several eastern Washington and western Montana bank robberies. An alleged accomplice in the robberies was arrested somewhere in Iowa and implicated a person believed to be Weaver during a confession. The accomplice has since escaped from custody with the assumption that he could be on the Weaver property.' Agent Byerly told a Senate subcommittee that the incorrect information was due to a "typographical error."

On Aug. 21, 1992, six U.S. marshals scurried onto the Weaver property, outfitted in full

ninja-type camouflage and ski masks and carrying submachine guns and other high-powered weapons. The marshals had no visible badges or insignia identifying them as federal agents. After agents threw rocks near the Weaver cabin, Mr. Weaver's 14-year-old son, Sammy, and Kevin Harris, a 25-year-old friend living in the cabin, ran to see what the Weavers' dogs were barking at.

The marshals took off running through the woods, followed by one dog. The marshals later told the FBI that they had been ambushed. But according to a Justice Department confidential report, the marshals chose to stop running and take a stand behind stumps and trees. The marshals had the advantage of surprise, camouflage and vastly more firepower than the boy and Kevin Harris possessed.

The firefight began when Marshal Arthur Roderick shot and killed the family dog, as a Senate subcommittee investigation concluded last December. Marshals Roderick and Cooper claimed that the first shot of the encounter had been fired by Kevin Harris and had killed Marshal Bill Degan. But Capt. Dave Neal of the Idaho State Police team that rescued the marshals 12 hours later stated that Marshal Roderick indicated that he had fired the first shot to kill the dog.

After his dog had been killed, Sammy fired his gun in the direction the shots had come from. Sammy was running back to the cabin when according to the government's ballistics expert at Mr. Weaver's 1993 trial, a shot from Marshal Larry Cooper hit him in the back and killed him. Kevin Harris stated that he responded to Sammy's shooting by firing one shot into the woods to try to protect Sammy and defend himself. Mr. Harris's shot apparently killed Marshal Degan, an Idaho jury found that Mr. Harris acted in self-defense. Though Marshals Cooper and Roderick testified that Marshal Degan was killed by the first shot, evidence later proved that he had fired seven shots.

Marshals Roderick and Cooper stayed huddled alongside Marshals Degan's body for the next 12 hours, afraid that they might be shot if they tried to carry him off the mountain—even though the Weavers had long since retrieved their son's corpse and gone back to the ramshackle cabin. Other marshals panicked and wrongfully indicated that the Weavers had U.S. marshals "pinned down" for hours under heavy gunfire. A subsequent FBI on-site investigation found evidence that the marshals fired far more shots at Sammy Weaver and Mr. Harris than Sammy and Mr. Harris fired at them.

FBI Hostage Rescue Team snipers were called in. The subcommittee report noted, "FBI agents who were briefed in Washington and in Idaho during the early stages of the crisis at Rudy Ridge received a great deal of inaccurate or exaggerated information concerning . . . the firefight." The marshals' gross mischaracterization helped pave the way to the FBI killing of Vicki Weaver, Sammy's mother.

Marshals Roderick and Cooper testified last Sept. 15 before Senate Judiciary subcommittee hearings chaired by Sen. Arlen Specter (R., Pa.) on the Ruby Ridge case. They stunned the committee by announcing that Randy Weaver had shot his own son. Though Sammy was shot as he was running in the direction of his father, and though Mr. Weaver was far away from the scene of his son's death, and was in front of him and at a higher elevation, and though his son was shot in the back by a bullet with an upward trajectory, Marshal Cooper insisted the father still somehow shot the son.

That could have happened only if Randy Weaver had been using "Roger Rabbit" cartoon bullets—bullets that could twist around tress, take U-turns, and defy all laws of physics. The jury foreman at the federal trial in 1993 characterized the new Cooper-Roderick theory with an expletive and told the Washington Post last September that "the government's story has changed every time you turn around."

The Senate subcommittee report concluded, "The Subcommittee . . . has seen no evidence which would support the Marshals' claim . . . "Sen. Specter said last week that he was "surprised to see a commendation for U.S. marshals whose conduct was under censure from the Judiciary subcommittee."

The marshals' dubious conduct is further indicated by the Marshals Service's refusal to undertake routine internal investigations after the fatal shootings. The Senate subcommittee noted, "We were disappointed to learn that, based on his desire to avoid creating discoverable documents that might be used by the defense in the Weaver/Harris trial . . . former Director Henry Hudson decided to conduct no formal internal review of USMS activities connected with the Weaver case and the Rudy Ridge incident."

Can anyone imagine Wyatt Earp, when he served as a U.S. marshal in the 1880s, receiving a valor award for shooting a 14-year old boy in the back? Does the Marshals Service believe that Americans are obliged to give the benefit of the doubt to people in ninja outfits who jump out of the woods and begin firing submachine guns at them? Federal law enforcement agencies have yet to learn that they cannot brazenly shoot innocent Americans and then pretend that the agents involved should be treated like national heroes.

Mr. McCOLLUM. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I do not intend to take much time. The bill's debate is essentially completed. But I do want to point out again to my colleagues that there are a lot of things that have been going on that have been legislation dealing with crime, that have come out here this year, and none of those have been frivolous but one of them has concerned, as the gentleman from Michigan well knows, frivolous lawsuits by prisoners.

While he may ridicule the idea that we are prohibiting suits about peanut butter sandwiches or that judges can throw out frivolous lawsuits today, the fact is the underlying principle of that bill has to do with exhausting administrative remedies, and is going to make it very much more difficult for prisoners to bring up frivolous lawsuits in the first place and make it a lot easier for judges to throw them out, not just for peanut butter sandwiches but for lots of other things.

Mr. SCHUMER. Mr. Chairman, will the gentleman yield?

Mr. McCOLLUM. I yield to the gentleman from New York.

Mr. SCHUMER. Mr. Chairman, I appreciate the gentleman for his courtesy. I just want to reiterate that for him and the chairman I have utmost respect. I think they have been trying to move a crime agenda along. I am only asking the gentleman to yield because we have yielded back our time.

The arguments of the gentleman from Colorado were the most sophistic I have ever seen about the open rule. We have a minor, narrowly drawn bill where no one wants to amend it, and the gentleman from Colorado has a big brass band with flags saying, "See, we're doing an open rule."

If the gentleman had listened to my point, it was not objecting to an open rule on this legislation but it was objecting to the fact that on far more weighty pieces of legislation, there is no open rule at all. When this majority was in the minority before the gentleman from Colorado got here, they complained royally at the fact that there were closed rules or modified closed rules, and yet when they got into power, this minority, now majority, has far more restricted the rules process than the majority ever did.

So the point is not that this is an open rule. I agree with the bill. I think it deserves about 5 minutes of debate. What I disagree with is the inability to debate crime issues, weighty issues, many of which I agree with the gentleman from Florida on, many of which I disagree. But we have had no opportunity to debate it because every major bill where we have debated crime has been under a closed rule where lots of amendments were not allowed or would not be allowed on this bill.

I thank the gentleman for yielding.

Mr. McCOLLUM. Reclaiming my time from the gentleman, I would point out to him that next week, I believe, there will be a couple more crime bills out here under open rules. I would like to see more of them all year long. Certainly we believe in that.

Mr. Chairman, I yield to the gentleman from Colorado [Mr. McINNIS], a member of the Committee on Rules, for a response to that.

Mr. McINNIS. Mr. Chairman, I, of course, find the comments amusing. All the gentleman from New York has done from what I have seen, and I saw him just a minute ago from my office, is complain, complain and complain. There is nothing we are going to do as long as we are Republicans, especially in an election year, that is going to make him happy. I can understand that, but I did not really come over to debate him. I came over to explain to my colleagues, this is an open rule.

Sure, there are some Members of this House who will complain about everything we do, but the fact is there is no justification for complaint either on the open rule and there is certainly no justification, in my opinion, to oppose this bill. This is a good bill. It cleans up the U.S. Marshals Service, it puts in some very basic reforms, and once again I commend the gentleman from Florida who I think, by the way, has really taken the lead of the pack on

putting some important crime legislation into this country and into law in this country.

Mr. SCHUMER. Mr. Chairman, will the gentleman yield?

Mr. McCOLLUM. I yield very briefly to the gentleman from New York.

Mr. SCHUMER. Mr. Chairman, I will give an example, one, to the gentleman from Colorado, a member of the Rules Committee. The vast majority of people in this body, the vast majority of law enforcement people would like a bill to ban cop killer bullets. We were prohibited by the Rules Committee on three different occasions in legislation from allowing that to be admitted. I could name many, many, many amendments that the gentleman would disagree with me or agree with me, that we are not allowed to debate. Let us be honest about it.

Mr. McCOLLUM. Reclaiming my time, Mr. Chairman, I will respond, and I am not going to yield more on this subject.

I want to say to my good friend from New York, he and I will debate some of the gun issues for a long time to come in the future. Cop killer bullets, as I know them defined today, are already banned by law.

Obviously, there is a great dispute over somebody wanting to set some standard that nobody knows yet is going to be a bad bullet that is going to actually pierce any of the kind of things that the cops wear to protect themselves. If he can show me that, I have always been willing to ban such a billet.

The problem is, this is an example of how we can get off track and get our political rhetoric going today, when we really ought to be together on fighting crime and this bill ought to be celebrated today.

This, as the gentleman from Colorado [Mr. McINNIS] said, is an extraordinarily important bill. Maybe it does not deserve, in and of itself, a lot of debate time, but it deserves the attention that this debate should draw on it because it is a constructive important step to finally end the politics in the appointment of U.S. marshals and make them conform, the service comform to the same kind of professionalism that the FBI, the DEA, and other Federal law enforcement bodies have.

There is no reason not to do this. The U.S. attorneys office, which was brought up by my colleague from Michigan, is an entirely different animal. Maybe we ought to take some of the politics out of them, but that is not a Federal law enforcement agency. The U.S. Marshals Service is, and it is the only one today that does not have the kind of removal from politics that this bill would give it. I therefore am very proud of the bill and urge the adoption of this bill.

The CHAIRMAN. All time for general debate has expired.

The committee amendment in the nature of a substitute printed in the bill shall be considered by sections as an original bill for the purpose of amendment, and pursuant to the rule each section is considered as having been read.

During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition to a Member offering an amendment that he has printed in the designated place in the CONGRESSIONAL RECORD. Those amendments will be considered as having been read.

The clerk will designate section 1.

The text of section 1 is as follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States Marshals Service Improvement Act of 1996".

The CHAIRMAN. Are there amendments to section 1? If not, the Clerk will designate section 2.

The text of section 2 is as follows:

SEC. 2. APPOINTMENTS OF MARSHALS.

(a) IN GENERAL.—Chapter 37 of title 28, United States Code, is amended—

(1) in section 561(c)—

(A) by striking "The President shall appoint, by and with the advice and consent of the Senate," and inserting "The Attorney General shall appoint"; and

(B) by inserting "United States marshals shall be appointed subject to the provisions of title 5 governing appointments in the competitive civil service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and pay rates." after the first sentence;

(2) by striking subsection (d) of section 561;

(3) by redesignating subsections (e), (f), (g), (h), and (i) section 561 as subsections (d), (e), (f), (g), and (h), respectively; and

(4) by striking section 562.

(b) CLERICAL AMENDMENT.—the table of sections at the beginning of chapter 37 of title 28, United States Code, is amended by striking the item relating to section 562.

The CHAIRMAN. Are there amendments to section 2? If not, the Clerk will designate section 3.

The text of section 3 is as follows:

SEC. 3. TRANSITIONAL PROVISIONS; PRESIDENTIAL APPOINTMENT OF CERTAIN UNITED STATES MARSHALS.

(a) INCUMBENT MARSHALS.—Notwithstanding the amendments made by this Act, each marshal appointed under chapter 37 of title 28, United States Code, before the date of the enactment of this Act shall, unless that marshal resigns or is removed by the President, continue to perform the duties of that office until the expiration of that marshal's term and the appointment of a successor.

(b) VACANCIES AFTER ENACTMENT.—Notwithstanding the amendments made by this Act, with respect to the first vacancy which occurs in the office of United States marshal in any district, during the period beginning on the date of the enactment of this Act and ending on December 31, 1999, the President shall appoint, by and with the advice and consent of the Senate, a marshal to fill that vacancy for a term of 4 years. Any marshal appointed by the President under this subsection shall, unless that marshal resigns or is removed from office by the President, continue to perform the duties of that office after the end of the four-year term to which such marshal was appointed until a successor is appointed.

The CHAIRMAN. Are there amendments to section 3? If not, the question is on the committee amendment in the nature of a substitute.

The Committee amendment in the nature of a substitute was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. DICKEY) having assumed the chair, Mr. WICKER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2641), to amend title 28, United States Code, to provide for appointment of U.S. marshals by the Director of the U.S. Marshals Service, pursuant to House Resolution 418, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

The question is on the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. BISHOP. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 351, nays 72, not voting 10, as follows:

[Roll No. 141]

YEAS—351

Abercrombie	Beilenson	Bunn
Ackerman	Bentsen	Bunning
Allard	Bereuter	Burr
Andrews	Bevill	Burton
Archer	Bilbray	Buyer
Armey	Bilirakis	Callahan
Bachus	Bliley	Calvert
Baesler	Blute	Camp
Baker (CA)	Boehlert	Campbell
Baker (LA)	Boehner	Canady
Baldacci	Bonilla	Cardin
Ballenger	Bono	Castle
Barcia	Borski	Chabot
Barr	Boucher	Chambliss
Barrett (NE)	Brewster	Chapman
Bartlett	Browder	Chenoweth
Barton	Brown (CA)	Christensen
Bass	Brown (OH)	Chrysler
Bateman	Brownback	Clement
Becerra	Bryant (TN)	Clinger

Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeLauro
DeLay
Deutsch
Diaz-Balart
Dickey
Dicks
Dixon
Doggett
Dooley
Doolittle
Dornan
Doyle
Dreier
Dunn
Durbin
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Evans
Everett
Ewing
Farr
Fawell
Fazio
Fields (TX)
Flanagan
Foley
Fowler
Fox
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Frost
Funderburk
Furse
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Gonzalez
Goodlatte
Goodling
Gordon
Graham
Greene (UT)
Greenwood
Gunderson
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hoyer
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson (SD)
Johnson, Sam
Johnston
Jones
Kasich
Kelly
Kennedy (RI)
Kennelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaFalce
LaHood
Lantos
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Levin
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Lipinski
Livingston
LoBiondo
Lofgren
Longley
Lowey
Lucas
Luther
Maloney
Manton
Manzullo
Markey
Martinez
Martini
Mascara
Matsui
McCarthy
McCollum
McCrery
McDade
McHale
McHugh
McInnis
McIntosh
McKeon
Meehan
Menendez
Metcalf
Meyers
Mica
Millender-McDonald
Miller (CA)
Miller (FL)
Minge
Mink
Moakley
Montgomery
Moorhead
Moran
Morella
Myrick
Nadler
Nethercutt
Neumann
Ney
Norwood
Nussle
Oberstar
Ortiz
Orton
Oxley
Packard
Pallone
Parker
Pastor
Paxon
Payne (VA)
Pelosi
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Reed
Regula
Richardson
Riggs
Rivers
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Roukema
Roybal-Allard
Royce
Sabo
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Schroeder
Schumer
Scott
Seastrand
Sensenbrenner
Serrano
Shadegg
Shaw
Shays
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stockman
Studds
Stump
Stupak
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornberry
Thornton
Thurman
Tiahrt
Torkildsen
Torres
Torricelli
Traficant
Upton
Velazquez
Vento
Volkmer
Vucanovich
Walsh
Wamp
Ward
Watt (NC)
Watts (OK)
Waxman
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson
Wise
Wolf
Woolsey
Yates
Young (AK)
Young (FL)
Zeliff
Zimmer

NAYS—72

Barrett (WI)
Bishop
Bonior
Brown (FL)
Clayton
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Cummings
DeFazio
Dellums
Dingell
Duncan
Engel
Eshoo
Fattah
Fields (LA)
Filner
Flake
Foglietta
Forbes
Ford
Gejdenson
Gephardt
Gibbons
Green (TX)
Hastings (FL)
Hefner
Hilliard
Hinchey
Holden
Jackson (IL)
Jackson-Lee (TX)
Jacobs
Jefferson
Johnson, E. B.
Kanjorski
Kennedy (MA)
Kildee
Klink
Lewis (GA)
McDermott
McKinney
McNulty
Meek
Mollohan
Murtha
Neal
Obey
Olver
Owens
Payne (NJ)
Peterson (FL)
Poshard
Rahall
Rangel
Roemer
Rush
Sanders
Sawyer
Stark
Stokes
Thompson
Towns
Visclosky
Waters
Williams
Wynn

NOT VOTING—10

Berman
Bryant (TX)
Clay
Goss
Kaptur
Kleczka
Molinari
Myers
Walker
White

□ 1429

Mr. HOYER and Mr. TORRES changed their vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

The title was amended so as to read: "A bill to amend title 28, United States Code, to provide for appointment of United States marshals by the Attorney General."

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. McCOLLUM. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 2641, the bill just passed.

The SPEAKER pro tempore (Mr. DICKEY). Is there objection to the request of the gentleman from Florida?

There was no objection.

PROVIDING FOR CONSIDERATION OF H.R. 2149, OCEAN SHIPPING REFORM ACT OF 1995

Mr. QUILLEN. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 419 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 419

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for consideration of the bill (H.R. 2149) to reduce regulation, promote efficiencies, and encourage competition in the international ocean transportation system of the United States, to eliminate the Federal Maritime Commission, and for other purposes. The first reading of the bill shall be dispensed with. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Transportation and Infrastructure. After general debate the bill shall be considered for amendment under the five-minute rule. Before consideration of any other amendment it shall be in order to consider the amendment printed in part 1 of the report of the Committee on Rules accompanying this resolution, if offered by Representative Shuster of Pennsylvania or his designee. That amendment shall be considered as read, may amend portions of the bill not yet read for amendment, shall be debatable for 10 minutes equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. Points of order against that amendment for failure to comply with clause 7 of rule XVI are waived. If that amendment is adopted, the bill, as amended, shall be considered as the original bill for the purpose of further amendment. The bill, as amended, shall be considered by title rather than by section. The first section and each title shall be considered as read. During further consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional Record designated for that purpose in clause 6 of rule XXIII. Amendments so printed shall be considered as read. The amendment printed in part 2 of the report of the Committee on Rules shall be considered as read, may amend portions of the bill not yet read for amendment, shall not be subject to an amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from Tennessee [Mr. QUILLEN] is recognized for 1 hour.

Mr. QUILLEN. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Massachusetts [Mr. MOAKLEY], pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

AMENDMENT OFFERED BY MR. QULLLEN

Mr. QUILLEN. Mr. Speaker, I ask unanimous consent that the pending resolution be amended in the form of the amendment at the desk.

The SPEAKER pro tempore. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. QUILLEN: Page 3, line 12, strike "an amendment" and insert in lieu thereof "amendment (except pro forma amendments)".

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

Mr. MOAKLEY. Mr. Speaker, reserving the right to object, and I will not object, I want to inform my dear friend from Tennessee that this side has read the amendment and we perfectly concur with it and we have no objection to the unanimous-consent request.

Mr. QUILLEN. Mr. Speaker, I thank the gentleman from Massachusetts.

Mr. MOAKLEY. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

The SPEAKER pro tempore. The amendment is agreed to.

Mr. QUILLEN. Mr. Speaker, House Resolution 419 is an open rule, providing 1 hour of general debate divided equally between the chairman and ranking minority member of the Committee on Transportation.

The rule provides for the consideration of a manager's amendment printed in part 1 of the report of the Committee on Rules accompanying this resolution.

The amendment may amend portions of the bill not yet read for amendment and is debatable for 10 minutes equally divided between the proponent and an opponent. It shall not be subject to amendment or to a demand for division of the question. If adopted, the amendment is considered as part of the base text for further amendment purposes.

Additionally, the germaneness rule is waived against the manager's amendment printed in part 1 of the report.

The rule provides that the bill, as amended, shall be considered by title rather than by section, and that the first section and each title shall be considered as read.

Members who have preprinted their amendments in the RECORD prior to their consideration will be given priority in recognition to offer their amendments.

The rule further provides that the amendment printed in part 2 of the report may amend portions of the bill not yet read for amendment, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

Finally, the rule provides for one motion to recommit, with or without instructions.

Mr. Speaker, I have always believed that the merchant marine was vital to national security and very necessary for the economic well being of this country. They have played a vital role in every major conflict this country has been in. I am a strong champion for any bill that aids our ocean shippers. That is why I am a strong supporter of H.R. 2149, the Ocean Shipping Reform Act.

H.R. 2149 is a bipartisan plan to deregulate the last area of regulated transportation and the bill would permit carriers and shippers to develop transportation arrangements to meet their specific needs.

Mr. Speaker, as strongly as I support the Ocean Shipping Reform Act, I oppose the Oberstar amendment and urge its defeat.

Mr. Speaker, this is an open rule for a good bill. I urge all Members to support the rule and the bill.

Mr. Speaker, I include the following material for the RECORD.

THE AMENDMENT PROCESS UNDER SPECIAL RULES REPORTED BY THE RULES COMMITTEE,[1] 103D CONGRESS V. 104TH CONGRESS

[As of May 1, 1996]

Rule type	103d Congress		104th Congress	
	Number of rules	Percent of total	Number of rules	Percent of total
Open/Modified-open[2]	46	44	64	60
Modified Closed[3]	49	47	26	24
Closed[4]	9	9	17	16
Total	104	100	107	100

[1] This table applies only to rules which provide for the original consideration of bills, joint resolutions or budget resolutions and which provide for an amendment process. It does not apply to special rules which only waive points of order against appropriations bills which are already privileged and are considered under an open amendment process under House rules.

[2] An open rule is one under which any Member may offer a germane amendment under the five-minute rule. A modified open rule is one under which any Member may offer a germane amendment under the five-minute rule subject only to an overall time limit on the amendment process and/or a requirement that the amendment be preprinted in the Congressional Record.

[3] A modified closed rule is one under which the Rules Committee limits the amendments that may be offered only to those amendments designated in the special rule or the Rules Committee report to accompany it, or which preclude amendments to a particular portion of a bill, even though the rest of the bill may be completely open to amendment.

[4] A closed rule is one under which no amendments may be offered (other than amendments recommended by the committee in reporting the bill).

SPECIAL RULES REPORTED BY THE RULES COMMITTEE, 104TH CONGRESS

[As of May 1, 1996]

H. Res. No. (Date rept.)	Rule type	Bill No.	Subject	Disposition of rule
H. Res. 38 (1/18/95)	O	H.R. 5	Unfunded Mandate Reform	A: 350–71 (1/19/95).
H. Res. 44 (1/24/95)	MC	H. Con. Res. 17	Social Security	A: 255–172 (1/25/95).
		H.J. Res. 1	Balanced Budget Amdt	
H. Res. 51 (1/31/95)	O	H.R. 101	Land Transfer, Taos Pueblo Indians	A: voice vote (2/1/95).
H. Res. 52 (1/31/95)	O	H.R. 400	Land Exchange, Arctic Nat'l. Park and Preserve	A: voice vote (2/1/95).
H. Res. 53 (1/31/95)	O	H.R. 440	Land Conveyance, Butte County, Calif	A: voice vote (2/1/95).
H. Res. 55 (2/1/95)	O	H.R. 2	Line Item Veto	A: voice vote (2/2/95).
H. Res. 60 (2/6/95)	O	H.R. 665	Victim Restitution	A: voice vote (2/7/95).
H. Res. 61 (2/6/95)	O	H.R. 666	Exclusionary Rule Reform	A: voice vote (2/7/95).
H. Res. 63 (2/8/95)	MO	H.R. 667	Violent Criminal Incarceration	A: voice vote (2/9/95).
H. Res. 69 (2/9/95)	O	H.R. 668	Criminal Alien Deportation	A: voice vote (2/10/95).
H. Res. 79 (2/10/95)	MO	H.R. 728	Law Enforcement Block Grants	A: voice vote (2/13/95).
H. Res. 83 (2/13/95)	MO	H.R. 7	National Security Revitalization	PQ: 229–100; A: 227–127 (2/15/95).
H. Res. 88 (2/16/95)	MC	H.R. 831	Health Insurance Deductibility	PQ: 230–191; A: 229–188 (2/21/95).
H. Res. 91 (2/21/95)	O	H.R. 830	Paperwork Reduction Act	A: voice vote (2/22/95).
H. Res. 92 (2/21/95)	MC	H.R. 889	Defense Supplemental	A: 282–144 (2/22/95).
H. Res. 93 (2/22/95)	MO	H.R. 450	Regulatory Transition Act	A: 252–175 (2/23/95).
H. Res. 96 (2/24/95)	MO	H.R. 1022	Risk Assessment	A: 253–165 (2/27/95).
H. Res. 100 (2/27/95)	O	H.R. 926	Regulatory Reform and Relief Act	A: voice vote (2/28/95).
H. Res. 101 (2/28/95)	MO	H.R. 925	Private Property Protection Act	A: 271–151 (3/2/95).
H. Res. 103 (3/3/95)	MO	H.R. 1058	Securities Litigation Reform	
H. Res. 104 (3/3/95)	MO	H.R. 988	Attorney Accountability Act	A: voice vote (3/6/95).
H. Res. 105 (3/6/95)	MO			A: 257–155 (3/7/95).
H. Res. 108 (3/7/95)	Debate	H.R. 956	Product Liability Reform	A: voice vote (3/8/95).
H. Res. 109 (3/8/95)	MC			PQ: 234–191 A: 247–181 (3/9/95).
H. Res. 115 (3/14/95)	MO	H.R. 1159	Making Emergency Supp. Approps	A: 242–190 (3/15/95).
H. Res. 116 (3/15/95)	MC	H.J. Res. 73	Term Limits Const. Amdt	A: voice vote (3/28/95).
H. Res. 117 (3/16/95)	Debate	H.R. 4	Personal Responsibility Act of 1995	A: voice vote (3/21/95).
H. Res. 119 (3/21/95)	MC			A: 217–211 (3/22/95).
H. Res. 125 (4/3/95)	O	H.R. 1271	Family Privacy Protection Act	A: 423–1 (4/4/95).
H. Res. 126 (4/3/95)	O	H.R. 660	Older Persons Housing Act	A: voice vote (4/6/95).
H. Res. 128 (4/4/95)	MC	H.R. 1215	Contract With America Tax Relief Act of 1995	A: 228–204 (4/5/95).
H. Res. 130 (4/5/95)	MC	H.R. 483	Medicare Select Expansion	A: 253–172 (4/6/95).
H. Res. 136 (5/1/95)	O	H.R. 655	Hydrogen Future Act of 1995	A: voice vote (5/2/95).
H. Res. 139 (5/3/95)	O	H.R. 1361	Coast Guard Auth. FY 1996	A: voice vote (5/9/95).
H. Res. 140 (5/9/95)	O	H.R. 961	Clean Water Amendments	A: 414–4 (5/10/95).
H. Res. 144 (5/11/95)	O	H.R. 535	Fish Hatchery—Arkansas	A: voice vote (5/15/95).
H. Res. 145 (5/11/95)	O	H.R. 584	Fish Hatchery—Iowa	A: voice vote (5/15/95).

SPECIAL RULES REPORTED BY THE RULES COMMITTEE, 104TH CONGRESS—Continued

[As of May 1, 1996]

H. Res. No. (Date rept.)	Rule type	Bill No.	Subject	Disposition of rule
H. Res. 146 (5/11/95)	O	H.R. 614	Fish Hatchery—Minnesota	A: voice vote (5/15/95).
H. Res. 149 (5/16/95)	MC	H. Con. Res. 67	Budget Resolution FY 1996	PQ: 252–170 A: 255–168 (5/17/95).
H. Res. 155 (5/22/95)	MO	H.R. 1561	American Overseas Interests Act	A: 233–176 (5/23/95).
H. Res. 164 (6/8/95)	MC	H.R. 1530	Nat. Defense Auth. FY 1996	PQ: 225–191 A: 233–183 (6/13/95).
H. Res. 167 (6/15/95)	O	H.R. 1817	MilCon Appropriations FY 1996	PQ: 223–180 A: 245–155 (6/16/95).
H. Res. 169 (6/19/95)	MC	H.R. 1854	Leg. Branch Approps. FY 1996	PQ: 232–196 A: 236–191 (6/20/95).
H. Res. 170 (6/20/95)	O	H.R. 1868	For. Ops. Approps. FY 1996	PQ: 221–178 A: 217–175 (6/22/95).
H. Res. 171 (6/22/95)	O	H.R. 1905	Energy & Water Approps. FY 1996	A: voice vote (7/12/95).
H. Res. 173 (6/27/95)	C	H.J. Res. 79	Flag Constitutional Amendment	PQ: 258–170 A: 271–152 (6/28/95).
H. Res. 176 (6/28/95)	MC	H.R. 1944	Emer. Supp. Approps	PQ: 236–194 A: 234–192 (6/29/95).
H. Res. 185 (7/11/95)	O	H.R. 1977	Interior Approps. FY 1996	PQ: 235–193 D: 192–238 (7/12/95).
H. Res. 187 (7/12/95)	O	H.R. 1977	Interior Approps. FY 1996 #2	PQ: 230–194 A: 229–195 (7/13/95).
H. Res. 188 (7/12/95)	O	H.R. 1976	Agriculture Approps. FY 1996	PQ: 242–185 A: voice vote (7/18/95).
H. Res. 190 (7/17/95)	O	H.R. 2020	Treasury/Postal Approps. FY 1996	PQ: 232–192 A: voice vote (7/18/95).
H. Res. 193 (7/19/95)	C	H.J. Res. 96	Disapproval of MFN to China	A: voice vote (7/20/95).
H. Res. 194 (7/19/95)	O	H.R. 2002	Transportation Approps. FY 1996	PQ: 217–202 (7/21/95).
H. Res. 197 (7/21/95)	O	H.R. 70	Exports of Alaskan Crude Oil	A: voice vote (7/24/95).
H. Res. 198 (7/21/95)	O	H.R. 2076	Commerce, State Approps. FY 1996	A: voice vote (7/25/95).
H. Res. 201 (7/25/95)	O	H.R. 2099	VA/HUD Approps. FY 1996	A: 230–189 (7/25/95).
H. Res. 204 (7/28/95)	MC	S. 21	Terminating U.S. Arms Embargo on Bosnia	A: voice vote (8/1/95).
H. Res. 205 (7/28/95)	O	H.R. 2126	Defense Approps. FY 1996	A: 409–1 (7/31/95).
H. Res. 207 (8/1/95)	MC	H.R. 1555	Communications Act of 1995	A: 255–156 (8/2/95).
H. Res. 208 (8/1/95)	O	H.R. 2127	Labor, HHS Approps. FY 1996	A: 323–104 (8/2/95).
H. Res. 215 (9/7/95)	O	H.R. 1594	Economically Targeted Investments	A: voice vote (9/12/95).
H. Res. 216 (9/7/95)	MO	H.R. 1655	Intelligence Authorization FY 1996	A: voice vote (9/12/95).
H. Res. 218 (9/12/95)	O	H.R. 1162	Deficit Reduction Lockbox	A: voice vote (9/13/95).
H. Res. 219 (9/12/95)	O	H.R. 1670	Federal Acquisition Reform Act	A: 414–0 (9/13/95).
H. Res. 222 (9/18/95)	O	H.R. 1617	CAREERS Act	A: 388–2 (9/19/95).
H. Res. 224 (9/19/95)	O	H.R. 2274	Natl. Highway System	PQ: 241–173 A: 375–39–1 (9/20/95).
H. Res. 225 (9/19/95)	MC	H.R. 927	Cuban Liberty & Dem. Solidarity	A: 304–118 (9/20/95).
H. Res. 226 (9/21/95)	O	H.R. 743	Team Act	A: 344–66–1 (9/27/95).
H. Res. 227 (9/21/95)	O	H.R. 1170	3-Judge Court	A: voice vote (9/28/95).
H. Res. 228 (9/21/95)	O	H.R. 1601	Internatl. Space Station	A: voice vote (9/27/95).
H. Res. 230 (9/27/95)	C	H.J. Res. 108	Continuing Resolution FY 1996	A: voice vote (9/28/95).
H. Res. 234 (9/29/95)	O	H.R. 2405	Omnibus Science Auth	A: voice vote (10/11/95).
H. Res. 237 (10/17/95)	MC	H.R. 2259	Disapprove Sentencing Guidelines	A: voice vote (10/18/95).
H. Res. 238 (10/18/95)	MC	H.R. 2425	Medicare Preservation Act	PQ: 231–194 A: 227–192 (10/19/95).
H. Res. 239 (10/19/95)	C	H.R. 2492	Leg. Branch Approps	PQ: 235–184 A: voice vote (10/31/95).
H. Res. 245 (10/25/95)	MC	H. Con. Res. 109	Social Security Earnings Reform	PQ: 228–191 A: 235–185 (10/26/95).
		H.R. 2491	Seven-Year Balanced Budget	
H. Res. 251 (10/31/95)	C	H.R. 1833	Partial Birth Abortion Ban	A: 237–190 (11/1/95).
H. Res. 252 (10/31/95)	MO	H.R. 2546	D.C. Approps.	A: 241–181 (11/1/95).
H. Res. 257 (11/7/95)	C	H.J. Res. 115	Cont. Res. FY 1996	A: 216–210 (11/8/95).
H. Res. 258 (11/8/95)	MC	H.R. 2586	Debt Limit	A: 220–200 (11/10/95).
H. Res. 259 (11/9/95)	O	H.R. 2539	ICC Termination Act	A: voice vote (11/14/95).
H. Res. 261 (11/9/95)	C	H.J. Res. 115	Cont. Resolution	A: 223–182 (11/10/95).
H. Res. 262 (11/9/95)	C	H.R. 2586	Increase Debt Limit	A: 220–185 (11/10/95).
H. Res. 269 (11/15/95)	O	H.R. 2564	Lobbying Reform	A: voice vote (11/16/95).
H. Res. 270 (11/15/95)	C	H.J. Res. 122	Further Cont. Resolution	A: 229–176 (11/15/95).
H. Res. 273 (11/16/95)	MC	H.R. 2606	Prohibition on Funds for Bosnia	A: 239–181 (11/17/95).
H. Res. 284 (11/29/95)	O	H.R. 1788	Amtrak Reform	A: voice vote (11/30/95).
H. Res. 287 (11/30/95)	O	H.R. 1350	Maritime Security Act	A: voice vote (12/6/95).
H. Res. 293 (12/7/95)	C	H.R. 2621	Protect Federal Trust Funds	PQ: 223–183 A: 228–184 (12/14/95).
H. Res. 303 (12/13/95)	O	H.R. 1745	Utah Public Lands.	
H. Res. 309 (12/18/95)	C	H.Con. Res. 122	Budget Res. W/President	PQ: 230–188 A: 229–189 (12/19/95).
H. Res. 313 (12/19/95)	O	H.R. 558	Texas Low-Level Radioactive	A: voice vote (12/20/95).
H. Res. 323 (12/21/95)	C	H.R. 2677	Natl. Parks & Wildlife Refuge	Tabled (2/28/96).
H. Res. 366 (2/27/96)	MC	H.R. 2854	Farm Bill	PQ: 228–182 A: 244–168 (2/28/96).
H. Res. 368 (2/28/96)	O	H.R. 994	Small Business Growth	
H. Res. 371 (3/6/96)	C	H.R. 3021	Debt Limit Increase	A: voice vote (3/7/96).
H. Res. 372 (3/6/96)	MC	H.R. 3019	Cont. Approps. FY 1996	PQ: voice vote A: 235–175 (3/7/96).
H. Res. 380 (3/12/96)	MC	H.R. 2703	Effective Death Penalty	A: 251–157 (3/13/96).
H. Res. 384 (3/14/96)	MC	H.R. 2202	Immigration	PQ: 233–152 A: voice vote (3/21/96).
H. Res. 386 (3/20/96)	C	H.J. Res. 165	Further Cont. Approps	PQ: 234–187 A: 237–183 (3/21/96).
H. Res. 388 (3/20/96)	C	H.R. 125	Gun Crime Enforcement	A: 244–166 (3/22/96).
H. Res. 391 (3/27/96)	C	H.R. 3136	Contract w/America Advancement	PQ: 232–180 A: 232–177, (3/28/96).
H. Res. 392 (3/27/96)	MC	H.R. 3103	Health Coverage Affordability	PQ: 229–186 A: Voice Vote (3/29/96).
H. Res. 395 (3/29/96)	MC	H.J. Res. 159	Tax Limitation Const. Amdmt.	PQ: 232–168 A: 234–162 (4/15/96).
H. Res. 396 (3/29/96)	O	H.R. 842	Truth in Budgeting Act	A: voice vote (4/17/96).
H. Res. 409 (4/23/96)	O	H.R. 2715	Paperwork Elimination Act	A: voice vote (4/24/96).
H. Res. 410 (4/23/96)	O	H.R. 1675	Natl. Wildlife Refuge	A: voice vote (4/24/96).
H. Res. 411 (4/23/96)	O	H.J. Res. 175	Further Cont. Approps. FY 1996	A: voice vote (4/24/96).
H. Res. 418 (4/30/96)	O	H.R. 2641	U.S. Marshals Service	PQ: 219–203 A: voice vote (5/1/96).
H. Res. 419 (4/30/96)	O	H.R. 2149	Ocean Shipping Reform	

Codes: O-open rule; MO-modified open rule; MC-modified closed rule; C-closed rule; A-adoption vote; D-defeated; PQ-previous question vote. Source: Notices of Action Taken, Committee on Rules, 104th Congress.

Mr. QUILLEN. Mr. Speaker, I reserve the balance of my time.

Mr. MOAKLEY. Mr. Speaker, I thank my colleague from Tennessee, Mr. QUILLEN, for yielding me the customary half hour, and I yield myself such time as I may consume.

Mr. Speaker, I am pleased that this bill is being considered under an open rule, but I am sorry to hear that it was not the subject of a single congressional hearing in the House.

Mr. Speaker, this rule provides for the consideration of a bill that's in serious need of an amendment.

Lucky for thousands of American workers, it's an open rule and we have a good chance of making the necessary improvements.

Because unless we fix this bill, it will lead to increased prices for consumers by eliminating the public disclosure of shipping rates. It will prevent small shippers from competing with the largest, most powerful shippers and remove the enforcement of contracts with workers.

Mr. Speaker, a lot of people depend on these jobs including longshoremen, warehousing workers, trucking employees, and rail employees in addition to the thousands of people who work in and around port communities. If this bill is not fixed, their wages could go down, or they could lose their jobs.

Like the bill, Mr. OBERSTAR's amendment will lighten some of the regulatory burden and eliminate the Federal Maritime Commission. However, the Oberstar amendment will also ensure a level playing field for all shippers; continue worker protections, and keep costs down for consumers.

I have always supported the Federal Maritime Commission. I believe they have done excellent work, and served the country well. I am pleased that although the time may have come to transfer their responsibilities elsewhere the good work they started on behalf of American workers and American consumers can continue.

Mr. Speaker, I urge my colleagues to support this rule and to vote to improve this bill with the Oberstar amendment.

Mr. Speaker, I reserve the balance of my time.

Mr. QUILLEN. Mr. Speaker, I yield 5 minutes to the gentleman from North Carolina [Mr. COBLE].

Mr. COBLE. Mr. Speaker, I thank the gentleman from Tennessee for yielding me this time.

Mr. Speaker, I have no problem coming to this floor to engage in open debate. This is, after all, our reason for being, to debate issues openly and notoriously in the hope of improving it. I do, however, Mr. Speaker, have problems when Members assure me that they are with me, then, as a result of what I call political intimidation, conclude that they are not only not with me but against me.

Oh, I am not angry. I am not that thin-skinned. I am disappointed, because we changed our position in reliance upon their assurances that they were supportive of this good legislation only to learn at the last minute that their support had vanished like the morning dew.

This bill, I say to my colleagues, promotes a sound fiscal approach by dismantling the Federal Maritime Commission and saving taxpayers approximately $20 million per year. The Federal Maritime Commission, my friends, is a vestige of the Federal bureaucracy whose usefulness, if any, has been served.

Just yesterday, at the House Committee on Rules meeting, the gentleman from Massachusetts [Mr. MOAKLEY] asked the gentleman from Minnesota [Mr. OBERSTAR] why he was going about his dismantling FMC, and here I am paraphrasing, and the gentleman from Minnesota replied to the gentleman from Massachusetts, its time has come.

And, folks, the time has come. It is time for us to move along and this is an excellent way to dismantle big Government.

This bill, secondly, promotes and encourages competition. It has the support, and, Mr. Speaker, I hope the Members are listening to this, it has the support of these groups: The American Farm Bureau. And I would say to the gentleman from Tennessee that I am told that they represent 4.5 million farm families.

□ 1445

The National Retail Federation, the American Forest and Paper Association, the American Automobile Association, Sea-Land Service, American President Lines, the two largest carriers in this country, the National Broiler Council, the National Turkey Federation, and I could to on and on.

But as evidenced by the aforementioned support, Mr. Speaker, this bill affects America. The title, Ocean Shipping Reform Act, might imply to the uninformed that this affects only ports and only coastal communities. This bill, Mr. Speaker and my friends, affects people, individuals and corporations across this land who produce goods and/or services, Americans who live in New England, who live in Dixie, who live on the Great Plains, the Pacific Northwest, the scenic Southwest. Americans all will benefit, directly or indirectly, with the passage of this bill without any amendments.

This bill could be labeled, Mr. Speaker, America's bill. It is a good bill. I urge passage of this rule.

Mr. MOAKLEY. Mr. Speaker, I yield 7 minutes to the gentleman from Minnesota [Mr. OBERSTAR], the ranking minority member.

Mr. OBERSTAR. Mr. Speaker, I thank the gentleman from Massachusetts [Mr. MOAKLEY], for yielding me the time.

Mr. Speaker, I do support this rule. I appreciate very much your comments about the amendment that I will offer in accordance with the rule. It is an open rule. It does provide us with 1 hour of general debate, makes in order my amendment. That is fair.

The rule inadvertently made a mistake on debate on my amendment. That has been corrected, and I appreciate that gesture on the part of the floor manager for the Republican side.

I have come to this floor many times in support of deregulation of aviation, of trucking, of bus, of railroad industries, and I stand here in support of deregulation of ocean shipping with some adjustments.

The goals in most of the provisions of H.R. 2149, the bill we will be considering this afternoon, are basically good goals and good provisions. They eliminate the Federal Maritime Commission, prohibit ocean carrier conferences from restricting the rights of individual carriers to make contracts with shippers, eliminate the requirement that tariffs have to be filed with a government agency. But it does not go far enough, or perhaps it goes too far.

My first concern is that the bill allows carriers and conferences, 85 percent of whom fly a foreign flag, to enter into secret contracts with shippers. Under existing law, the essential terms of those contracts must be disclosed. That is what we do in the airline industry today. Nothing wrong with that.

Allowing secret contracts would lead to contracts that would discriminate against small shippers and disadvantage smaller carriers and smaller ports. They have raised concerns about this legislation. That is why I have an amendment to require these be open contracts, as current law requires.

Secret agreements would also permit foreign carriers to set the market price for U.S. exports, while U.S. carriers would have no ability to learn the essential terms of the secret contracts and offer competitive rates.

My other concern focuses on the agency that will take over the residual functions of the Federal Maritime Commission. The bill would vest that authority to the Secretary of Transportation.

Well, I may trust this Secretary. I do not necessarily want to have confidence in every Secretary. I do not believe that major authority should be placed in a department that is subject to the ever-changing political winds or whims of any particular Secretary. My amendment would address those concerns by requiring public disclosure of the essential terms of carrier conference contracts.

Second, it will vest the remaining enforcement responsibilities of the Federal Maritime Commission in the Surface Transportation Board, an independent transportation agency that already oversees water carriers transporting goods to certain destinations.

My amendment leaves in place the objectives, major objectives of this legislation. The Federal Maritime Commission is eliminated. Restrictions on the contents of contracts between shippers and carriers would be eliminated. Laws related to unfair trade practices of foreign carriers and foreign governments would be strengthened.

But I must say, my colleagues, and I am sorry that I do not see the gentleman on the floor right now, the chairman of the subcommittee, who said certain people were subjected to political intimidation. I am sure that those words were directed to our side of the aisle and possibly to this Member, and I just wanted to ask the gentleman, since when do citizens of this country not have the right, provided in our Constitution, to petition their government for redress of grievances? Since when do we say to people who will be adversely affected by legislation, you have no voice, you have no way to express yourself, you have no opportunity to come before the body of this country that makes policy and express your dismay and ask for redress of grievances?

That is not political intimidation. That is the right of every citizen of this country to walk into our offices and to say, "I do not like the way things are happening, I do not like this law, I do not like this bill. Please correct it for me." We do that time and again, and that is right and that is fair, and my amendment is not being subjected to any kind of secret process. It is being debated right here openly on that floor, and I resent that kind of language. It is inappropriate.

We did have hearings on the concept of deregulation. There was a bill drafted by the committee at the conclusion, and a markup was held. There were no hearings on that bill, and I am not faulting that process. I am just saying that people have come since then and said 8 months later, after this bill was considered in committee, "We find fault with the bill. We do not think

that it is appropriate to proceed in this manner. We want redress of our grievances." Small ports, small shippers, maritime labor, who have concerns.

Those concerns are going to be addressed in my amendment in an open, fair debate, no political intimidation. That is sheer nonsense and inappropriate and I resent it.

Mr. QUILLEN. Mr. Speaker, I yield 5 minutes to the gentleman from Pennsylvania [Mr. SHUSTER], the distinguished chairman of the Committee on Transportation.

Mr. SHUSTER. Mr. Speaker, I did not realize we would be debating the substance of this bill in the rule, but since my good friend from Minnesota is, then I think that I need to respond.

I cannot tell you how deeply disappointed I am that I believed we had a deal. We had a very delicate compromise in which everybody gave up something: the shippers, the carriers, all interested parties.

In fact, while the shippers were very much opposed to retaining antitrust immunity, this is in the bill. They swallowed hard. On the other hand, in exchange for their swallowing hard, private contracts were permitted, private contracts which are at the heart of the Staggers Act, in the railroad industry, are permitted with rail; private contracts between shippers and carriers which are permitted in the trucking industry.

Indeed, one of the essential parts of deregulation is to permit private contracts between shippers and carriers, and indeed, that was part of the deal. In fact I must particularly remind my good friend from Minnesota, who indeed is a good friend, in fact I am reminded of something that somebody told me earlier today about a chaplain saying the prayer in the Louisiana State legislature when he prayed, "O Lord, help us make our words sweet today because we might have to eat them tomorrow."

Well, I must remind my good friend from Minnesota that this legislation was passed overwhelmingly by voice vote out of our committee; that my good friend from Minnesota said and I quote him:

> I am a strong supporter of the legislation that we consider today, as are my fellow committee Democrats. The basis for this legislation has been the strong bipartisan, cooperative manner in which the bill has been developed.

Then he went on to say:

> The bill accomplishes preservation of the committee carrier system, which is important to the carriers, but it also injects a very healthy and significant dose of flexibility and competitive opportunity.

And then he said:

> Most importantly, Mr. Chairman, prior to the bipartisanship that we developed on the committee on this bill, it enjoys the support of carriers, of labor, and of the shipping community, without which we could not move the legislation. We'd have a room full of people buzzing around and all sorts of conflicts. But because we've come to this—as we are fond of saying in this committee over and over again—a delicate balance, we've got a good compromise of different interests.

Indeed, just less than a month ago my dear friend from Minnesota, in a speech, also said:

> Our committee has reported the Ocean Shipping Reform Act of 1995 to the House and proposed that we deregulate the ocean transportation industry in ways that are similar to what we have already done in the trucking, rail, and airline industries. We would eliminate tariff filings and allow for confidential service contracts.

Let me repeat that: "We would eliminate tariff filings and allow for confidential service contracts." That was part of the deal. That was the compromise. Now to be told a few days ago that, "Well, we really did not mean it when we make a deal, we do not stick to the deal, but at the last minute we try to change the deal," I find that extremely disappointing.

My good friend went on to say:

> As we deregulate transportation industries carefully over the years, each time the result has been lower rates and greater cargo and passengers movement.
>
> So if we decrease the cost of international shipping through deregulation of the ocean transportation system, and at the same time expand our port access infrastructure, everyone can and will win.

So I cannot tell you how deeply disappointed I am that after we crafted a very, very delicate compromise, after management, labor, carriers, shippers, all came to the table, all gave up something and we passed this out by voice vote, with nary a "nay" expressed, with, as my good friend from Minnesota says, strong bipartisan support from the Democrats and the Republicans, now at the last minute to be told that "Well, the deal really was not a deal, now we want changes."

So I am very disappointed by this, and if the gentleman has time on his own time, I would be happy to address him. My time has expired, I understand.

Mr. MOAKLEY. Mr. Speaker, I yield 5 minutes to the gentleman from Ohio [Mr. TRAFICANT].

(Mr. TRAFICANT asked and was given permission to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, I want to start out by commending the gentleman from Pennsylvania, Chairman SHUSTER, and the ranking member, the gentleman from Minnesota, Mr. OBERSTAR, and the gentleman from North Carolina, Mr. COBLE, the subcommittee chairman, who worked hard. He is a friend of mine.

I was the ranking member at the time this bill was approved, and I remember much the things now being rehashed except to say that there was always one little asterisk in this whole process, and that was labor's concern over the secret opportunities of these contracts and certain antitrust considerations right from the beginning.

□ 1500

We went along, and there was supposedly a mild-mannered agreement, gentleman's agreement, but there was never total confirmation of support from those people who were concerned.

I will yield to the gentleman when I conclude this because I would like to make this statement:

The Oberstar amendment and the original bill are not far apart. The Federal Maritime Commission has done a great job; it will be eliminated, as will all of the other salient points that are brought up in the legislation before us. Where the bill currently stands and the Oberstar amendment currently fits deals with the issue of repealing the requirement that the essential terms of contracts between ocean carriers and shippers be disclosed to the public. They would not be allowed to be disclosed to the public, and on the surface it does not seem to be a problem. That is the way it was some time ago, especially when we look at the way rail and highway shipping industries operate. But unlike rail and highway industries, in ocean shipping most of the carriers are a part of conferences that are immune from U.S. antitrust laws.

This combination, I say to my colleagues, of antitrust immunity and secret contracts, in our opinion, and in the opinion of many in the industry now, would greatly compromise the competitive balance between ocean carriers and shippers.

I am of the conclusion, as is the gentleman from Minnesota [Mr. OBERSTAR] and many others in labor, that the only way to fully protect small carriers and shippers as well as small- to mid-sized ports is to preserve the requirements in existing law for disclosure of the essential terms of ocean shipping contracts. With that, that is the issue that separates us.

But I started out, I said I wanted to compliment the gentleman from Pennsylvania [Mr. SHUSTER]. Three of my amendments are included in this bill and are included in the Oberstar substitute as well which would broaden the authority of the Secretary of Transportation to take action against foreign governments and entities that take actions that are unfair, predatory, or anticompetitive, and disadvantageous to all carriers. The original Tranficant language in the bill was criticized because it focused solely on the impact on U.S. carriers. It has been broadened, and it affects both domestic and foreign carriers.

The second amendment clarifies the manner in which regulations shall be issued by the Secretary on making determinations that prices charged by carriers are unfair, predatory, and anticompetitive. It ensures that, if a carrier is investigated by the Secretary

and found not to have violated the law, the information will not be made public. Congress would have access to the information.

Finally, it would require the Secretary of Transportation to report to the Congress annually on any action taken to enforce U.S. laws prohibiting unfair, predatory, and anticompetitive foreign trade practices and the effect of U.S. maritime labor on the actions of foreign governments and carriers.

I do not know about all the small detail between the two heavyweights on our committee, but we have been truly a bipartisan committee from the day that I have first been elected and served on this committee. I do not know of any two finer Members that serve. But I do know this as the ranking member at the time, not knowing the words that were repeated by the ranking member, the gentleman from Minnesota [Mr. OBERSTAR], but there was always that element of doubt and concern from labor over that issue of disclosure/nondisclosure. With that, I would urge all to support the Oberstar amendment.

Mr. SHUSTER. Mr. Speaker, will the gentleman yield?

Mr. TRAFICANT. I yield to the gentleman from Pennsylvania.

Mr. SHUSTER. My good friend said in the committee, and I am quoting him now: Mr. Chairman, I am in strong support of this legislation. The bill was developed in a bipartisan manner, et cetera.

Mr. Speaker, I would further say I am sure my good friend would not want to mislead the body and certainly would not do that on purpose. I am sure the gentleman would not intentionally mislead the body.

Talk about antitrust immunity here in ocean shipping, well antitrust immunity continues to exist in rail and trucking as well, and in fact in rail and in trucking the right to enter into these private contracts exists.

So the Staggers Act, which has been extraordinarily successful in revitalizing the rail industry, has the very provision in it that we have in this bill and which was supported not only in the committee by the gentleman and the Democratic side, but in a speech less than a month ago by my good friend from Minnesota.

So I find it extraordinary that we have this disagreement.

Mr. TRAFICANT. Reclaiming my time, if we went back into the archives and looked at all the memorializations of any speeches made by every Member, I am sure we would find some unusual trespasses.

Let me say this before I would yield. There is one thing that I do recall, and there was one great concern over this bill. That is the issue that was brought forth in the Oberstar language. I think it is at the right place where the deliberative body here shall make that decision, in the Congress here, the whole House, and I support the Oberstar language. I think it clarifies it, it stabilizes it, and in fact solidifies what we do here today for small ports, small business and for labor.

Mr. OBERSTAR. Mr. Speaker, will the gentleman yield?

Mr. TRAFICANT. I yield to the distinguished gentleman from Minnesota.

Mr. OBERSTAR. Mr. Speaker, I am sure the chairman would not want to mislead people either into thinking that labor was at the table, as he said, because in the list of witnesses on the one hearing we had, there was no representation from labor. There was no testimony from labor. So they were not part of the deal. Those maritime interests that are concerned about this issue were not part of any deal.

Mr. SHUSTER. Mr. Speaker, will the gentleman yield?

Mr. TRAFICANT. Reclaiming my time, Mr. Speaker, I yield to the distinguished gentleman from Pennsylvania.

Mr. SHUSTER. I would say to my friend I was quoting my friend from Minnesota who said, and I quote, on this bill it enjoys the support of carriers, of labor, of labor, and of the shipping community. I was quoting my good friend from Minnesota.

Mr. QUILLEN. Mr. Speaker, I advise the gentleman from Massachusetts [Mr. MOAKLEY] that I have no further requests for time at this time.

Mr. MOAKLEY. I would like to inform the gentleman from Tennessee that I do not have any requests for time either, and I yield back the balance of my time.

Mr. QUILLEN. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. SHUSTER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 422, nays 0, not voting 11, as follows:

[Roll No. 142]

YEAS—422

Abercrombie
Ackerman
Allard
Andrews
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Becerra
Beilenson
Bentsen
Bereuter
Bevill
Bilbray
Bilirakis
Bishop
Bliley
Blute
Boehlert
Boehner
Bonilla
Bonior
Bono
Borski
Boucher
Brewster
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clayton
Clement
Clinger
Clyburn
Coble
Coburn
Coleman
Collins (GA)
Collins (IL)
Collins (MI)
Combest
Condit
Conyers
Cooley
Costello
Cox
Coyne
Cramer
Crane
Crapo
Cremeans
Cubin
Cummings
Cunningham
Davis
de la Garza
Deal
DeFazio
DeLauro
DeLay
Dellums
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Doggett
Dooley
Doolittle
Dornan
Doyle
Dreier
Duncan
Dunn
Durbin
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Ensign
Eshoo
Evans
Everett
Farr
Fattah
Fawell
Fazio
Fields (LA)
Fields (TX)
Filner
Flake
Flanagan
Foglietta
Foley
Forbes
Ford
Fowler
Fox
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Frost
Funderburk
Furse
Gallegly
Ganske
Gejdenson
Gekas
Gephardt
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Gonzalez
Goodlatte
Goodling
Gordon
Graham
Green (TX)
Greene (UT)
Greenwood
Gunderson
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hilliard
Hinchey
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hoyer
Hunter
Hutchinson
Hyde
Inglis
Istook
Jackson (IL)
Jackson-Lee (TX)
Jacobs
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, E. B.
Johnson, Sam
Johnston
Jones
Kanjorski
Kasich
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kim
King
Kingston
Kleczka
Klink
Klug
Knollenberg
Kolbe
LaFalce
LaHood
Lantos
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Lipinski
Livingston
LoBiondo
Lofgren
Longley
Lowey
Lucas
Luther
Maloney
Manton
Manzullo
Markey
Martinez
Martini
Mascara
Matsui
McCollum
McCrery
McDade
McDermott
McHale
McHugh
McInnis
McIntosh
McKeon
McKinney
Meehan
Meek
Menendez
Metcalf
Meyers
Mica
Millender-McDonald
Miller (CA)
Miller (FL)
Minge
Mink
Moakley
Mollohan
Montgomery
Moorhead
Moran
Morella
Murtha
Myrick
Nadler
Neal
Nethercutt
Neumann
Ney
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Oxley
Packard
Pallone
Parker
Pastor
Paxon
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Rahall
Ramstad

Rangel	Sisisky	Torricelli
Reed	Skaggs	Towns
Regula	Skeen	Traficant
Richardson	Skelton	Upton
Riggs	Slaughter	Velazquez
Rivers	Smith (MI)	Vento
Roberts	Smith (NJ)	Visclosky
Roemer	Smith (TX)	Volkmer
Rogers	Smith (WA)	Vucanovich
Rohrabacher	Solomon	Walker
Ros-Lehtinen	Souder	Walsh
Rose	Spence	Wamp
Roth	Spratt	Ward
Roukema	Stark	Waters
Roybal-Allard	Stearns	Watt (NC)
Royce	Stenholm	Watts (OK)
Rush	Stockman	Waxman
Sabo	Stokes	Weldon (FL)
Salmon	Studds	Weldon (PA)
Sanders	Stump	Weller
Sanford	Stupak	White
Sawyer	Talent	Whitfield
Saxton	Tanner	Wicker
Scarborough	Tate	Williams
Schaefer	Tauzin	Wilson
Schiff	Taylor (MS)	Wise
Schroeder	Taylor (NC)	Wolf
Schumer	Tejeda	Woolsey
Scott	Thomas	Wynn
Seastrand	Thompson	Yates
Sensenbrenner	Thornberry	Young (AK)
Serrano	Thornton	Young (FL)
Shadegg	Thurman	Zeliff
Shaw	Tiahrt	Zimmer
Shays	Torkildsen	
Shuster	Torres	

NOT VOTING—11

Berman	Ewing	McNulty
Bryant (TX)	Goss	Molinari
Clay	Kaptur	Myers
Danner	McCarthy	

□ 1526

So the resolution, as amended, was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Ms. McCARTHY. Mr. Speaker, during rollcall vote No. 142 on House Resolution 419 I was unavoidably detained. Had I been present, I would have voted "yes".

□ 1530

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 2796

Mr. GORDON. Mr. Speaker, I ask unanimous consent that my name be withdrawn as a cosponsor of H.R. 2796.

The SPEAKER pro tempore (Mr. DICKEY). Is there objection to the request of the gentleman from Tennessee?

There was no objection.

ANNOUNCEMENT OF PROCEDURES AND DEADLINE FOR PRINTING OF AMENDMENTS ON H.R. 3230, DEFENSE AUTHORIZATION BILL

(Mr. SOLOMON asked and was given permission to address the House for 1 minute.)

Mr. SOLOMON. Mr. Speaker, the Committee on Rules is planning to meet on Thursday, May 9 to hear testimony on Friday, May 10 to grant a rule which may restrict amendments for consideration of H.R. 3230, the fiscal 1997 defense authorization bill.

The important part is, any Member contemplating an amendment to this bill should submit 55 copies of the amendment and a brief explanation to the Rules Committee in room 312 in the Capitol no later than 12 noon on Wednesday, May 8.

OCEAN SHIPPING REFORM ACT OF 1995

The SPEAKER pro tempore. Pursuant to House Resolution 419 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 2149.

□ 1531

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2149) to reduce regulation, promote efficiencies, and encourage competition in the international ocean transportation system of the United States, to eliminate the Federal Maritime Commission, and for other purposes, with Mr. REGULA in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Pennsylvania [Mr. SHUSTER] and the gentleman from Minnesota [Mr. OBERSTAR] each will control 30 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. SHUSTER].

Mr. SHUSTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, it is not often that we can bring to the floor a piece of legislation that can boost the entire United States economy but this legislation, the Ocean Shipping Reform Act, can do just that.

Mr. Chairman, while it is true that by abolishing the Federal Maritime Commission, which this bill does, we can save about $20 million a year in the Federal expenditures, that really does not tell the story. The real story here is that by abolishing the Federal Maritime Commission, by eliminating the tariff filings, we can stimulate this segment of American transportation to the point that we can save for America close to $2 billion a year in increased productivity through increased competition.

Yes, this abolishes the Federal Maritime Commission. Yes, it eliminates tariff filings, although it requires that such filings be made public. But it also provides for private contracts. This is at the heart of the bill, because if we are going to retain antitrust immunity, which this bill does, and which the shippers were very much opposed to but in the spirit of compromise agreed to, if we are going to retain antitrust immunity, then it is crucial that the carriers and the shippers be able to enter into private contracts.

This is not a new idea. This is an idea which has been proven, and it has been proven through the Staggers Act, which was the Rail Reform Act. The railroads have the ability with their shippers to enter into private contracts, and we all know the great success story of the revitalization of the railroad industry. The trucking industry has the ability to enter into private contracts with shippers and carriers. The aviation industry has the ability to enter into private contracts with shippers and carriers.

Indeed, every mode of transportation in America, freight transportation, has the ability to enter into these private contracts except for ocean carriage, and that is one of the fundamental reforms that we make today. We say that as all the other modes may do, now shippers and the carriers in ocean shipping can also enter into private carriage. It is a critical, fundamental part of the compromise of this legislation.

Beyond that, we are told by the U.S. Department of Agriculture that the shipping cartels fix prices and that is what we have had up to this point in ocean shipping, cartels fixing prices enforced by the Federal Maritime Commission. We are told by the Department of Agriculture that that price-fixing amounted to an 18-percent surcharge on the total ocean transportation cost of agricultural products.

And so indeed by injecting this competition, we are going to be able to make agriculture more productive. Indeed, we are going to be able to make virtually all modes that rely on ocean shipping more productive.

It is important to emphasize, Mr. Chairman, the United States is the only country in the world that maintains an agency to regulate and enforce Government ocean shipping controls. The time has come to eliminate the Federal Maritime Commission.

There are several points that served as a basis for the delicate compromise on this legislation, a compromise which had strong bipartisan support, indeed was passed out of committee by voice vote with nary a negative expression against this legislation. Republicans and Democrats alike cosponsored this legislation and passed it overwhelmingly, if not unanimously, out of the committee by voice vote.

The agreement was very simple. The shippers agreed that the ocean carriers and the ports would retain their antitrust immunity. That is what the carriers and the ports got in this compromise, including the authority to set their prices with antitrust immunity and publish those prices.

In exchange for this fundamental concession by the shippers, the carriers

agreed to accept reforms to instill greater competition among the carriers. These reforms are the elimination of tariff and contract filings and enforcement, and the authority for shippers and carriers to enter into the private contractual arrangements which every other mode of transportation has. Let me emphasize, seagoing labor, the Seafarers, the part of organized labor most directly affected by this legislation, agreed to this compromise. Indeed, we bring this balance to the floor today.

Let me also emphasize, Mr. Speaker, that originally the bureaucratic ocean and shipping regime, including tariff filings and compulsory publication of contract terms, originally was designed to protect American businesses. But today, however, the ocean transportation system works against U.S. exporters and importers, and it benefits those very foreign competitors of U.S. business and foreign flag owners who dominate the price-fixing cartels. Indeed, these foreign vessel owners control nearly 85 percent of the regulated ocean shipping.

So we bring to the floor today legislation which is good for America, legislation which had the strong, strong support, bipartisan support of virtually every member on the committee. I would urge my colleagues to support this legislation, this compromise, without amendment, because if we undo the compromise, then we undo the reforms and the benefits which are so crucial and critical to the future of American productivity.

Mr. Chairman, I reserve the balance of my time.

Mr. OBERSTAR. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, many writers and historians have described the United States as an "Island Nation". The oceans that have protected us from foreign invasion are also the highways over which most of this country's imports and exports must travel to market.

While most people recognize that the coastal cities in our country grew up around ports, today, every congressional district in the United States is touched by this linkage to the world market—whether it be iron ranges in my district, or wheat fields in Kansas. That's why we must all be concerned about how international shipping is regulated.

The bill now before us would take major steps in shifting the regulation of international shipping from the Government to the marketplace. In general, I support this approach. The market can do a much better job than the Government in promoting efficiencies and low prices for consumers. That was proved with the successful deregulation of the domestic airlines, trucking, bus, and railroad industries.

I also support most of the provisions of H.R. 2149, including the provisions which eliminate the Federal Maritime Commission; prohibit ocean carrier conferences from restricting the rights of individual carriers to make contracts with shippers; and eliminate the requirement that tariffs must be filed with a governmental agency.

However, I believe that the bill goes too far in one important respect. By combining continued antitrust immunity for conferences of carriers with a right of these carriers to make secret agreements with individual shippers, the bill is likely to lead to less competition and higher rates. Later, I plan to offer an amendment to prevent these unfortunate consequences by banning secret agreements.

In evaluating the problems with secret agreements, we must be aware of some basic economic facts about ocean shipping today.

At the end of World War II, the United States had the greatest commercial fleet in the world to carry this commerce. Today, less than 4 percent of our commerce is transported on U.S.-flag vessels. More than ever before, we are dependent on foreign vessels owned by foreign citizens to transport the lifeblood of our Nation. Foreign carriers do not necessarily have the best interest of United States' citizens at heart. Foreign carriers can be motivated by their own nationalism, their business interests, or the interests of their government. Foreign carriers can operate as an instrument of their country's corporate or governmental policy. To further these policies, foreign carriers can set rates which increase the costs of our exporters and lower the shipping costs of their country's corporations which export to the United States. Thereby, foreign carriers can place U.S. manufacturers, even those only serving domestic markets, at a disadvantage in competing against foreign manufactured goods.

The ability of foreign carriers to create unfair advantages for their country's exporters will be greatly enhanced if the foreign carriers are allowed to enter secret agreements with these exporters, with discriminatory terms. Our shippers will be unaware of these agreements and have less leverage to obtain comparable agreements.

Secret agreements will also accelerate current trends toward industry concentration. In this regard, I would like to take a moment to read to you the views of one of the biggest supporters of H.R. 2140, John Clancy, the president and CEO of Sea-Land Services, Inc. According to an interview he granted with World Wide Shipping in September, Mr. Clancy believe that:

> A few giant shipping consortia with global reach and the freedom to function like contract carriers will dominate the world's sealanes before the end of the century. He painted a picture of a maritime environment where a few super-consortia will control 85-90% of the world's containerships. The by-product, he says, is the demise of the niche carrier, the feeder line and the north-south lines with no other links in the shipping chain.

The controlling factor in this, according to Mr. Clancy, is the pending legislation to deregulate the U.S. shipping industry.

I thought the purpose of deregulation legislation was to increase competition, not to eliminate it. That's the fundamental flaw in H.R. 2149. It lacks balance. Everyone is looking at the quick, short-term impact—everyone; that is, except Mr. Clancy. He has his eye on the ball—a short-term cut in rates resulting from secret contracts under deregulation will drive his competitors into bankruptcy and he and the other super consortia members will have the market to themselves, with unlimited ability to control the price of international shipping—whether it be household goods, food and grain, raw materials, automobile parts, or clothing.

Secret agreements will be a major weapon enabling Mr. Clancy to achieve his goals. It will permit large companies to offer lower rates to larger shippers. If smaller shippers and carriers are unaware of these deals they will find it difficult to compete. The end result is likely to be exactly what Mr. Clancy predicts. The demise of the niche carrier, the feeder line and the north-south lines.

I served on the House Committee on Merchant Marine and Fisheries when the Shipping Act of 1984 was written. One of the fundamental purposes of the 1984 act was to counterbalance the legalization of international cartels that have anti-trust immunity by requiring public disclosure of the agreements between the carriers in the cartel, and the essential terms of the contracts between the carriers and the shippers. This way the Government and public will know that ports and manufacturers in the United States are not being discriminated against. By allowing secret contracts, this bill eliminates this balance and undermines the concept of common carriage.

I reiterate that there are good provisions in the Ocean Shipping Reform Act. There should be less governmental interference in the marketplace. The Federal Maritime Commission should be eliminated. The marketplace is a better regulator than the Government. But for the market to work, there must be daylight in the market. Carriers, conferences, consortia, and shippers shouldn't be allowed to enter into secret deals that can harm our ports, manufacturers, and consumers. It's one thing to allow for confidential contracting in our domestic commerce where the Department of Justice or the investigating agency can easily obtain evidence by subpoena. But this isn't

the domestic commerce. These contracts are being made and executed in cities around the globe—Hong Kong, Singapore, Tokyo, London, Rio de Janiero, and Rotterdam. Many foreign governments have blocking statutes to prevent discovery of evidence by U.S. investigators. It will be virtually impossible to obtain information about the content of these secret deals before the harm is done to U.S. ports, manufacturers, and consumers. Was it good for the U.S. consumer and manufacturers when OPEC got together to control the world price of oil?

At the appropriate time I will offer an amendment to require that essential terms of these confidential contracts be made publicly available and to transfer the residual functions of the FMC to the Surface Transportation Board that currently regulates ocean shipping between the continental United States and Hawaii, Puerto Rico, Alaska, and Guam. I believe that my amendment will not gut or kill this bill but will restore the proper balance to this legislation and allow market forces to regulate this industry instead of the Federal Government.

Now you have already heard from the other side that this amendment will gut the bill. There's nothing further from the truth. The fact is my amendment would still allow for private contracts between shippers and carriers. My amendment would not disturb the important provision in the bill that conferences may not prevent individual carriers from making separate contracts. All my amendment would do is require that certain essential terms of these contracts be made public so that there would be an equal playing field in terms of competition. In addition, my amendment would also allow for the transfer of FMC's remaining functions to the Secretary of Transportation with the minor modification that the Secretary then delegate those responsibilities to the Surface Transportation Board.

Hardly "killer" changes, I submit.

Lastly, you have also heard that this bill received bipartisan support in the committee and that even though no hearings were held on it there was opportunity for comment and reaction.

That's true. But unfortunately as is often the case, when a bill lays around for 8 months after markup as this bill did, new issues and new interested parties emerge.

While some may charge that particular groups came late in the game, the real issue is not "when" but "what." In this case, the issues that have been raised are legitimate public policy issues which must be addressed. My amendment addresses these issues, while at the same time preserving the basic structure of deregulation established by the bill.

If my amendment is adopted, I will support final passage of the bill. Without the amendment, I believe that the bill is highly anticompetitive and I will urge a "no" vote on final passage.

□ 1545

Mr. Chairman, I reserve the balance of my time.

Mr. SHUSTER. Mr. Chairman, I am pleased to yield 7 minutes to the gentleman from North Carolina [Mr. COBLE], the distinguished chairman of the Subcommittee on Coast Guard and Maritime Transportation.

Mr. COBLE. Mr. Chairman, I thank the gentleman from Pennsylvania, the chairman of the full committee, for yielding me time.

Mr. Chairman, at the outset I want to comment to the gentleman from Minnesota, I think he took umbrage with my earlier statement when I used the words "political intimidation." Well, I use those words again, but I certainly meant nothing personal about that, I will say to the gentleman from Minnesota.

Folks, is there anybody in this great hall who would dare think that political intimidation is not an ingredient that we see every day up here? All of us, nobody is immune to it. Sure, political intimidation is kicked around. I did not mean anything personally by that at all. But I do stand by my choice of words. I do think political intimidation is involved here.

I have heard it said, Mr. Chairman, that oftentimes the lyrics of music sometimes can bring things together. So I heard a song not long ago, and I am going to try to connect it, Mr. Chairman, to what we are about today.

The song was written by Tom T. Hall, the country balladeer, country story teller, who was reared I think in Congressman ROGERS' district in Kentucky, and it is entitled "The Ballad of $40". The lyrics depict a fellow who died and he was indebted to a friend in the amount of forty bucks.

The creditor friend goes to the funeral, and the lyrics depict him standing alongside the church there viewing the activity. And as he sees the survivors of the deceased, his debtor, walk by, he says, "That must be the widow in the car, and would you take a look at that; My, what a pretty dress, you know some women do look good in black. He ain't even in the ground, they tell me that his truck is up for sale. They say she took it pretty hard, but you can't tell too much behind a veil."

Well, many people up here obviously have been wearing veils. Veils conceal the eyes, and observers therefore are unable to determine the sincerity of the voices behind the veils, because the veils conceal eyes and faces. The observer is, therefore, at a disadvantage.

We were assured by our Democrat friends that they were supportive of this legislation. And as the gentleman from Pennsylvania, Chairman SHUSTER, said earlier, we worked hard, Democrats and Republicans alike, to strike a delicate, yet well-oiled balance.

Strategy sessions were conducted and staffers attended these sessions representing Democrats and Republicans alike. A man said to me yesterday who represents one of the groups supportive of this bill in its present form, he said, "I feel violated. I went to those strategy sessions and shared information that was very personal to my group, thinking people there were supportive of this legislation. Now I find out they were spying." Those were his words, not mine. He felt violated, he said.

All was well, Mr.. Chairman, until the Transportation Trades Department of the AFL-CIO weighed in and told many of my friends on the other side it was time for them to withdraw their support, withdraw their support, despite past assurances that they were in fact supportive.

Have we come to the point in this body where one's word, one's promise, has no significance, has no meaning?

Permit me, Mr. Chairman, to elaborate about the 11th hour involvement of the labor unions. Now, I am not being critical of rank and file, card-carrying union members. My complaint is with union bosses. Union members are rather flexible politically. They vote Republican, Democrat, Liberal, Conservative. Union bosses, on the other hand, with rare exceptions, vote straight Democrat, because I assume big government, sometimes intrusive government, has appeal to these people. Well, these bosses yell "jump", and many respond "how high must I jump?"

Recently some of my colleagues charged that the NRA had too much clout with this Congress. Well, I wonder if these same people believe the AFL-CIO has too much clout? Oh, I guess it is perfectly permissible for the AFL-CIO to dictate the course of legislation, but highly improper for the NRA and other groups to do likewise. The imposition of a double standard, I ask, Mr. Chairman? Perhaps. Perhaps indeed.

A sea change has occurred on this bill. As recently as last week, I say to my friend from Pennsylvania, I say to my friend from Minnesota, the bill was on its way to inevitable passage because of bipartisan support. Then came the AFL-CIO with their marching orders. Now those who previously supported the bill have jumped ship.

A man's word was at one time his bond, but obviously not this day. Too many people, Mr. Chairman, are wearing veils, enabling them to say one thing and do another, and yet often times get away untouched, unpunished, with this elusive approach.

This is a good piece of legislation in its present form, and America, as I said in my remarks during the debate on

the rule, will benefit. The gentleman from Pennsylvania, Chairman SHUSTER, just mentioned how much money will be realized by Americans if this bill is enacted. I urge my friends to support it.

Mr. OBERSTAR. Mr. Chairman, I yield 5½ minutes to the gentleman from New Jersey [Mr. MENENDEZ].

Mr. MENENDEZ. Mr. Chairman, I thank the ranking member for yielding me time.

Mr. Chairman, I rise in strong opposition to this legislation. Last August, I raised questions about the wisdom of this piece of legislation. Here is why I am concerned about this bill: $571 billion of economic activity move through our Nation's ports; 15 million jobs are generated in those ports. That is one in every seven jobs in the country. Oceangoing vessels move over 95 percent of the U.S. overseas trade by weight and 75 percent by value. This generates an estimated $15 billion in U.S. customs duty revenue. These are truly staggering numbers and the bill today jeopardizes all of them. Listen my colleagues, if you have a small or medium sized port and you support H.R. 2149, you can kiss your port goodbye.

I want to cite a September 1995 article in World Wide Shipping which discusses ocean shipping deregulation. It states that a few giant shipping consortia with global reach will dominate the world sealanes before the end of the century, four short years away. One of the prime supporters of today's bill outlined the scenario where maritime container commerce would be 85 to 90 percent controlled by a few conglomerated super-companies and that is the driving factor in today's move to deregulate the U.S. shipping industry and carrier operating alliances. The Republican revolution is putting deregulation into the fast forward mode. At what cost? The byproduct will be the demise of the niche carrier, the feeder lines and the north-south lines with no other links in the shipping chain. One can almost hear the long knives sharpening as these huge combinations prepare to carve up the commerce of the United States.

You will be told that this is the wave of the future. This is the key to international competition. We were told the same things before the current downsizing craze and the merger and acquisition craze of the 1980's. Tell this lame economics to the workers who have been laid off and the port workers who will lose their jobs. See if they believe you.

I want to quote a former Republican colleague of ours from Maryland who has stood foresquare in opposition to this legislation, Helen Bentley, recognized as an expert on maritime commerce. Ms. Bentley is unequivocal: she says that this legislation will result in the reduction of U.S. ports to as few as four. There are now over 100 public ports serving this country. From 100 ports to 4, now that's downsizing any corporate pirate can be proud of.

This bill is simple. Big shippers and big carriers have gotten together and put the screws to the nations' commerce. Ask your local port authority. They oppose this legislation and have been threatened and punished for it. Right now, port-critical language in the Water Resources Development Act is being threatened with reprisal.

There has never been even a single hearing in the House on this bill. One hearing was held last February 1995 on maritime issues. Last week, there was even a hearing on the Federal Maritime Administration authorization but this legislation was not even mentioned. If you read the February 1995 testimony, only one, single witness favored the position taken in this bill. There was strong opposition from every other sector of the maritime community against wholesale deregulation. Then something mysterious happened. Let me now quote page 10 of the committee report:

> It should be noted that during the Spring and Summer of 1995 numerous, in depth meetings and discussions were held under the committee's auspices to forge a bill that could enjoy wide support among all segments of the ocean shipping industry to the greatest extent possible.

I note that the use of the phrase "forge a bill" could be construed in the same sense one could forge a check because this bill is drawn on an insufficient basis. A bill was introduced one day before the markup in August, yet it took until November to file the report. There is something very fishy about this bill and it smells of backroom, closed door, special interest at the expense of everyone else. I say let the sunshine in.

If this legislation enjoys widespread support in the ocean shipping community, why are responsible parties expressing concern about this bill being subjected to bullying, threats, and intimidation? Why were all the discussions conducted behind closed doors? I know that responsible parties with legitimate interests like the port authorities and labor have been repeatedly threatened because they have voiced concerns about what this legislation means.

Here are a few of the concerns that have been raised about this bill.

H.R. 2149 would allow large carriers and large shippers to discriminate against ports in favor of super-hub ports without public notice or public recourse.

H.R. 2149 would effectively impose higher rates on small and medium sized shippers to subsidize secret deals made between large carriers and large shippers. Many shippers would simply go out of business.

H.R. 2149 would result in massive job dislocation in port communities. Wages and benefits would be pushed downward as ports compete against ports and exporters compete against exporters.

H.R. 2149 is not deregulation. It is cartelling. H.R. 2149 will not result in an ocean transportation industry governed by market principles or competition. It will result in a system of cartels which will operate with legal impunity. The United States has never before recognized a cartel of this type.

H.R. 2149 threatens billions of dollars in taxpayer investment in public ports and facilities.

I think that these are issues of consequence. I think that a radical change in $571 billion in commerce merits at least a single hearing in an open and free atmosphere.

Here is the bottomline: H.R. 2149 smells of the bad old days of monopoly power. It reeks of secret contracts, immunity from antitrust laws and no Government safeguards to act as a referee. If you like secret deals, monopolies, unemployment, and recession, while billions of dollars get funnelled directly into the pockets of the cartels, then you should vote for H.R. 2149. If you care about the Nation, the economy or government conducted in the sunshine, you will oppose this bill.

□ 1600

Mr. SHUSTER. Mr. Chairman, I yield myself such time as I may consume to emphasize that the private contracts which pejoratively are called secret contracts, these private contracts are not different from the contracts that exist in Staggers, in rail, they are no different from the contracts that exist in trucking, in aviation, and every other mode. So for that reason we should simply bring ocean shipping into what is going to become the twenty-first century.

Mr. Chairman, I yield 5½ minutes to the gentleman from Illinois [Mr. HYDE], the distinguished chairman of the Committee on the Judiciary.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Chairman, I thank my friend for yielding me this time.

Mr. Chairman, I rise in support of H.R. 2149, the Ocean Shipping Reform Act, and in opposition to the Oberstar amendment.

This legislation would make significant reforms in the regulatory regime contained in the Shipping Act of 1984. H.R. 2149 represents the bipartisan compromise that would reform this outdated regime by deregulating ocean shipping, infusing new price competition into the industry, eliminating the need for the Federal Maritime Commission, and maintaining oversight of ocean shipping conferences. As chairman of the Judiciary Committee, I believe that H.R. 2149 moves this important industry towards full market competition and I fully support it.

Under the Shipping Act of 1984, ocean carriers—most of whom are foreign—are allowed to organize themselves into cartels, known as conferences, and collectively fix their prices, set sailing schedules, and make other business arrangements. In fact, the Shipping Act provides an antitrust exemption for international ocean carriers and their conferences, thereby sanctioning price fixing agreements. In contrast, H.R. 2149 would lessen the power of the conferences to fix prices by authorizing private contracts for ocean transportation, as provided in all other areas of transportation.

During the consideration of the Shipping Act in the 98th Congress, the majority of the Republicans on the Judiciary Committee, including me, pushed hard for the concept of independent action. Independent action means that an ocean carrier member of a cartel can act independently of the cartel in setting its prices. We were able to achieve that goal in a limited fashion. However, we did not feel that the 1984 legislation went far enough in ending price fixing.

Fortunately, H.R. 2149 takes another step away from Government-sanctioned price fixing by allowing shippers and carriers to enter into private contracts away from the prying eyes of cartel enforcers. My preference would be to end the antitrust immunity altogether for these cartels. However, I am realistic enough to understand that H.R. 2149 represents a delicate compromise among many competing interests. While it does not go as far as I would like, it is a vast improvement over current law.

Unfortunately, Congressman OBERSTAR's amendment would upset this delicate compromise by requiring prior publication of these private ocean shipping contracts. Without the ability to negotiate reasonable transportation rates in private, U.S. shippers—that is the tens of thousands of American businesses who use the services of carriers—would be at a competitive disadvantage with their foreign competitors who are not compelled to publicize their transportation costs. This amendment would undermine the pro-competitive thrust of H.R. 2149, and I strongly urge you to vote against it.

The biggest beneficiaries of the public contracts that the Oberstar amendment seeks to preserve would be the foreign-dominated shipping cartels who fix prices that they charge American businesses. Over 85 percent of U.S. goods are carried aboard foreign vessels, and this amendment allows foreign ship owners to avoid competition and maintain high profits at the expense of U.S. businesses and consumers.

Further, the Oberstar amendment would not help small shippers as its proponents claim. According to a recent article in the Journal of Commerce, getting the Government out of ocean shipping contracting may allow smaller shippers to get a better bargain than large shippers. Obviously, the thousands of small and medium shippers who support H.R. 2149 agree.

Finally, do not be fooled by the claim that the private nature of these contracts is bad for the shippers. On the contrary, privacy allows competition in rates. Publicizing prices only allows the foreign-dominated cartels to enforce the prices they have fixed. Without this mode of enforcement, competition will ultimately undermine the cartels.

The proponents of the amendment argue that the antitrust immunity provided by the Shipping Act somehow counsels against private contracts. However, the antitrust immunity applies only to agreements among the carriers themselves and with terminal operators. It does not apply to the private contracts between carriers and shippers that the amendment seeks to overturn. Thus, the continuation of antitrust immunity for the cartels is not an argument against private contracts between carriers and shippers.

Cast your vote for the free market, lower prices and actual competition in ocean shipping. Vote for H.R. 2149 and against the Oberstar amendment.

Mr. OBERSTAR. Mr. Chairman, I yield 5 minutes to the gentleman from Oregon [Mr. DEFAZIO].

Mr. DEFAZIO. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I think those listening to the debate are perhaps becoming a bit confused. We have heard from the esteemed chairman of the Committee on the Judiciary how these secret agreements and the antitrust exemptions will lead to a freer market, more competition, benefit all shippers, particularly possibly maybe smaller shippers and others, and those who have been listening to the debate have heard the opposite from this side of the aisle.

I guess that is a good argument to basically withdraw this bill and go back to the committee of jurisdiction on which I sit and hold a hearing. It would be nice to hear from the broad interests that are going to be impacted by this bill in some detail how they believe this will affect American ports, American shippers, American workers, and the American maritime industry, such as it is. But no hearings were held and none will be held before this bill is voted on. That is absurd, for something that has such a tremendous economic impact, or potential impact on this country.

I respectfully disagree with the prior speakers on that side of the aisle. I believe that antitrust immunity linked to secret, nonpublished tariffs and rates will lead to an anticompetitive environment, an environment that is particularly to the disadvantage of small- and medium-sized shippers and the businesses which they serve. I believe that this will also bring about problems for medium-sized and smaller ports in America.

I do not believe a country that concentrates all of its shipping in two or three large ports is a healthy nation, particularly a maritime nation such as the United States of America. So for those Members who represent States which contain medium-sized or smaller-sized ports, if they do not represent a megaport, this bill in all probability will deprive their port, their State, of vital interests and of carriage through those areas. That means job loss, competitive loss, competitive disadvantage for their States.

Beyond that, I disagree also, Mr. Chairman, on the fact that this will somehow disadvantage the foreign cartels; to have antitrust immunity, and secret agreements, and no transparency, and no publication of rates and tariffs is somehow going to disadvantage foreign cartels, who are right now trying to drive American shippers out of business and trying to channel business through a few select ports. No, I do not believe this bill is going to help that situation. In fact, I believe it is going to make it worse.

There is only one remedy. We can get the savings proposed here by eliminating the Maritime Commission. We can get the savings and the efficiency that underlie other parts of this bill, and we can maintain competition, maintain a viable environment for small shippers, medium shippers, small ports, medium ports if the bill is amended with the Oberstar amendment, which the chairman of the full committee objects to vehemently.

Again, perhaps we could sort those differences out if we went back and held a hearing. But absent a hearing, I think we should act in a way that is prudent to protect America's interests and the diversity of interests in this country by adopting the Oberstar amendment. And absent the Oberstar amendment, I and many others will not support this legislation.

Mr. SHUSTER. Mr. Chairman, I yield myself such time as I may consume to respond to my good friend from Oregon that, first, hearings were held on February 2 on ocean shipping deregulation. Second, in the last Congress there were at least three different major bills on which precisely the procedure which was followed in the last Congress was followed in this Congress, and that is hearings on airline improvements, hearings on trucking deregulation, and hearings on amending the FAA, all of which, under the control of our Democratic friends, hearings were held on the issue but no hearings were held on the actual text of the legislation. So we are simply following the same procedure that our Democratic friends followed in the last Congress.

And, finally, I would also say that my good friend, the gentleman from Minnesota, Mr. OBERSTAR, in his statement on August 1 in the committee, said that, and I quote him directly, the basis of this legislation is bipartisan; a cooperative manner in which the bill was developed, and the willingness of Chairman COBLE to let the bill hang out there for a time and let people digest it, and comment on it, and be comfortable with it and with changes that need to be made.

Mr. Chairman, I yield 6 minutes to my good friend, the gentleman from California [Mr. BAKER].

Mr. BAKER of California. Mr. Chairman, I got into this process early serving on the subcommittee, and at the point we entered the debate there was a mechanism where we fixed prices and the cartels and other parts of the world fixed prices. How can we, if we want to increase our exports, use shipping when the prices are fixed artificially high? How do we expect to change our balance of payments if we are going to allow the shipping to be artificially high?

□ 1615

So the gentleman from North Carolina, Chairman COBLE, and I and other members of the committee said the end of the Maritime Commission, the end of price fixing, we are going to join the late 1800's and we are going to have competition.

No one thought we would do it. The gentleman from North Carolina [Mr. COBLE] assured them, the chairman of the committee, that we were crazy enough to eliminate them, just as has been suggested by Democratic Congresses before that. This mechanism was old. Seven years ago we asked that they study this mechanism, and this Congress demanded that they study this mechanism. And because the carriers had a lock grip on the Maritime Commission, they came back with no recommendation, surprise, surprise.

Another 4 years went on after that and nothing happened. But then we got a new Congress and we began addressing problems. We said the old days are over, this mechanism is going. They are going under the Department of Transportation and this industry is going to be deregulated, just as rail and trucking was before it.

The rail units have, quote, secret contracts. Is it not funny when we have a business agreement with somebody and we do not post it on the wall, it becomes evil at the last moment? These are now secret contracts. The shipping people and the rail industry have secret contracts. Truckers have secret contractors. And while we post the airline rates for you and me, we know what we pay when we walk in, the airlines are free to go to a corporation and say, "Use us a bunch of times and we will give you a discount." Those are secret contracts.

So now we are being besieged to, well, just take that out, do not allow competition, post the rates which then become the rates. Everybody will have the same rate once again, back to the old rule. So what happened? We allowed shippers and carriers, those who have ships, those who make the product, whether they be small manufacturers or farmers, large goods, small goods, they got into a room and they decided they could work it out by themselves, once they realized we were crazy enough to get rid of their cartel mechanism, and they worked it out.

They came out and just showed what their final product was and everybody signed off on it, until the unions decided this was 1996 and they wanted to play politics. They wanted to muscle around on the floor of the legislative body and they said, "Oh, we no longer think this is a good deal." We cannot lose American jobs in shipping because most of the people in shipping, whether they are American flags or foreign flags, are foreigners.

Mr. KASICH. Mr. Chairman, will the gentleman yield?

Mr. BAKER of California. I yield to the gentleman from Ohio.

Mr. KASICH. Mr. Chairman, I would like to alert our Members to this bill that we will be voting on here this afternoon, and I would like to pay a very high compliment to the gentleman from North Carolina, Mr. COBLE, the chairman of the subcommittee, and obviously the gentleman from Pennsylvania, Chairman SHUSTER. It is great to stand up here and be with Chairman SHUSTER, not only because we won the last time but, second, he generally wins, so it is good to be working with him this time.

But I want to say to our Members that this is another outstanding effort by this Congress to try to move things literally with an aim toward the 21st century. Now, I think we have got to give Jimmy Carter a little bit of credit, President Carter a little bit of credit for deregulating a number of industries: the trucking industry, the bus industry. We are trying to do some deregulation of railroads and of airlines, as you know.

All we are trying to do here is to say that the time has come in America where we ought to deregulate some of the activity involved in shipping. And at the same time, very similar to what we did in the Interstate Commerce Commission, we are saying we do not need this old bureaucracy anymore.

This bill will call for the dismantling of the Federal Maritime Commission. This is a fantastic vote for this Congress so we will be able to achieve several things: One is, we will deregulate because we believe that regulations cost money and strangle business. Second, we will have a lowering of prices. It will be pro-consumer. Third, it is pro-taxpayer because we are again trying to pull another one of these tired old dinosaur-like bureaucracies out by the roots and to suggest that we move into the 21st century.

So the members of our party in particular should be very enthusiastic to vote for less government, less regulation, and giving the taxpayers a break on some of the money that they are sending up here to keep piling up World War II bureaucracy. We are going to cut through that.

To my Democratic friends who are market-oriented, this makes all the sense in the world. If you believe in deregulating trucking, if you believe that people have been served well in this country, consumers, by a better product with more competition, you need to vote for this bill. If you want to get rid of some of the World War II relics, you have got to come to the floor and vote for this bill.

I one more time want to compliment Chairman SHUSTER and Chairman COBLE for their outstanding work, and would ask for very strong support of this legislation.

Mr. BAKER of California. Mr. Chairman, reclaiming my time, I think the gentleman in the budget area said $17 million savings on the commission, lower rates to consumers and a better trade balance. I ask for an "aye" vote, and a "no" vote on the Oberstar amendment.

Mr. OBERSTAR. Mr. Chairman, I yield myself 30 seconds.

I am sorry my good friend, the gentleman from Ohio [Mr. KASICH], the chairman of the Committee on the Budget, left the floor so precipitously. All he said, we are in agreement with. There is nothing that my amendment does that will affect in any way anything that he said. We are all in agreement about this deregulation, about all the good things he talked about. We just want to correct one defective aspect of this legislation.

Mr. Chairman, I yield 4 minutes to the gentleman from Illinois [Mr. LIPINSKI].

Mr. LIPINSKI. Mr. Chairman, I thank the gentleman from Minnesota for yielding me the time, and I want to say that I feel I am compelled to speak on this particular bill because I had the fortune of being the last chairman of the late, great Merchant Marine subcommittee.

H.R. 2149, the Ocean Shipping Reform Act, provides badly needed reform to the ocean shipping industry. The ocean shipping industry is one of the only transportation industries still heavily regulated by the U.S. Federal Government. By substantially deregulating the ocean shipping industry, this bill has the potential to restore the competitiveness of the American shipper.

The United States is the only country in the world that maintains a Government agency to regulate ocean shipping. For this reason, the Ocean Shipping Reform Act sunsets the Federal

Maritime Commission—a Federal agency which has clearly outlived its usefulness.

The Ocean Shipping Reform Act also eliminates the detrimental tariff-filing and enforcement requirements. It preserves common carriage for all sizes of U.S. shippers who choose that method of ocean transportation. Most importantly, the bill also strengthens the laws that prohibit unfair trade practices on behalf of foreign carriers. Under the bill, the United States will retain the authority to police foreign carriers and governments who set anticompetitively low rates and other foreign activities detrimental to U.S. carriers.

Despite these much needed reforms, I will not be able to vote for H.R. 2149 without an amendment. The Ocean Shipping Reform Act allows conferences of carriers to enter into secret contracts and still enjoy full immunity from U.S. antitrust laws. These secret contracts will only accelerate the trend in the maritime industry toward consolidation. With carriers operating free from antitrust laws, there would be no safeguards to prevent predatory activity. Small consumers, manufacturers, and ports will have no recourse from secret deals that discriminate against them.

Allowing secret, discriminatory contracts is a fundamental flaw of H.R. 2149, the Ocean Shipping Reform Act. I urge my colleagues to adopt the amendment which would preserve the requirement that carriers file their rates. Only with the amendment will the Ocean Shipping Reform Act produce a stronger maritime industry capable of meeting the Nation's future ocean transportation needs.

I urge my colleagues to vote for the Ocean Shipping Reform Act only and only if the Oberstar amendment passes this afternoon.

Mr. SHUSTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, perhaps my good friend from Illinois misspoke, because when he said that the so-called secret contracts will have antitrust immunity, that simply is not the case. The antitrust immunity applies only to the published rates.

The antitrust immunity does not apply to the private contracts, the so-called secret contracts which the gentleman refers to. I wish to emphasize that very, very clearly. The antitrust immunity does not apply to the private contracts entered into, the same private contracts that already exist for every other mode of transportationin America.

Mr. Chairman, I have no further requests for time, and I reserve the balance of my time.

Mr. OBERSTAR. Mr. Chairman, I yield 3 minutes to the gentleman from Pennsylvania [Mr. BORSKI].

(Mr. BORSKI asked and was given permission to revise and extend his remarks.)

Mr. BORSKI. Mr. Chairman, I want to thank the distinguished gentleman for yielding me the time.

Mr. Chairman, I wish to express my opposition to H.R. 2149 and my strong support for the Oberstar amendment.

H.R. 2149, as it now stands, would benefit a small group of large shippers and a handful of the largest ports at the expense of everyone else. The committee bill would be a serious threat for consumers, for small shippers, and for all but the largest ports.

In Philadelphia, a minimum of 11,000 people owe their jobs to port activity. H.R. 2149 could put those 11,000 jobs at serious risk because shipping activity could be funneled through a few large ports.

Just a few years ago, we saw the power of the ocean carrier cartels when the Northern Europe-United States Conference dropped its designation of Philadelphia as a port of call. Since then, the carrier conferences have become larger and even more powerful.

H.R. 2149 would provide a powerful new launching pad for concentration of the carrier industry, of the shipping industry, and of the ports of this Nation. One of the major backers of this bill has said that the 100 public ports that exist today in this country will be reduced to four. That concentration will come at the cost of tens of thousands of jobs in every part of this country.

It is the threat of the industry and port concentration that would be promoted by this bill that has prompted the strong opposition that has surfaced during the past 8 months.

We have heard from the ports, from labor, and from small shippers about the damage this bill could cause.

To make this bill acceptable, we must eliminate the cloak of secrecy that H.R. 2149 would cast over freight carrier contracts. The Oberstar amendment would lift that veil of secrecy to protect consumers, small shippers, and smaller ports from potentially serious damage that could take place if the confidentiailiy provision is allowed to stand.

If the Oberstar amendment is not adopted, the end result of this bill will be fewer shippers, fewer carriers, and fewer ports. This Congress should not be creating a special veil of secrecy for ocean shipping that will put thousands of people out of work.

This bill is a step backward from the open and public disclosure of contract terms that has existed since the Ocean Shipping Act of 1984. H.R. 2149 continues the special antitrust exemption for ocean carrier conferences but it also allows the deals made by these conferences to be secret.

The new secrecy authority will make these conferences into cartels that will become more and more powerful. Eventually, there will be no competition. That means fewer jobs.

It is also crucial that an independent regulatory board, such as the Surface Transportation Board in the Department of Transportation, take over the remaining oversight functions of the Federal Maritime Commission. The Oberstar amendment would eliminate the FMC and transfer its functions to the Surface Transportation Board.

Without the Oberstar amendment, H.R. 2149 is anticonsumer, antiworker, and will benefit only a handful of major ports. Without the Oberstar amendment, H.R. 2149 is a job killer that should not be approved.

I am also concerned about other issues that have been raised by the American Association of Port Authorities, another group which opposes the bill. AAPA has objected to the provisions on tariff filing and on steamship alliances. I hope those issues can be resolved so the ports can support the bill.

Mr. Chairman, I urge support of the Oberstar amendment and defeat of the bill unless the Oberstar amendment is adopted.

The CHAIRMAN. The Chair advises that the gentleman from Pennsylvania [Mr. SHUSTER] has 4½ minutes remaining and the right to close, and the gentleman from Minnesota [Mr. OBERSTAR] has 4 minutes remaining.

Mr. OBERSTAR. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, in the course of this debate, much has been made of who said what and when. At the very outset of this whole process, I made it very clear to my good friend, the chairman of our committee, that as we moved the bill through subcommittee and full committee, I supported the bill.

I felt, however, there should have been hearings on the introduced bill before we went to markup, but there was a willingness to work together to try to work out differences to come to an agreement. When we came to markup, I said very clearly, "I support the legislation being considered, as do my fellow Democrats on the committee." I thought that we had gone through a process whereby all considerations had been given an opportunity to be brought to bear on the legislation.

□ 1630

The bill that the committee was about to consider was very similar, I said, to legislation I introduced earlier in the year, but that bill that I introduced following the concept hearings the committee held never allowed for secret contracts. That was not something, it was not a provision, that I supported. We had come to an agreement, however, that I thought was about as far as we could go at that point.

Mr. Chairman, time passed 8 months went on, and agreements should never stand in the way of good public policy. If people have objection to legislation, people feel their interests are being hurt, if ports feel that they are going

to be disadvantaged, if labor feels it is going to be disadvantaged, we have a right to hear their concerns, and we have a responsibility to react to those concerns. That is what I am doing in proposing my amendment.

This is not some act of disloyalty, as it seems to be portrayed in the course of this general debate. This is, however, a high act of public responsibility and public policy. Openly discussed, I did not conceal from my friends on the Republican side that there were concerns raised by valid interests that need to be heard. I was very open about it, told my colleagues directly what needed to be done and gave them an opportunity to look at this legislation, at this amendment, rise objections if they have them. We understood that they could not probably come to an agreement on it and that this is the place to take that language to the floor and have a vote on it, and we will have a vote.

Mr. Chairman, but it is done in the full spirit of openness and of respecting interests that people have and concerns in this open public policy process. There is no hidden agenda on my part or on the part of any of us on this side. We have differences; let us have them out. But let us not make them personal. I never have and I do not like that way of proceeding. We have differences on public policy issues; let us debate them out on their merits, and that is what we are going to do in a few minutes.

With that, Mr. Chairman, I yield back the balance of our time.

Mr. SHUSTER. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, I wish to strongly concur with the last statement my good friend made because, the minute he realized that there was going to be an effort on the part of labor to try to change this legislation, in the spirit of openness and fairness he came to me immediately, and he told me that there was this problem developing. So I salute him, and I concur with what he said in the spirit of openness with which we have always worked.

I would like to review the facts, however, as how this has developed and the whole question of this last-minute abrogation, I must call it, of an agreement from my perspective. Last June 28 we put out a bipartisan press release, both sides of the aisle, in our committee, and we listed the seven key elements of the compromise and the private contracts. The confidential contracts were one of the seven elements.

Mr. Chairman, from June 28 to August 1 and 2, the markups, we heard nothing about opposition. On August 1 and 2 we marked up the bill; we heard no opposition to this issue. On April 2, this year, less than a month ago, my good friend, the ranking member of the committee, was still supporting the private contracts in speeches to the ports.

Indeed, and I again emphasize what my good friend said because I think it is so relevant, he said our committee has reported the Ocean Shipping Act to the House and proposed that we deregulate the ocean transportation industry in ways that are similar to what we have already done in trucking and rail and airline industries. We would eliminate tariff filings and allow for confidential service contracts. My good friend went on to say, "I know that some ports may have concerns about the possible impact of this bill, but I would hope that you would look at this as an opportunity to increase your business and not as a threat to your existence." Then he further went on to say, "Shippers and consumers will pay less for their products, the ports will be handling more cargoes, and the ocean carriers will have a more competitive operating environment.".

So after all these months, 10 months after we had a compromise, a bipartisan agreement, no problem. Finally, a few days ago something changed, and I understand that, and we all know what changed, and I respect that. But really those are the facts.

Mr. Chairman, it should be emphasized once again that the compromise that was agreed to was that the carriers would swallow hard and accept private contracts for the shippers. The shippers would swallow hard and accept keeping antitrust immunity which the carriers wanted, and indeed I emphasize again, lest there be no misunderstanding. With regard to the private contracts the antitrust immunity does not apply. The antitrust immunity applies only to the published tariff rates.

Further, I would ask rhetorically to my good friends on the other side of the aisle, do they want to eliminate the private contracts that we gave to rail in the Staggers act? I have heard nobody proposing to do that. Do they want to eliminate the private contracts which exist in the trucking industry? I have heard nobody propose that. Do they want to eliminate the private contracts that exist in the aviation industry? I have heard nobody propose that.

Yes, every other mode of transportation in America has the ability to enter into private contracts between the shipper and the carrier, and we are simply doing here today what every other mode of transportation already has in America.

Now my friends can try to characterize it as secret agreements. These are private agreements which every other mode has, and for that reason I think that we should treat the ocean carriers in exactly the same way. Indeed, let us not destroy this compromise, let us not gut this bill. Let us pass the bill as it was overwhelmingly passed on a bipartisan basis out of our committee and, until last Thursday evening, had the strong bipartisan support of virtually every member of the committee on both sides of the aisle.

For all those reasons I would urge my colleagues to reject the Oberstar amendment when it comes and to support the bill so we can get on with real regulatory reform in the transportation industry.

Mr. TRAFICANT. Mr. Chairman, first of all I want to applaud the chairman of the Coast Guard and Maritime Transportation Subcommittee, HOWARD COBLE, for all the hard work he and his staff did on this bill.

I was the ranking member of the subcommittee when the bill was approved. We worked very closely with shippers, carriers, and maritime labor. The bill approved by the committee last August had the strong support of ocean shippers and carriers. At the time, maritime labor indicated that they were not opposed to the bill, although they did not expressly support it.

It has been 9 months since the bill was approved by the committee. Members of Congress and our friends in maritime labor have had time to digest the bill and fully understand every section. After this normal process of reflection, one legitimate concern has arisen over the issue of secret contracts.

H.R. 2149 amends existing law by repealing the requirement that the essential terms of contracts between ocean carriers and shippers be disclosed to the public. On the surface, this seems to make common sense—especially when one looks at the manner in which the rail and highway shipping industries operate. But unlike the rail and highway industries, in ocean shipping, most of the carriers are part of conferences that are immune from U.S. antitrust laws.

The combination of antitrust immunity and secret contracts will greatly compromise the delicate competitive balance between ocean carriers and shippers. The only way to fully protect small carriers and shippers, as well as small- to mid-size ports, is to preserve the requirements in existing law for disclosure of the essential terms of ocean shipping contracts.

All the Oberstar amendment does is retain the disclosure requirement. I support the Oberstar amendment. Far from gutting the bill, the Oberstar amendment retains all of the key provisions in H.R. 2149. These include:

Elimination of the Federal Maritime Commission; elimination of tariff filing; elimination of restrictions on the contents of contracts between shippers and carriers; repeal of current provision of law that allowed carrier conferences to bar their members from making individual, lower cost, ocean transportation contracts with shippers; reduction of the amount of notice a carrier must give a conference before it offers lower contract rate from 10 days to 3 days.

Most significantly, the Oberstar amendment retains key language I had included in the bill to strengthen the ability of the United States to combat unfair, predatory, and anticompetitive trade practices by foreign governments and carriers.

While I support the elimination of the FMC, I want to applaud the FMC for the excellent

job it did over the years to protect U.S. ocean shippers and carriers from unfair and illegal foreign trade practices. The FMC rarely took action against a foreign government or a foreign carrier. It didn't have to. Merely the threat of FMC sanctions was enough to keep foreign governments and foreign carriers in line.

The Traficant language included in the bill and the Oberstar amendment will ensure that the United States retains the ability to take decisive action against foreign governments and carriers that engage in unfair trade practices. In fact, the Traficant language actually strengthens the hand of the United States.

The bottom line: The Oberstar amendment will not gut the bill. I urge Members to support the Oberstar amendment, and I applaud the distinguished ranking member, Mr. OBERSTAR, for bringing the amendment forward.

Mr. UNDERWOOD. Mr. Chairman, I rise in opposition to H.R. 2149, the Ocean Shipping Act of 1995, in its present form and in favor of the Oberstar amendment that would remove some of the onerous provisions in this legislation that are harmful to domestic offshore areas such as Guam.

Open and fair competition in the shipping industry is good. But, we do not have open and fair competition in the domestic offshore trades. Instead, because of the Jones Act and cargo preference laws, we have captive markets like Guam that are gouged by carriers with high shipping rates due to lack of competition. Because there is no effective competition in the offshore trades, we need effective regulation, or completely open markets—it seems that we are moving in the direction of having the worst of both worlds. To allow the carriers to have complete freedom to set secret rates without public disclosure would only exacerbate the exploitation of the domestic offshore markets and the raiding of consumers' wallets on Guam. I opposed certain provisions of the ICC Termination Act for this reason.

This same basic infirmity is now being proposed for the foreign commerce of the United States in H.R. 2149. Most troubling are provisions in H.R. 2149 that would allow conferences to negotiate secret rate deals with shippers. The effect on the shipping industry is potentially devastating. By allowing secret contracts, major shippers and major ports may be able to steer business away from smaller shippers and ports. Any oversight by the Department of Transportation, once the Federal Maritime Commission is eliminated, would be meaningless if critical information about the carriers' trade practices are withheld.

I am concerned about the effect of our maritime policies on captive markets such as Guam and have voiced those concerns during the debate on the ICC Termination Act. I have also urged the Department of Transportation to consider the domestic offshore trades, the impact on individual areas such as Guam, and the potential for abuse of carriers' rate-making authority in exercising its oversight responsibilities. These considerations apply with equal force to the foreign commerce of our Nation.

I urge my colleagues to support the Oberstar amendment to retain some accountability by DOT over the carriers.

Mr. ROBERTS. Mr. Chairman, I rise in support of the bill H.R. 2149, so as to eliminate the regulation by the Federal Maritime Commission [FMC] of manufactured and processed goods including many agricultural food and fiber products.

As I understand it, existing maritime law permits ocean carriers to organize into consortiums, known in the trade as shipping conferences that may collectively fix their rates, set sailing schedules, and make other business arrangements. I am informed that the United States is the only country that maintains a government agency—FMC—to regulate ocean shipping.

The apparent primary purpose of FMC is to collect and enforce thousands of transportation rates and prices—tariffs—and business contracts filed by ocean carriers and make them publicly available.

The Transportation Committee states that a report prepared by the Department of Agriculture in 1993 found that a "cartel premium" attributable to conference market power amounts to some 18 percent of the cost of ocean transportation of manufactured or processed agricultural exports.

The Committee on Agriculture for a number of years has enacted legislation urging the Secretary of Agriculture to expand on value-added—high value—processed products so that not only will the United States enhance its dollar value and volume of agricultural exports but also enhance rural development by giving jobs to our domestic work force by processing and adding value to our raw commodities and compete in foreign markets. However, to be competitive we need to diminish or eliminate that 18-percent cost of exporting U.S. value-added products and keep that advantage here in the United States to help our domestic farmers, agricultural industries and laborers.

The following groups, among about 40 or more, that support this bill include American Farm Bureau Federation, American Forest and Paper Association, American Frozen Food Institute, American Meat Institute, Calcat Ltd., Con Agra, Inc., Florida Citrus Packers, National Broiler Council, National Cattlemen's Beef Association, Sun Diamond Growers of California, and Weyerhaeuser Co.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Chairman, I rise in support of the Oberstar amendment to H.R. 2149, the Ocean Shipping Reform Act. This amendment, simply put, requires the public disclosure of the essential terms of contracts that could be secret and/or discriminatory. The authority to make secret contracts is particularly inappropriate when we bear in mind that under H.R. 2149 carriers, consortia of carriers, and their conferences will operate under antitrust immunity.

Mr. Chairman, the combination of antitrust immunity and secret agreements undercuts the Shipping Act of 1984 which achieved a delicate balance between the competing interests of the ocean carrier and the shipper. Under the 1984 act, carriers were allowed to continue having conferences, but the essential terms of the contracts they entered into with shippers had to be publicly disclosed to ensure that they were not discriminating against shippers, ports, manufacturers, and freight forwarders. Without this amendment, Mr. Chairman, this balance will be destroyed. Carriers will be allowed to enter into confidential ocean transportation contracts and no one, not even the Federal Government, will know when these carriers or cartels choose to harm our ports or industries.

Mr. Chairman, with the Oberstar amendment, significant but fair deregulation will still occur. I urge my colleagues to support this amendment that will ensure that true marketplace forces will be able to provide safeguards to protect our consumers, manufacturers, and ports from secret deals that discriminate against them.

I yield back the balance of my time.

Mr. SMITH of Michigan. Mr. Chairman, last year, I was a Chair of the Budget Committee working group looking at this part of the budget. We recommended the elimination of the Federal Maritime Commission. I'm glad to support this bill to do that today.

The Federal Maritime Commission, established in 1961, is charged with maintaining a cartel formed by the steamship lines to increase ocean transportation rates above market levels. The FMC also enforces an extraordinarily burdensome tariff filing scheme and restricts the negotiation of contracts for the transportation of goods. This burdens out exporters and contributes to our negative balance of trade. Dr. Alan Furgeson an economist under contract with the U.S. Department of Agriculture, calculated that FMC regulations and restrictions increase transportation costs by an average of 18 percent above the market level. He also estimated that U.S. exporters lose hundreds of millions of dollars of sales due to these additional transport costs. The bottom line is that the FMC is costing Americans jobs by rendering U.S. products less cost-competitive. This proposal would deregulate Federal maritime policy, terminate the Commission, and transfer critical functions to the Department of Transportation.

It deserves our support.

Mr. SHUSTER. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time for general debate has expired. Before consideration of any other amendment, it shall be in order to consider the amendment printed in part 1 of House Report 104–544, if offered by the gentleman from Pennsylvania [Mr. SHUSTER] or his designee. That amendment shall be considered read, shall be debatable for 10 minutes, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

If that amendment is adopted, the bill, as amended, shall be considered as an original bill by title, and the first section and each title shall be considered read.

If offered, the amendment printed in part 2 of the report shall be considered read, may amend portions of the bill not yet read for amendment, shall not be subject to amendment, except for

pro forma amendments, and shall not be subject to a demand for division of the question.

During consideration of the bill for amendment, the Chair may accord priority in recognition to a Member offering an amendment that he has printed in the designated place in the CONGRESSIONAL RECORD. Those amendments will be considered read.

PARLIAMENTARY INQUIRY

Mr. SHUSTER. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. SHUSTER. Mr. Chairman, I want to be sure I understand that the gentleman from Minnesota will not be limited in time on his amendment, which it is our intent that he not be limited; is that correct?

The CHAIRMAN. In response to the question, the gentleman is correct.

AMENDMENT OFFERED BY MR. SHUSTER

Mr. SHUSTER. Mr. Chairman, pursuant to the rule, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. SHUSTER: Page 3, line 3, strike "rates;" and insert "rates, charges, classifications, rules, and practices;".

Page 3, line 19, strike "or" and insert "and".

Page 10, line 17, strike the closing quotation marks and the final period.

Page 10, after line 17, insert the following:

"(4) The requirements and prohibitions concerning contracting by conferences contained in sections 5(b) (9) and (10) of this Act shall also apply to any agreement among one or more ocean common carriers that is filed under section 5(a) of this Act.".

Page 10, line 23, strike "(4)" and insert "(5)".

Page 14, after line 19, insert the following:

(A) by striking subsection (c)(1) and inserting the following:

"(1) boycott, take any concerted action resulting in an unreasonable refusal to deal, or implement a policy or practice that results in an unreasonable refusal to deal;";

Page 14, line 20, strike "(A)" and insert "(B)".

Page 14, line 23, strike "(B)" and insert "(C)".

Page 14, line 25, insert "and" at the end.

Page 15, line 3, strike "; and" and insert a period.

Page 15, strike lines 4 through 9.

Page 19, strike lines 4 through 25 and insert the following:

(1) by striking subsections (a) and inserting the following:

"(a) LICENSE.—No person in the United States may act as an ocean freight forwarder unless that person holds a license issued by the Commission. The Commission shall issue a forwarder's license to any person that the Commission determines to be qualified by experience and character to render forwarding services.";

(2) by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively;

(3) by inserting after subsection (a) the following:

"(b) FINANCIAL RESPONSIBILITY.—

"(1) No person may act as an ocean freight forwarder unless that person furnishes a bond, proof of insurance, or other surety in a form and amount determined by the Commission to insure financial responsibility that is issued by a surety company found acceptable by the Secretary of the Treasury.

"(2) A bond, insurance, or other surety obtained pursuant to this section shall be available to pay any judgment for damages against an ocean freight forwarder arising from its transportation-related activities under this Act or order for reparation issued pursuant to section 11 or 14 of this Act.

"(3) An ocean freight forwarder not domiciled in the United States shall designate a resident agent in the United States for receipt of service of judicial and administrative process, including subpoenas.";

(4) in subsection (c), as redesignated by paragraph (2) of this section, by striking "a bond in accordance with subsection (a)(2)" and inserting "a bond, proof of insurance, or other surety in accordance with subsection (b)(1)"; and

(5) in subsection (e), as redesignated by paragraph (2) of this section—

(A) by striking paragraph (3) and redesignating paragraph (4) as paragraph (3); and

(B) by adding at the end the following:

"(4) No conference or group of 2 or more ocean common carriers in the foreign commerce of the United States that is authorized to agree upon the level of compensation paid to an ocean freight forwarder, as defined in section 3(18)(A) of this Act, may—

"(A) deny to any member of the conference or group the right, upon notice of not more than 3 business days, to take independent action on any level of compensation paid to an ocean freight forwarder; or

"(B) agree to limit the payment of compensation to an ocean freight forwarder, as defined in section 3(18)(A) of this Act, to less than 1.25 percent of the aggregate of all rates and charges which are applicable under a common schedule of transportation rates provided under section 8(a) of this Act, and which are assessed against the cargo on which the forwarding services are provided.".

Page 24, line 15, strike "United States carriers" and insert "one or more ocean common carriers".

Page 24, strike lines 19 through 24 and insert the following:

"(h)(1) The Secretary shall issue regulations by June 1, 1997, that prescribe procedures and requirements governing the submission of price and other information necessary to enable the Secretary to determine under subsection (g) whether prices charged by carriers are unfair, predatory, or anticompetitive.

"(2)(A) If information provided to the Secretary under this subsection does not result in a finding by the Secretary of a violation of this section or enforcement action by the Secretary, the information may not be made public and shall be exempt from disclosure under section 552 of title 5, United States Code, except for purposes of an administrative or judicial action or proceeding.

"(B) This paragraph does not prohibit disclosure to either House of the Congress or to a duly authorized committee or subcommittee of the Congress.".

Page 25, after line 10, insert the following:

"SEC. 203. REPORT BY THE SECRETARY.

"The Secretary shall report to the Congress by January 1, 1998, and annually thereafter, on—

"(1) actions taken by the Secretary under the Foreign Shipping Practices Act of 1988 (46 App. U.S.C. 1710a) and section 9 of the Shipping Act of 1984 (46 U.S.C. App. 1708); and

"(2) the effect on United States maritime employment of laws, rules, regulations, policies, or practice of foreign governments, and any practices of foreign carriers or other persons providing maritime or maritime-related services in a foreign country, that adversely affect the operations of United States carriers in United States oceanborne trade."

Page 25, strike line 14 and all that follows through line 4 on page 26 and insert the following:

SEC. 301. AGENCY TERMINATION.

(a) IN GENERAL.—On September 30, 1997, the Federal Maritime Commission shall terminate and all remaining functions, powers, and duties of the Federal Maritime Commission shall be transferred to the Secretary of Transportation.

(b) AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1997.—There is authorized to be appropriated to the Federal Maritime Commission, $19,000,000 for fiscal year 1997.

The CHAIRMAN. Pursuant to the rule, the gentleman from Pennsylvania [Mr. SHUSTER] and a Member opposed each will be recognized for 5 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. SHUSTER].

Mr. SHUSTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this is a technical amendment, contains amendments to H.R. 2149 as reported, clarifies the definition of a conference, extends the prohibition against conference interfering with contracting, terminates Federal Maritime Commission at the end of fiscal 1997. I believe this amendment is not controversial, and I would urge its adoption.

Mr. OBERSTAR. Mr. Chairman, we are not opposed to the amendment. Therefore, we claim no time.

Mr. SHUSTER. I thank the gentleman from Minnesota.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania [Mr. SHUSTER].

The amendment was agreed to.

The CHAIRMAN. The Clerk will designate section 1.

The text of section 1 is as follows:

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 "Ocean Shipping Reform Act of 1995".

The CHAIRMAN. Are there any amendments to section 1? If not the Clerk will designate title I.

The text of title I is as follows:

TITLE I—OCEAN SHIPPING REFORM

SEC. 101. PURPOSES.

Section 2 of the Shipping Act of 1984 (46 App. U.S.C. 1701) is amended—

(1) by striking "and" at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting "; and"; and

(3) by adding a new paragraph (4) to read as follows:

"(4) to permit carriers and shippers to develop transportation arrangements to meet their specific needs.".

SEC. 102. DEFINITIONS.

Section 3 of the Shipping Act of 1984 (46 App. U.S.C. 1702) is amended—

(1) effective on January 1, 1997—

(A) by striking paragraph (9); and

(B) by redesignating the remaining paragraphs accordingly;

(2) effective on June 1, 1997—

(A) by striking paragraph (4);

(B) in paragraph (7), by striking "a common tariff;" and inserting "a common schedule of transportation rates;";

(C) by striking paragraph (10) (as redesignated by paragraph (1) of this section);

(D) by striking paragraph (13) (as redesignated by paragraph (1) of this section);

(E) by striking paragraph (16) (as redesignated by paragraph (1) of this section);

(F) by amending paragraph (18) (as redesignated by paragraph (1) of this section) to read as follows:

"(18) 'ocean freight forwarder' means a person that—

"(A)(i) in the United States, dispatches shipments from the United States via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers; or

"(ii) processes the documentation or performs related activities incident to those shipments; or

"(B) acts as a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.";

(G) by striking paragraph (20) (as redesignated by paragraph (1) of this section);

(H) in paragraph (22) (as redesignated by paragraph (1) of this section)—

(i) by striking "or" the second time it appears and inserting a comma; and

(ii) by striking the period and inserting ", a shippers' association, or an ocean freight forwarder that accepts responsibility for payment of the ocean freight.";

(I) by amending paragraph (23) (as redesignated by paragraph (1) of this section) to read as follows:

"(23) 'shippers' association' means a group of shippers that consolidates or distributes freight, on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or ocean transportation contracts."; and

(J) by inserting after paragraph (18) the following new paragraph:

"(19) 'ocean transportation contract' means a contract in writing separate from the bill of lading or receipt between 1 or more common carriers or a conference and 1 or more shippers to provide specified services under specified rates and conditions.".

SEC. 103. AGREEMENTS WITHIN THE SCOPE OF THE ACT.

Section 4(a) of the Shipping Act of 1984 (46 App. U.S.C. 1703(a)) is amended, effective on June 1, 1997—

(1) in paragraph (5), by striking "non-vessel-operating common carriers" and inserting "ocean freight forwarders"; and

(2) by amending paragraph (7) to read as follows:

"(7) discuss any matter related to ocean transportation contracts, and enter ocean transportation contracts and agreements related to those contracts.".

SEC. 104. AGREEMENTS.

Section 5 of the Shipping Act of 1984 (46 App. U.S.C. 1704) is amended—

(1) effective on January 1, 1997—

(A) in subsection (b)(4), by striking "at the request of any member, require an independent neutral body to police fully" and inserting "state the provisions, if any, for the policing of";

(B) in subsection (b)(7), by striking "and" at the end;

(C) in subsection (b)(8), by striking the period and inserting "; and"; and

(D) by adding at the end of subsection (b) the following new paragraph:

"(9) provide that a member of the conference may enter individual and independent negotiations and may conclude individual and independent service contracts under section 8 of this Act.";

(2) effective on June 1, 1997—

(A) by amending subsection (b)(8) to read as follows:

"(8) provide that any member of the conference may take independent action on any rate or service item agreed upon by the conference for transportation provided under section 8(a) of this Act upon not more than 3 business days' notice to the conference, and that the conference will provide the new rate or service item for use by that member, effective no later than 3 business days after receipt of that notice, and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date, in lieu of the existing conference provision for that rate or service item;"; and

(B) by adding the following new paragraph to read as follows:

"(10) prohibit the conference from—

"(A) prohibiting or restricting the members of the conference from engaging in individual negotiations for ocean transportation contracts under section 8(b) with 1 or more shippers; and

"(B) issuing mandatory rules or requirements affecting ocean transportation contracts that may be entered by 1 or more members of the conference, except that a conference may require that a member of the conference disclose the existence of an existing individual ocean transportation contract or negotiations on an ocean transportation contract, when the conference enters negotiations on an ocean transportation contract with the same shipper.";

(C) in subsection (e), by striking "carrier that are required to be set forth in a tariff," and inserting "carrier,"; and

(D) in subsection (b)(9), by striking "service" and inserting "ocean transportation".

SEC. 105. EXEMPTION FROM ANTITRUST LAWS.

Section 7 of the Shipping Act of 1984 (46 App. U.S.C. 1706) is amended—

(1) by amending subsection (a)(6) to read as follows:

"(6) subject to section 20(e)(2) of this Act, any agreement, modification, or cancellation, in effect before the effective date of this Act and any tariff, rate, fare, charge, classification, rule, or regulation explanatory thereof implementing that agreement, modification, or cancellation."; and

(2) in subsection (c)(1), by striking "agency" and inserting "agency, department,".

SEC. 106. COMMON AND CONTRACT CARRIAGE.

(a) IN GENERAL.—Effective on June 1, 1997—

(1) section 8a of the Shipping Act of 1984 (46 App. U.S.C. 1707a) is repealed; and

(2) section 8 of the Shipping Act of 1984 (46 App. U.S.C. 1707) is amended to read as follows:

"SEC. 8. COMMON AND CONTRACT CARRIAGE.

"(a) COMMON CARRIAGE.—

"(1) A common carrier and a conference shall make available a schedule of transportation rates which shall include the rates, terms, and conditions for transportation services not governed by an ocean transportation contract, and shall provide the schedule of transportation rates, in writing, upon the request of any person. A common carrier and a conference may assess a reasonable charge for complying with a request for a rate, term, and condition, except that the charge may not exceed the cost of providing the information requested.

"(2) A dispute between a common carrier or conference and a person as to the applicability of the rates, terms, and conditions for ocean transportation services shall be decided in an appropriate State or Federal court of competent jurisdiction, unless the parties otherwise agree.

"(3) A claim concerning a rate for ocean transportation services which involves false billing, false classification, false weighing, false report of weight, or false measurement shall be decided in an appropriate State or Federal court of competent jurisdiction, unless the parties otherwise agree.

"(b) CONTRACT CARRIAGE.—

"(1) 1 or more common carriers or a conference may enter into an ocean transportation contract with 1 or more shippers. A common carrier may enter into ocean transportation contracts without limitations concerning the number of ocean transportation contracts or the amount of cargo or space involved. The status of a common carrier as an ocean common carrier is not affected by the number or terms of ocean transportation contracts entered.

"(2) A party to an ocean transportation contract entered under this section shall have no duty in connection with services provided under the contract other than the duties specified by the terms of the contract.

"(3)(A) An ocean transportation contract or the transportation provided under that contract may not be challenged in any court on the grounds that the contract violates a provision of this Act.

"(B) The exclusive remedy for an alleged breach of an ocean transportation contract is an action in an appropriate State or Federal court of competent jurisdiction, unless the parties otherwise agree.".

(b) CONFIDENTIALITY OF CONTRACTS.—Effective on January 1, 1998, section 8(b) of the Shipping Act of 1984 (46 App. U.S.C. 1707(b)), as amended by subsection (a) of this section, is amended by adding at the end the following:

"(4) A contract entered under this section may be made on a confidential basis, upon agreement of the parties. An ocean common carrier that is a member of a conference agreement may not be prohibited or restricted from agreeing with 1 or more shippers that the parties to the contract will not disclose the rates, services, terms, or conditions of that contract to any other member of the agreement, to the conference, to any other carrier, shipper, conference, or to any other third party.".

SEC. 107. PROHIBITED ACTS.

Section 10 of the Shipping Act of 1984 (46 App. U.S.C. 1709) is amended—

(1) effective on January 1, 1997, by amending subsection (b)—

(A) by amending paragraph (1) to read as follows:

"(1) except for service contracts, subject a person, place, port, or shipper to unreasonable discrimination;"; and

(B) by repealing paragraphs (2), (3), (4), and (8);

(2) effective on June 1, 1997, by amending subsection (b) to read as follows:

"(b) COMMON CARRIERS.—No common carrier, either alone or in conjunction with any other person, directly or indirectly, may—

"(1) except for ocean transportation contracts, subject a person, place, port, or shipper to unreasonable discrimination;

"(2) retaliate against any shipper by refusing, or threatening to refuse, cargo space accommodations when available, or resort to

other unfair or unjustly discriminatory methods because the shipper has patronized another carrier or has filed a complaint, or for any other reason;

"(3) employ any fighting ship;

"(4) subject any particular person, locality, class, or type of shipper or description of traffic to an unreasonable refusal to deal;

"(5) refuse to negotiate with a shippers' association;

"(6) knowingly and willfully accept cargo from or transport cargo for the account of an ocean freight forwarder that does not have a bond, insurance, or other surety as required by section 19;

"(7) knowingly and willfully enter into an ocean transportation contract with an ocean freight forwarder or in which an ocean freight forwarder is listed as an affiliate that does not have a bond, insurance, or other surety as required by section 19; or

"(8)(A) knowingly disclose, offer, solicit, or receive any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to a common carrier without the consent of the shipper or consignee if that information—

"(i) may be used to the detriment or prejudice of the shipper or consignee;

"(ii) may improperly disclose its business transaction to a competitor; or

"(iii) may be used to the detriment or prejudice of any common carrier;

except that nothing in paragraph (8) shall be construed to prevent providing the information, in response to legal process, to the United States, or to an independent neutral body operating within the scope of its authority to fulfill the policing obligations of the parties to an agreement effective under this Act. Nor shall it be prohibited for any ocean common carrier that is a party to a conference agreement approved under this Act, or any receiver, trustee, lessee, agent, or employee of that carrier, or any other person authorized by that carrier to receive information, to give information to the conference or any person, firm, corporation, or agency designated by the conference or to prevent the conference or its designee from soliciting or receiving information for the purpose of determining whether a shipper or consignee has breached an agreement with a conference or for the purpose of determining whether a member of the conference has breached the conference agreement or for the purpose of compiling statistics of cargo movement, but the use of that information for any other purpose prohibited by this Act or any other Act is prohibited; and

"(B) after December 31, 1997, the rates, services, terms, and conditions of an ocean transportation contract may not be disclosed under this paragraph if the contract has been made on a confidential basis under section 8(b) of this Act.

The exclusive remedy for a disclosure under this paragraph shall be an action for breach of contract as provided in section 8(b)(3) of this Act.";

(3) effective on June 1, 1997—

(A) in subsection (c)(5), by inserting "as defined in section 3(14)(A) of this Act" after "freight forwarder"; and

(B) in subsection (c)(6), by striking "a service contract." and inserting "an ocean transportation contract.";

(4) effective on June 1, 1997, in subsection (d)(3), by striking "(b) (11), (12), and (16)" and inserting "(b) (1), (4), and (8)"; and

(5) effective on June 1, 1997, by adding a new subsection (f) to read as follows:

"(f) CONFERENCE ACTION.—No conference may subject a person, place, port, class or type of shipper, or ocean freight forwarder, to unjust or unreasonable ocean contract provisions.".

SEC. 108. REPARATIONS.

Effective June 1, 1997, section 11(g) of the Shipping Act of 1984 (46 App. U.S.C. 1710(g)) is amended—

(1) by inserting "or counter-complainant" after "complainant" the second time it appears;

(2) by striking "10(b) (5) or (7)" and inserting "10(b) (2) or (3)"; and

(3) by striking the last sentence.

SEC. 109. FOREIGN LAWS AND PRACTICES.

Section 10002 of the Foreign Shipping Practices Act of 1988 (46 App. U.S.C. 1710a) is amended, effective on June 1, 1997—

(1) in subsection (a)(1)—

(A) by striking "non-vessel-operating common carrier,"; and

(B) by inserting "ocean freight forwarder," after "ocean common carrier,";

(2) in subsection (a)(4), by striking "non-vessel-operating common carrier operations,";

(3) in subsection (e)(1), by striking subparagraph (B) and all that follows through subparagraph (D) and inserting the following:

"(B) suspension, in whole or in part, of the right of an ocean common carrier to operate under any agreement filed with the Secretary, including agreements authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargo or revenues with other ocean common carriers; and

"(C) a fee, not to exceed $1,000,000 per voyage."; and

(4) in subsection (h), by striking "section 13(b)(5) of the Shipping Act of 1984 (46 App. U.S.C. 1712(b)(5))" and inserting "section 13(b)(2) of the Shipping Act of 1984 (46 App. U.S.C. 1712(b)(2))".

SEC. 110. PENALTIES.

Section 13 of the Shipping Act of 1984 (46 App. U.S.C. 1712) is amended, effective on June 1, 1997—

(1) in subsection (b)—

(A) by striking paragraphs (1) and (3) and redesignating paragraphs (2), (4), (5), and (6) in order as paragraphs (1), (2), (3), and (4);

(B) by striking paragraph (1), as so redesignated, and inserting the following:

"(1) If the Secretary finds, after notice and an opportunity for a hearing, that a common carrier has failed to supply information ordered to be produced or compelled by subpoena under section 1711 of this Act, the Secretary may request that the Secretary of the Treasury refuse or revoke any clearance required for a vessel operated by that common carrier. Upon request by the Secretary, the Secretary of the Treasury shall, with respect to the vessel concerned, refuse or revoke any clearance required by section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91).."; and

(C) in paragraph (3), as so redesignated, by striking "finds appropriate," and all that follows through the end of the paragraph and inserting "finds appropriate including the imposition of the penalties authorized under paragraph (2).";

(2) in subsection (f)(1), by striking "section 10 (a)(1), (b)(1), or (b)(4)" and inserting "section 10(a)(1)".

SEC. 111. REPORTS.

(a) IN GENERAL.—Section 15 of the Shipping Act of 1984 (46 App. U.S.C. 1714) is amended, effective on January 1, 1997—

(1) in the section heading by striking "**and certificates**";

(2) by striking "(a) REPORTS.—"; and

(3) by striking subsection (b).".

(b) CLERICAL AMENDMENT.—The Shipping Act of 1984 (46 App. U.S.C. 1701 et seq.) is amended in the first section in the table of contents by amending the item relating to section 15 to read as follows:

"Sec. 15. Reports.".

SEC. 112. REGULATIONS.

Section 17 of the Shipping Act of 1984 (46 App. U.S.C. 1716) is amended—

(1) by striking "(a)"; and

(2) by striking subsection (b).".

SEC. 113. REPEAL.

Section 18 of the Shipping Act of 1984 (46 App. U.S.C. 1717) is repealed.

SEC. 114. OCEAN FREIGHT FORWARDERS.

Section 19 of the Shipping Act of 1984 (46 App. U.S.C. 1718) is amended, effective on June 1, 1997—

(1) in subsection (a), by inserting "in the United States" after "person" the first time it appears;

(2) in subsection (a)(2), by striking "a bond" and inserting "a bond, proof of insurance, or other surety";

(3) by adding after subsection (a)(2) the following:

"A bond, insurance, or other surety obtained pursuant to this section shall be available to pay any judgment for damages against an ocean freight forwarder arising from its transportation-related activities under this Act or order for reparation issued pursuant to section 11 or 14 of this Act. An ocean freight forwarder not domiciled in the United States shall designate a resident agent in the United States for receipt of service of judicial and administrative process, including subpoenas.";

(4) in subsection (b), by striking "a bond" and inserting "a bond, proof of insurance, or other surety"; and

(5) in subsection (d), by striking paragraph (3) and redesignating paragraph (4) as paragraph (3).".

SEC. 115. EFFECTS ON CERTAIN AGREEMENTS AND CONTRACTS.

Section 20(e) of the Shipping Act of 1984 (46 App. U.S.C. 1719) is amended to read as follows:

"(e) SAVINGS PROVISIONS.—

"(1) Each service contract entered into by a shipper and an ocean common carrier or conference before the date of the enactment of the Ocean Shipping Reform Act of 1995 may remain in full force and effect according to its terms.

"(2) This Act and the amendments made by this Act shall not affect any suit—

"(A) filed before the date of the enactment of the Ocean Shipping Reform Act of 1995;

"(B) with respect to claims arising out of conduct engaged in before the date of the enactment of the Ocean Shipping Reform Act of 1995, filed within 1 year after the date of the enactment of the Ocean Shipping Reform Act of 1995;

"(C) with respect to claims arising out of conduct engaged in after the date of the enactment of the Ocean Shipping Reform Act of 1995 but before January 1, 1997, pertaining to a violation of section 10(b) (1), (2), (3), (4), or (8), as in effect before January 1, 1997, filed by June 1, 1997;

"(D) with respect to claims pertaining to the failure of a common carrier or conference to file its tariffs or service contracts in accordance with this Act in the period beginning January 1, 1997, and ending June 1, 1997, filed by December 31, 1997; or

"(E) with respect to claims arising out of conduct engaged in on or after the date of

the enactment of the Ocean Shipping Reform Act of 1995 but before June 1, 1997, filed by December 31, 1997.".

SEC. 116. REPEAL.

Section 23 of the Shipping Act of 1984 (46 App. U.S.C. 1721) is repealed, effective on June 1, 1997.

SEC. 117. MARINE TERMINAL OPERATOR SCHEDULES.

(a) IN GENERAL.—The Shipping Act of 1984 (46 App. U.S.C. 1701 et seq.) is amended, effective on June 1, 1997, by adding at the end the following new section:

"SEC. 24. MARINE TERMINAL OPERATOR SCHEDULES.

"A marine terminal operator shall make available to the public a schedule of rates, regulations, and practices, including limitations of liability, pertaining to receiving, delivering, handling, or storing property at its marine terminal. The schedule shall be enforceable as an implied contract, without proof of actual knowledge of its provisions, for any activity by the marine terminal operator that is taken to—

"(1) efficiently transfer property between transportation modes;

"(2) protect property from damage or loss;

"(3) comply with any governmental requirement; or

"(4) store property in excess of the terms of any other contract or agreement, if any, entered into by the marine terminal operator.".

(b) CLERICAL AMENDMENT.—The Shipping Act of 1984 (46 App. U.S.C. 1701 et seq.) is amended in the first section in the table of contents by adding at the end the following new item:

"Sec. 24. Marine terminal operator schedules.".

AMENDMENT OFFERED BY MR. OBERSTAR

Mr. OBERSTAR. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. OBERSTAR: Page 10, line 23, strike "(5)" and insert "(5)(A)".

Page 11, line 7, strike the closing quotation marks and the final period.

Page 11, after line 7, insert the following:

"(B) Notwithstanding subparagraph (A), the essential terms of a contract entered into under this section shall be made publicly available electronically in a manner prescribed by the Commission. This subparagraph does not apply to service contracts dealing with bulk cargo, forest products, recycled metal scrap, waste paper, or paper waste.

"(C) For purpose of subparagraph (B), the essential terms of a contract shall include—

"(i) the origin and destination port ranges in the case of port-to-port movements, and the original and destination geographic areas in the case of through intermodal movements;

"(ii) the commodity or commodities involved;

"(iii) the minimum volume;

"(iv) the line-haul rate;

"(v) the duration;

"(vi) service commitments; and

"(vii) the liquidated damages for nonperformance, if any.".

Page 14, line 11, insert "except as provided by section 8(b)(4)(B)," after "(B)".

At the end of section 301(a) of the bill insert the following:

The Secretary of Transportation shall delegate such functions, powers, and duties to the Surface Transportation Board.

Mr. OBERSTAR. Mr. Chairman, I ask unanimous consent to be able to proceed for an additional 5 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The CHAIRMAN. The gentleman from Minnesota [Mr. OBERSTAR] is recognized for a total of 10 minutes.

Mr. OBERSTAR. Mr. Chairman, this amendment requires that the essential terms of ocean transportation contracts be disclosed to the public. The amendment transfers, in addition, the remaining functions of the Federal Maritime Commission to the Surface Transportation Board within the Department of Transportation rather than to the secretary to ensure that investigations and decisions about ocean shipping are done in an unbiased and nonpolitical manner. Those are the only changes my amendment makes to the bill.

In evaluating the request of secret contracts, we have to remember that international shipping operates in a very different environment than any other mode in our domestic transportation industry. Over 85 percent of the containerized shipments in and out of our ports go on foreign-flagged ships.

Most of this cargo is transported on ships operated under a conference or a cartel agreement. Many foreign carriers have many agendas. Some are controlled by their governments, some are vertically integrated with manufacturing companies, some are motivated by their brand of nationalism, some will do whatever necessary to drive their competitors out of the marketplace.

Into such a complex system will this bill allow secret contracts. I do not think it is in the interest of our ports, our manufacturers, U.S. consumers, or the Nation to allow secret contracts negotiated behind closed doors to determine the fate of our international trade. There have been no hearings on this legislation in our committee. No testimony was received on the impact of that provision of the bill. Potential opponents were not given an opportunity to voice their concerns about it in open hearings. However, the Senate's hearing on an identical bill raised a number of problems about this particular issue of secret contracts.

Mr. Chairman, the basis of this bill is to promote competition, but it will result in less competition. With secret contracts, rates likely will fall below levels that provide an adequate return on assets or investments. I quoted earlier Mr. Clancy, President and CEO of Sealand Services, one of the world's largest ocean carriers and a major supporter of this bill.

□ 1645

He sees the result of this bill: that in a few years, a few giant super shipping consortia with global reach will control 85 to 90 percent of the world's container ships. There will be one cartel in the Atlantic, one in the Pacific, and one in the Asia-Europe trade. He believes it will be the demise of the niche carrier, of the feeder line, of the North-South shipping lines between North and South America. The types of carriers he believes will disappear are carriers such as Crowley Maritime and Tropical Shipping. Secret agreements will be the major weapon megacarriers are going to use to achieve their goals of consolidating power in the shipping industry.

This provision will allow large companies to offer lower rates to larger shippers, and if smaller shippers and carriers are unaware of the deals, they are going to find it difficult to compete. The end result will be exactly what Mr. Clancy predicts: the demise of niche carriers, feeder lines, and North-South lines.

Let us look at the impact on small- and medium-sized shippers and on manufacturers and retailers. With secret contracts it will be virtually impossible to enforce any of the prohibitions in the bill. For example, under the act, a carrier or a group of carriers may not retaliate against any shipper who has patronized another carrier or filed a complaint. How will anyone be able to tell if there has been retaliation or discrimination if all contracts are going to be kept confidential? With the secret contracts, small- and medium-sized shippers will likely pay more, not less, in the short run and the rates they pay will increase even more in the long run.

Everyone acknowledges that confidential contracts will lower the rates paid by the large shippers, of course. But 70 percent of the carriers' costs are fixed. Who is going to make up the difference when the large shippers get the rate breaks? Obviously, the ones who are going to make up the differences are going to be the small- and medium-sized shippers.

If Mr. Clancy's plans succeed and the cartels controlled 85 to 90 percent of the world's shipping, then we are going to see increased use of secret contracts from large shippers and higher rates for these small- and medium-sized carriers, and they will be driven right out of the marketplace.

What about our ports and our infrastructure? Ports in their communities have invested billions of dollars in developing their port facilities through local taxes and bond issues. But when these consortia enter into secret deals under the protection of antitrust immunity, they are going to drive the small carrier out of business, the very tenants in those ports that pay the rent to pay off the bonds.

When U.S. Lines, for example, went bankrupt, it left the port of New York with a vacant terminal. That terminal

has been vacant for 15 years. Who paid for the construction? The port of New York-New Jersey. Who paid for the financing of an empty terminal? The port of New York-New Jersey. Do we want to see that repeated all over the country?

With the demise of small carriers in a regime of secret agreements, surviving large carriers will consolidate their operations at the larger ports. Carriers will stop calling at many of the smaller ports. Jobs, public investment, will be lost.

One of the fundamental purposes of the 1984 act was to reach a balance by legalizing international cartels with antitrust immunity, but requiring public disclosure of the agreements between the carriers in the cartel and the essential terms of the contract between carriers and shippers, so everyone would know that ports, manufacturers, retailers, consumers in the United States are not being discriminated against.

The contracts in this bill will promote survival of cartels and survival of large carriers. There may be a short-term decrease in rates as they use market power to drive small and independent carriers out of business. But when, as the chairman of Sea Land predicts, there are only three cartels left controlling 85 to 90 percent of the world trade, rates are going to go up. They are going to put U.S. exporters out of business or at a disadvantage in the international market. We should not launch that process here with this legislation.

The overriding purpose of shipping laws should be to ensure that the small as well as the large shipper is able to have their goods shipped anywhere in the world at a competitive price.

My other concern is that the bill transfers the remaining functions of the FMC to the Secretary of Transportation instead of an independent regulatory panel. The former FMC responsibilities would not appropriately be exercised by an independent panel. So my amendment would do that. My amendment will do that.

The Republic of China, for example, has restricted the ability of U.S. carriers to operate terminals and freight forwarding operations in China, even though we allow Chinese carriers to conduct these same operations in the United States. The Japanese Government imposes a harbor tax that does not benefit navigation, but only increases the price of United States exports to Japan.

I believe we ought to have an independent body, insulated from pressures by the State Department, to pursue elimination of trade barriers. That is why I propose that we transfer this function to the Surface Transportation Board.

My amendment leaves in place elimination of the Federal Maritime Commission; elimination of tariff filing and regulation by the Government; restrictions on the contents of contracts between shippers and carriers are eliminated; laws related to unfair trade practices of foreign carriers and foreign governments will be strengthened; conferences will not be able to prevent their members from making individual, lower cost ocean transportation contracts with shippers.

We deal with two shortcomings of the legislation. Airlines do not have antitrust immunity for anything domestically. Shipping conferences have antitrust immunity for point-to-point rates. No other mode of transportation has antitrust immunity for point-to-point rates. We should not allow secret deals to be made under such protection.

My amendment will make this bill acceptable in the other body, acceptable to the administration. It will make it possible for us to enact good deregulation. I urge support for the amendment I have set forth.

Mr. SHUSTER. Mr. Chairman, I rise in strong opposition to the amendment offered by my good friend, the gentleman from Minnesota.

Mr. Chairman, we already had exhaustive debate on this issue, so I will attempt to be brief. First, though I would like to again correct what perhaps was a misstatement. My good friend, the gentleman from Minnesota, said, "secret deals under protection of antitrust immunity." This legislation does not provide antitrust immunity for private contracts. We have said it several times. I hate to be repetitive. But the antitrust immunity only applies to where the tariffs are set. So again I emphasize that point. As a matter of fact, if anybody doubts it, read the bill.

Second, the ability to negotiate private contracts with carriers was the bottom line in the compromise for all our U.S. shippers.

Third, every other mode of transportation has this ability to negotiate private contracts. The airlines have it, the trucks have it, the rails have it. Every other mode has it except for ocean shipping. That is one of the fundamental reforms here which will create more competition.

Again, while my dear friend stood up now and said how harmful this is going to be, less than a month ago he said, "Shippers and consumers will pay less for their products. The ports will be handling more cargoes and the ocean carriers will have a more competitive operating environment."

I recognize, as of last Friday night, things changed. And what changed, of course, was that some of the labor unions decided at the last minute to try to get another bite at the apple to oppose it. But it is important to emphasize that the seafarers, who are most directly affected by this legislation, support the bill as we bring it to the floor.

Mr. Chairman, for all of those reasons, I will not belabor the point. We have debated it.

Mr. CLEMENT. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in support of the Oberstar amendment to the Ocean Shipping Reform Act.

Mr. Chairman, I support the provisions of the Ocean Shipping Reform Act which abolish the Federal Maritime Commission. But I am proud of the work this agency has done to combat unfair foreign shipping practices that injure U.S. carriers and U.S. importers and exporters. Since 1920, we have successfully fought commercial cargo preference programs of foreign governments, restrictions on carrier operations, restrictions on port operations, and foreign taxes designed to limit imports from the United States. The FMC has experienced a remarkable success rate—100 percent. They have never failed to get the foreign government to eliminate their unfair practice—not once.

One of the major reasons for this glaring success is the independent nature of the agency. They are insulated from pressures from the State Department that may have other foreign policy objectives with the country involved. Only the President can overrule a finding by the Commission on an unfair foreign trade practice. No President has ever done this. Last summer when H.R. 2149 was reported out of committee, the Surface Transportation Board did not exist. The Surface Transportation Board, or Surf-Board, was created by the ICC Termination Act to take over the remaining functions of the ICC. It is an independent board within the Department of Transportation, insulated from the politics of the executive branch. The name of the board is deceiving—it does much more than regulate surface transportation.

It currently regulates all of the water carriers transporting goods from the continental United States to Hawaii, Alaska, Puerto Rico, and Guam. These trade routes had been regulated by the FMC. The Surf-Board has the experience and expertise necessary to handle the FMC's regulatory issues.

Even with the reforms in H.R. 2149, the statutes which govern international ocean transportation will require an agency to perform many important oversight functions. Fairness and impartiality require that these functions be performed by an independent agency, not a political department of the Executive Branch.

For example, the agency will need to resolve all allegations by U.S. or foreign shippers or U.S. ports that they have been discriminated against or have been denied service by one or a group of ocean carriers. The agency will also be required to review agreements among ocean carriers to ensure

the agreements are not anti-competitive. The funding of collectively bargained fringe benefit obligations must be overseen by the agency. Finally, the agency must administer laws governing unfair trading practices by foreign governments related to the shipping industry. All of these functions demand an independent agency with expertise in maritime issues. They should not be held captive to political winds and special interest favors.

Finally, I support the Oberstar amendment because it would provide for the supervision of all transportation systems under one board—the Surface Transportation Board. In today's environment of intermodalism, this makes sense. The Surf-Board regulates rail roads, motor carriers, and water carriers engaged in our domestic transportation system. Now, with the Oberstar amendment, it can supervise intermodal movements with those carriers in our international trades as well.

I call on my colleagues to support the Oberstar amendment. Surely, the transferal of the FMC's functions to an independent agency with the expertise to govern the shipping trade is something on which we can all agree. America's business and shipping interests are at stake. Support the Oberstar amendment—it protects American business and the consumer. This approach only makes sense.

Mr. HAYWORTH. Mr. Chairman, I move to strike the requisite number of words and speak in opposition to the amendment.

Mr. Chairman, I thank the chairman of the full committee and the chairman of the subcommittee, the gentleman from North Carolina, for their insight, and indeed the ranking member, the gentleman from Minnesota, for some of his thoughts earlier today on this.

Mr. Chairman, I will confess I am new to this process. I came from the outside world. I am not a career politician. Getting here has been a rather eye-opening experience. I have noted with great interest the disdain that many of my constituents have for what they term "gridlock" or almost a playground type of contentious debate that happens here.

While major policy differences should be discussed and indeed debated in this Chamber, and we champion that, and indeed we champion differences in opinion, I cannot help but notice the irony of the situation in which the Committee of the Whole House finds itself today with reference to this piece of legislation.

Again, even taking into account the comments of my good friend, the gentleman from Minnesota [Mr. OBERSTAR], the ranking member, I just note the irony that fairly drips from the comments of August 1, 1995, from my good friend, the gentleman from Minnesota: "This bill injects a very healthy and significant dose of flexibility of competitive opportunity into the carrier and shipper relationship. That was the aim of my bill. I am pleased to see we are taking that tack in this legislation. It is what will be good for ocean shipping." So said my good friend, the gentleman from Minnesota, in August.

Indeed, as I understand, hearing from my good friend, the gentleman from Pennsylvania [Mr. SHUSTER], the chairman, essentially this point of view prevailed until what legislatively, Mr. Chairman, becomes the very last nanosecond of the 11th hour, when those who sought to find fault with the legislation chose to step in and inject the whole notion of union bossism into this process.

□ 1700

Now, this is a free country and certainly those special interests have a chance to stand up and say "no." But, Mr. Chairman, what is the prevalent difference?

Now we find, Mr. Chairman, that confidential agreements, a hallmark of doing business in almost every commercial endeavor, are suddenly given the name rhetorically, secret agreements, as if there is something ominous, as if the entire practice of doing business is somehow protected. But then again, what are we to expect of those who constantly propagate a philosophy that would tell us that taxes are really just investments in government growth, and that Washington knows best, and it must always be the constant oversight of some governmental body into every endeavor; only that process, only Washington knows best, only government exercise of oversight can ensure the true and property aims of business.

Mr. Chairman, I assert that if it is good in other areas of transportation deregulation, if confidential agreements and other essential staples of the business process are good in the deregulation that has gone on in other sectors of transportation, why now, at the very last nanosecond of the 11th hour, are there problems? This is a good piece of legislation as it stands. Mr. Chairman, I rise in support of the legislation as presented. I oppose the Oberstar amendment.

Mr. BORSKI. Mr. Chairman, I move to strike the requisite number of words.

Mr. OBERSTAR. Mr. Chairman, will the gentleman yield?

Mr. BORSKI. I yield to the gentleman from Minnesota, the distinguished ranking member.

Mr. OBERSTAR. Mr. Chairman, I thank the gentleman for his courtesies. I am sorry that the gentleman from Arizona exhibited such discourtesy in displaying a quote up there which is incomplete, takes out of context or at least leaves out conveniently something I did say. I am glad he thought it was important to quote what I said. I have quoted myself, and I do not need to be quoted in a poster by the gentleman from Arizona and then have part of it left out.

I supported the legislation as it was pending in committee. I said it accomplishes preservation of the conference carrier system, which is important to carriers, and injects a healthy and significant dose of flexibility. Put the whole thing in context. Do not just quote part of what I said.

I thank the gentleman for yielding.

Mr. BORSKI. Mr. Chairman, I rise to support the Oberstar amendment to protect the small-and medium-sized ports, the small shippers, and the working people of the Nation.

I compliment the gentleman from Minnesota, the ranking member of the Transportation and Infrastructure Committee, for offering this amendment.

It is absolutely vital for the survival of the small- and medium-sized ports in this country that rates between conferences and shippers be open for public scrutiny.

The committee bill allows those rates to be kept secret—a practice that will allow conferences to become cartels that will put everyone in their way out of business.

The secrecy provision will allow big carriers to cut deals with big shippers that get rid of most of the Nation's ports, many small shipping companies and tens of thousands of jobs.

Without the Oberstar amendment, H.R. 2149 is a protection bill for big business and big shippers.

This amendment maintains the public disclosure requirements that were enacted in 1984 and have worked well.

It will provide protection for small and medium-sized ports, for small shippers and for tens of thousands of jobs at the 90 percent of the ports in this country that will be put at risk by this bill.

We can reform the ocean shipping laws without giving our endorsement to cartels and without promoting the elimination of virtually every one of our Nation's ports.

We can reform the ocean shipping laws without jeopardizing tens of thousands of jobs throughout the country.

Mr. Chairman, H.R. 2149 has it backwards. It provides help and protection for the big guys when we should be providing that help for the small shippers and the small- and medium-sized ports.

The Oberstar amendment will correct problems with the bill by maintaining the system that has worked since 1984.

The Oberstar amendment is needed so that the thousands who depend on ports along with the Nation's consumers, are not trampled in this rush to rewrite shipping laws in a way that helps only the big ports, the big carriers and the big shippers.

Without the Oberstar amendment, H.R. 2149 is a job killer and should be defeated.

Mr. Chairman, I urge passage of the Oberstar amendment.

Mr. LATHAM. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. SHUSTER. Mr. Chairman, will the gentleman yield?

Mr. LATHAM. I yield to the gentleman from Pennsylvania.

Mr. SHUSTER. I thank the gentleman for yielding.

Mr. Chairman, I became quite concerned when my good friend said that only part of his quote was included, so I have the full quote here and I do not believe it changes the thrust of what was said at all. But nevertheless, in order to be totally fair, I want to insert the entire quote into the RECORD, which is the following:

> The bill accomplishes preservation of the committee carrier system, which is important to the carriers, but it also injects a very healthy and significant dose of flexibility, of competitive opportunity into the carrier and shipper relationship. That was the aim of my bill. I am pleased to see we are taking that tack in this legislation. It is what will be good for ocean shipping.

That is the complete quote of my good friend, and I think it is important to put it in the RECORD so the RECORD is clear.

Mr. OBERSTAR. Mr. Chairman, will the gentleman yield?

Mr. LATHAM. I yield to the gentleman from Minnesota.

Mr. OBERSTAR. Mr. Chairman, that is what I attempted to do with the quote of the gentleman from Arizona, or that he attempted to represent as attributed to me. But the point is, what I said there does not bear on the subject of our debate this afternoon.

Mr. LATHAM. Mr. Chairman, I will just make a brief statement here. Coming from northwest Iowa and a very large agricultural district, I am quite concerned about how this amendment would affect agriculture and agricultural exports. A few of the groups that support this legislation and oppose the amendment, the American Farm Bureau, the Blue Diamond Growers, National Broiler Council, National Cattlemen's Beef Association, National Council of Farmer Cooperatives, National Pork Producers Council, National Turkey Federation, United Fresh Fruit and Vegetable Association, oppose the Oberstar amendment and support the legislation as is.

I think it is critical to look as far as how it affects agriculture, the fact that in 1996 we expect to export about 60 billion dollars' worth of products, and 18 percent of the cost of exporting in the transportation sector is due to the fact that we have to disclose at this time what our rates are but our competitors overseas do not have to disclose their rates. In effect, what is happening is that if when we post our rates, our competitors come in and see what it is and just simply undercut us and we lose that business, but we still pay a premium here and it certainly is unfair.

I cannot quite understand why an amendment would be offered, I guess, that would undercut agriculture, the gentleman I know is from Minnesota and has large agricultural exports that would cause such problems for agriculture itself. I just strongly oppose this amendment because of the effect, that one of the bright parts of this legislation is the fact that we will be competitive in the world. As we move forward into the next millennium, it is essential that we are on an equal playing field in agriculture in all of our exports. That is why I strongly oppose this amendment and support the bill as it is.

Mr. MENENDEZ. Mr. Chairman, I move to strike the requisite number of words in support of the Oberstar amendment.

I want to salute the ranking member [Mr. OBERSTAR] for his creative and market-oriented proposal. This amendment is precisely what should have been done in the committee process, an open discussion of the meaning and implication of the legislation.

I am no enemy of deregulation, and believe all of us who are supporting Mr. OBERSTAR are of the same view. I personally wrote the New Jersey Telecommunications Act, which substantially deregulated the industry and modernized my State phone system into a national telecommunications leader. I have voted for similar proposals here in the House.

I think there are constructive measures that will improve ocean transportation, but it cannot be a backroom deal. The Oberstar amendment has broken the code. Look at the bill. What does the term "confidential agreement" mean? If we are deregulating this industry, why do we have to include authorization for confidential contracts?

The gentleman from Minnesota [Mr. OBERSTAR] has it right. Secret deals. This bill is carteling in its purest form, secret deals, antitrust immunity and no Government oversight. Do we really think the small shipper has any chance in the face of this monopoly power? To the friends of small businesses in this Congress, you have got to think, your transportation price may go down in the short term just long enough to consolidate the vast grants of monopoly power, and then you will pay and you will pay dearly.

Chairman SHUSTER has stated correctly that antitrust immunity covers only the conference rate and not rates negotiated by an individual carrier, but in reality both rates are part of a package. The carriers are allowed to get together under antitrust immunity to set a conference rate. Each carrier is then free to depart from this rate on a selective basis.

To evaluate antitrust immunity we need to know when the conference rate is followed and when it is not. Are special rates being made available only to certain large shippers? Is the conference rate set under antitrust immunity subsidizing discount rates for larger carriers? If individual agreements are secret as they would be under H.R. 2149, we will never know.

Mr. OBERSTAR's amendment says yes to smaller Government, it says yes to less regulation, it says yes to savings in the budget, but it says no to secret deals and cartels. If this legislation is enacted, only the largest shippers will benefit from secretive shipping contracts that discriminate against smaller shippers, and these secret deals will allow Fortune 100 corporations to avoid public disclosure and to use their already potent market powers to exact privileged rates while smaller shippers, businesses and carriers, their employees and ports across the Nation will be left defenseless.

Clearly, the thousands of smaller businesses that rely on the transparency of prices, and the level playing field that provides—we heard a lot about that in the Telecommunications Act that was passed here in the House, that everybody starting on a level playing field, about transparency. That is in fact what we are arguing for here. If not, we will be forced to pay higher rates and thus subsidize the larger more powerful competitors.

For American ports and thousands of longshore, warehousing, trucking, rail, and related industry employees in and around port communities, this unfair pricing and operating environment could lead to severe economic dislocation, declining wages, and job loss, and that is something we cannot afford. That is why the American Association of Port Authorities recently joined transportation labor and many smaller shippers to oppose H.R. 2149 in its present form.

The Oberstar amendment would eliminate a Federal agency, it would allow for sensible ocean shipping reforms, but it would ensure the essential terms of contracts are not kept in secret at the expense of ports, shippers, employees, and other shipping interests. That is why it deserves our unanimous support, and that is why we urge all of our colleagues to be voting for it.

□ 1715

Mr. DELAY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I was back in my office watching this debate, and I thought I was living in the sixties and the seventies. The same arguments that those that support the Oberstar amendment were made time and time again in opposition to the deregulation

of trucking, to the deregulation of aviation, to the deregulation of railroads. Small communities will not be served. We have got to have tariffs filed so that everybody can see them. We have got to have the Government involved or small shippers will not be able to find somebody to carry their goods.

How many times have we heard these arguments in trucking, in aviation, in railroads? And you know what? Not one of those arguments came true in those modes of transportation. Not one.

In fact, just the opposite happened, because those of us that oppose the Oberstar amendment believe in the free enterprise system, believe that in competition the quality of service goes up, the number of people that offer themselves for service goes up, and the cost of transportation goes down. It is not artificially held up, because the Government knows best. That is what the Oberstar amendment is attempting to do, to change a very well-crafted compromise in this bill.

I have to tell you if I was writing this bill and I had the votes, it would not be this bill, because in this bill the chairman crafted a bipartisan, at least at the time, a bipartisan compromise to take care of some of the concerns of those that do not believe in the free market system. Unfortunately, for whatever reasons, and it has already been expressed here on the floor, at the last minute, this compromise was rejected.

We ought to be opening up markets. We ought to be allowing shippers and shipping companies and ocean shipping companies to come together and, through the free market system, devise contracts that meet the needs of that market. That is what we are trying to do here.

It worked in trucking. Let me give you an example why I was so supportive of deregulation of trucking. In my part of the country, outside of Houston, TX, we have a lot of small towns and they needed trucking service. But the Government said only one truck line, in a cartel type way, could service my small towns. The argument was, oh, my goodness, if you opened it up, that truck line would not go to Rosenberg, TX, because it is too small a market.

You know what happened in Rosenberg, TX, with the car dealers? They could not get their parts shipped by this one trucking company that had authority to carry goods to Rosenberg, TX. So a Hispanic gentleman who cleaned commodes for one of the car dealers got in a truck and went up and picked up his parts on the other side of Houston and brought them back. He said, "This is a pretty good deal." He started going around to the other car dealers, and they were having the same problem, so he bought himself a van and started himself a little business, provided a service that was not being provided by the Government authority given to one trucking company.

But you know what? They caught him and they said "You can't do this anymore, because the government says you can't do it." He says, "Why not?" He says, "Because you got to have a piece of paper from the government to allow you to go pick up auto parts in Houston and bring them to Rosenberg." "How do I get that piece of paper?" "You have to hire a lawyer." "How much does a lawyer cost?" "Well, it will cost you at least $25,000, and then you are not guaranteed to get the authority."

He went back to cleaning commodes in Rosenberg, TX.

Now, they will say probably oh, well, this does not apply, because we are talking about large ships and we are talking about small ports and we are talking about small shippers. The market is the same no matter whether it is ships or trucks or airplanes or railroads. The point here is we are trying to move into the 21st century, and the proponents and the supporters of the Oberstar amendment want to keep us in the 1930's, when regulation of trucking was first passed, in the 1920's, when regulation of railroads was passed.

We are in a world economy and we cannot afford the 1930's type economics.

The CHAIRMAN. The time of the gentleman from Texas [Mr. DELAY] has expired.

(By unanimous consent, Mr. DELAY was allowed to proceed for 1 additional minute.)

Mr. DELAY. Mr. Chairman, we cannot afford to run the U.S. economy based on 1930's economics, and that is what we are trying to do here. We are trying to change it, to bring America into the 21st century. Unfortunately, the gentleman from Minnesota wants to keep us in the 1930's.

I urge you to vote "no" on the Oberstar amendment.

Mr. LIPINSKI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise today in support of the Oberstar amendment to H.R. 2149, the Ocean Shipping Reform Act of 1995.

The maritime industry is one of the few industries in the United States that enjoys full immunity from our antitrust laws. Carriers are allowed to enter into conferences which are cartels of vessels that collectively set prices and allocate routes and cargo among its members. In the Shipping Act of 1984, Congress granted antitrust immunity of ocean conferences only if the carriers file their rates and contract terms with the Federal Maritime Commission.

The Ocean Shipping Reform Act, however, would eliminate the requirement that ocean carriers disclose the essential terms of their contracts with shippers. Without this disclosure, the large carriers are likely to enter secret agreements giving major shippers low rates which could not be offered if the arrangement had to be disclosed. These secret contracts will create unfair competitive advantages for large shippers and large carriers, and the larger ports they serve. This is a real threat to the economic wellbeing and job security of smaller carriers and the smaller and medium size ports.

H.R. 2149 will not result in an ocean transportation industry governed by market principles, but will result in a system in which carrier cartels will operate with legal impunity and large corporations will be able to secure secret, below cost transportation rates from carriers, with smaller shippers being charged higher and higher rates to make up for these concessions to mega-shippers. In other words, this legislation will simply intensify the alarming trends that already exist in the maritime industry—bigger and fewer ports, fewer and larger carriers, and larger shipping conglomerates.

This is why I support the Oberstar amendment; the amendment would require carriers to file their rates and essential contract terms electronically. It balances carriers' full antitrust immunity with the simple requirement that they make the essential terms of their contracts with shippers public. It ensures that market forces are able to keep the power of industry conglomerates in check, providing safeguards to protect our consumers, manufacturers, and ports from secret deals that discriminate against them.

Like H.R. 2149, the Oberstar amendment sunsets the Federal Maritime Commission. However, the amendment transfers the remaining enforcement responsibilities to the Surface Transportation Board, an independent transportation agency. The Ocean Shipping Reform Act transfers remaining authority to the Department of Transportation, a far more politicized cabinet department of the Federal Government.

The Oberstar amendment aims to correct the two fundamental flaws of the Ocean Shipping Reform Act. The major goal of the Ocean Shipping Reform Act remains intact, which is to increase competition in the ocean shipping industry by substantially deregulating the industry. In fact, it is only with the adoption of this amendment that increased competition will occur in the maritime industry. I urge my colleagues to support the Oberstar amendment and then support the bill.

Mr. ROBERTS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I oppose the amendment offered by the gentleman from Minnesota. The biggest beneficiaries of

public ocean transportation contracts are the foreign-dominated ocean shipping cartels. Public contracting as continued under the Oberstar amendment to my way of thinking would simply enhance the ability of these cartels to fix prices for the transportation of goods in the import and export trade.

The data on ocean shipping confirms that over 85 percent of U.S. goods are carried aboard foreign vessels, and this amendment would, in my opinion, simply permit that to continue.

Meanwhile, under the Shuster bill, the committee bill, we would save 18 percent of transportation costs, according to a Department of Agriculture report. I have got the report right here.

Everybody interested in agriculture, everybody interested in rural America, everybody interested in the balance of payments benefits that agriculture provides, everybody who voted for a new change, a market-oriented farm policy, everybody who voted for freedom to farm, regardless of your personal opinion about all of the farm program policies, pay attention.

The Department of Agriculture says:

A cartel premium attributable to conference market power, the ability to set rates above the competitive level, amounts to some 18 percent of the cost of ocean transportation.

Turn it around. Look at the benefit to our farm exports if we turn it around.

The annual gain in agriculture revenues from increased exports resulting from lower shipping costs would produce an expected gain of $406 million, 8.1 percent of the total revenues, including more commodities, more markets. It would simply magnify the economic effect.

I am quoting from the Maritime Policy and Agriculture Interests Impacts of the Conference System of the Department of Agriculture.

My experience in the Marine Corps leads me to understand that there are very few merchant ships left that are registered in the United States. Now, think a minute. If you publicize the contracts that primarily benefit our foreign competitors by allowing them to estimate a U.S. exporter's shipping costs, that simply permits the foreign carriers to have a great advantage over our U.S. carriers. It is not only going to hurt them, it is going to hurt all of the exporters, all of the added value product exporters, and all we are trying to do in regard to agriculture today.

I am informed by the distinguished chairman that U.S. shippers, especially the small shippers, support the bill without such an amendment. So I would urge Members, all members of the House Committee on Agriculture, all members of the various task forces on either side of the aisle, to oppose this amendment, and to support not only the U.S. business, but simply U.S. agriculture, who trade overseas. So support the U.S. farmer and the producers who really wish to enhance our agriculture exports. Again, I urge my colleagues to vote against the Oberstar amendment.

Mr. FILNER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise today in strong support of the Oberstar amendment. I represent the city of San Diego. We are engaged in a major effort with the support of all members of the community to upgrade the Port of San Diego, to transform the economy of San Diego, to provide thousands of jobs in the future.

Mr. Chairman, as currently written, this legislation would hurt smaller-sized ports like the Port of San Diego. By allowing shippers and carriers to enter into secret and confidential shipping agreements, the concept of common carriage will effectively disappear. It has been this concept of the public display of contract terms that has kept ocean transportation available to small- and medium-sized shippers on the same terms and conditions as large shippers.

This public disclosure of contract terms stimulates competition and ensures a level playing field for shippers and ports alike. Keeping contract details secret would put smaller shippers and ports with niche markets at a decided disadvantage and unable to match preferential deals offered by the largest companies and ports.

We should not grant economic advantages to anyone and the Oberstar amendment ensures this by providing fair and equal opportunity for everyone—large and small—in ocean transportation: the ports, the carriers, and the employees of both. The economic well-being of America's ocean transportation depends on this amendment. Keep ocean shipping fair. Vote "yes" on Oberstar.

□ 1730

Mr. FOLEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I want to take a moment to read a quote from a former colleague of ours in California now: "For 20 years I have advocated the orderly economic deregulation of American transportation systems. Air and ground transportation deregulation have largely been completed, with consumers and businesses benefiting from less government and more competition. This new proposal extends deregulation to ocean transportation. It is a commonsense, balanced proposal, providing a clear road map and a schedule for ocean freight deregulation." Norm Mineta, June 28, 1995.

Something has happened since then. Something has happened in Washington since that statement was uttered. And there is more. And my colleagues will share some of the other statements.

When we look at the partisanship displayed on the floor on this issue, it is no wonder things are not happening here in Washington. I heard the last speaker say we should not grant economic opportunities to select people. Some of us in this Congress feel NAFTA and GATT granted select opportunities to certain individuals.

In Florida, my agricultural industry is under great pressure from NAFTA. Tomatoes are almost being run out of business. Citrus is next. Why do we not pass a bill with bipartisan support on ocean shipping reform, allowing elimination of tariffs and tariff enforcements, giving an opportunity to American vessels, American shippers, to be able to compete in the international marketplace?

NAFTA and GATT were talked about as great incentives for the economic opportunities of all Americans. All Americans are going to benefit from NAFTA and GATT. Well, let us extend that great system we have passed on the floor to ocean shipping. Why leave shippers out of the equation?

But somehow the politics of this House turns on the dime, that thin dime Mr. GORE spoke of when he talked about minimum wage. When we talk about minimum wage, they had on the other side 2 years to do it while they had control. No discussion of minimum wage. Gas tax. All of a sudden, my God, gases are high. Call Janet Reno, have her investigate. Gas companies must be in collusion.

Nobody stands here on the floor and says, by God, I passed a 4.3 cent increase in the gas tax. I wonder if that had something to do with it. Consumers in American need to know that the taxes passed by this Congress and State legislatures throughout the Nation add probably 40, 50 cents per gallon of gasoline.

So when you pull up to the pump, do not immediately shout it must be Exxon's fault. Think of the people in this body that on partisan rhetoric destroy legislation or attempt to destroy legislation that at one time, just a short period ago, was fine with Mr. Mineta, apparently fine with the gentleman from Minnesota [Mr. OBERSTAR] and others.

Clearly, I would say to my colleagues that we have a bill on this floor that reforms a system that desperately needs reforming. We have not had all perfect experiences with deregulation, as people will testify on transportation, like airlines. But I think, by and large, the prices consumers pay today to fly from West Palm Beach, FL to Washington, DC, $137 on a round-trip basis, are largely as a result of deregulation. Lower prices for consumers, benefiting America, benefiting the airliners, benefiting everyone involved in the process.

Mr. OBERSTAR. Mr. Chairman, will the gentleman yield?

Mr. FOLEY. I am delighted to yield to the gentleman from Minnesota.

Mr. OBERSTAR. Mr. Chairman, I voted for airline deregulation, and trucking and bus deregulation, and rail deregulation. But I wanted to say, since my former colleague is no longer here to explain himself, that quote was taken at a time when we had a concept of a bill and not the specific language of a bill. It is not relevant to the present debate.

Mr. FOLEY. So the gentleman thinks the conversation has changed completely?

Mr. OBEY. I am saying the quote was taken at a time before there was an introduced bill. It is not relevant to the bill at hand.

Mr. DELAY. Mr. Chairman, will the gentleman yield?

Mr. FOLEY. I yield to the gentleman from Texas.

Mr. DELAY. Mr. Chairman, very quickly, maybe this is an insight that we are hearing about, that this was a concept. A bill was worked out, supposedly a compromise. I have three letters here, one from the AFL–CIO, one from International Brotherhood of Teamsters, and one from a group called Transportation Trades Department of the AFL–CIO, the American Federation of Labor and Congress of Industrial Organizations, all dated yesterday.

So my point is I know why from the time that this was a concept and this quote was made, through the time that a bipartisan effort was put together, to the time of yesterday, when Mr. Sweeney barked, they jumped. That is what is going on here. When the Sweeneys and the Washington union bosses barked, they jumped and changed and took another tack on this and offered the Oberstar amendment.

Mr. SHUSTER. Mr. Chairman, will the gentleman yield?

Mr. FOLEY. I am delighted to yield to the gentleman from Pennsylvania.

Mr. SHUSTER. Mr. Chairman, the date of that quote is June 28, 1995. At that time we had issued our release and we spelled out the seven principles of this bill, and nothing has changed up to this day.

Ms. BROWN of Florida. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, a few weeks ago the House approved the truth in budgeting act. If there is truth in budgeting, surely there must be truth in contracting, and that is what the Oberstar amendment does.

I too support the goals of most of the provisions of H.R. 2149, including the provision which eliminates the Federal Maritime Commission prohibiting ocean carrier conferences from restricting the rights of individual carriers to make contracts with shippers and eliminate the requirement that tariffs must be filed with a Government agency.

However, I do believe that there should be two modifications to the bill to meet the concerns which have been raised by consumers, and that is what the Oberstar amendment does.

The Oberstar amendment is not a killer amendment, it does not gut the bill. With the amendment, the bill will still take the following important actions to deregulate the ocean shipping industry: The Federal Maritime Commission will be eliminated, restrictions on the contents of contracts between shippers and carriers will be eliminated, and laws related to unfair trade practices of foreign carriers and foreign governments will be strengthened.

As I said earlier, a few weeks ago the House approved the truth in budgeting act. If there is truth in budgeting, surely there must be truth in contracting.

Mr. OBERSTAR. Mr. Chairman, will the gentlewoman yield?

Ms. BROWN of Florida. I yield to the gentleman from Minnesota.

Mr. OBERSTAR. Mr. Chairman, I thank the gentlewoman for yielding.

I just wanted to say that repeatedly my chairman has said that seagoing maritime labor supports this legislation, and I have called to find out just what is their position on this matter, and both the American maritime officers and the seafarers are not in support of the legislation unless it is amended as we have proposed. I just wanted to get the record straight.

Ms. MILLENDER-McDONALD. Mr. Chairman, I rise today in support of the Oberstar amendment to the Ocean Shipping Reform Act of 1995.

The Oberstar amendment continues current law requiring the public disclosure of the terms of ocean and shipping contracts to ensure fair competition. The amendment also preserves the objectives of the bill to ease the regulatory burden by eliminating the Federal Maritime Commission and transferring its authority to the independent Surface Transportation Board.

Mr. Chairman, all things that are done in darkness will inevitably come to light. The bill before us was abruptly reported out of committee without the benefit of public hearings—darkness Mr. Chairman, darkness. Now, there are some Members of this body who seek to keep the consumers in the dark by prohibiting the public disclosure of the terms of shipping contracts. If we allow them to prohibit the public disclosure of information and allow shippers and carriers to enter into back room deals, we will permit larger shippers and carriers to engage in secret negotiations and enter into secret contracts. Such secret contracts are anticompetitive and may have a negative impact on workers by driving the smaller shipping and carrying companies out of business. This may well also lead to higher prices for the consumer because of a lack of competition.

In 1992, when I began my service in the California State legislature, I did so with a spirit of bipartisanship and cooperation. I bring this same approach to governing with me as I begin my service in this distinguished body. This amendment enjoys bipartisan support—and let me tell you why Mr. Chairman. This issue and this amendment is not about one political party or the other. This issue is about right and wrong. In my district, in southern Los Angeles County, there is a place called Mormon Island. On Mormon Island are docks and berths where warehousemen and longshoremen work hard to earn a living to support their families. Let me tell you what would happen if we allow this bill to pass without the Oberstar amendment; larger shippers and carriers would get together and create deals and agreements without the benefit of public scrutiny. This would allow those larger companies to lock the smaller companies out of the industry and force them out of business. Without the Oberstar amendment, Fortune 100 shipping companies would be able to avoid public disclosure while hurting the smaller shipping companies that rely on the transparency of prices. If those companies are not allowed to compete fairly, on a level playing field, they will not be able to survive. The warehousemen and longshoremen, the working people in my district depend on those small companies for employment and ultimately their livelihoods. In this Congresswoman's opinion, we would serve our constituents best by supporting fair competition and maintaining the current law which prohibits shipping companies from entering into secret contracts.

Mr. Chairman, I urge my colleagues to support the consumer, support fair competition, and support public disclosure by voting "yes" on the Oberstar amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota [Mr. OBERSTAR].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. OBERSTAR. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 197, noes 224, not voting 12, as follows:

[Roll No. 143]

AYES—197

Abercrombie	Condit	Foglietta
Ackerman	Conyers	Forbes
Andrews	Costello	Ford
Baesler	Coyne	Frank (MA)
Baldacci	Cramer	Frisa
Barcia	Cummings	Frost
Barrett (WI)	Danner	Furse
Becerra	DeFazio	Gejdenson
Beilenson	DeLauro	Gephardt
Bentsen	Dellums	Gibbons
Bevill	Deutsch	Gilman
Bilirakis	Diaz-Balart	Gonzalez
Bishop	Dicks	Gordon
Bonior	Dingell	Green (TX)
Borski	Dixon	Gutierrez
Boucher	Doggett	Hall (OH)
Browder	Doyle	Hamilton
Brown (CA)	Durbin	Harman
Brown (FL)	Edwards	Hastings (FL)
Brown (OH)	Engel	Hefner
Cardin	English	Hilliard
Chapman	Eshoo	Hinchey
Clayton	Evans	Holden
Clement	Farr	Hoyer
Clyburn	Fattah	Jackson (IL)
Coburn	Fazio	Jackson-Lee (TX)
Coleman	Fields (LA)	Jacobs
Collins (IL)	Filner	Jefferson
Collins (MI)	Flake	

Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
King
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Mascara
Matsui
McCarthy
McDade
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Metcalf
Millender-McDonald
Miller (CA)
Minge
Mink
Moakley
Mollohan
Moran
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Pickett
Pomeroy
Poshard
Quinn
Rahall
Rangel
Reed
Richardson
Rivers
Roemer
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Saxton
Schiff
Schroeder
Schumer
Scott
Serrano
Shays
Sisisky
Skaggs
Skelton
Slaughter
Smith (NJ)
Spratt
Stark
Stokes
Studds
Stupak
Tanner
Tejeda
Thompson
Thornton
Thurman
Torres
Towns
Traficant
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Williams
Wilson
Wise
Woolsey
Wynn
Yates

NOES—224

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bliley
Blute
Boehlert
Boehner
Bono
Brewster
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clinger
Coble
Collins (GA)
Combest
Cooley
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Davis
de la Garza
Deal
DeLay
Dickey
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Goodlatte
Goodling
Graham
Greene (UT)
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
Kingston
Klug
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martinez
Martini
McCollum
McCrery
McHugh
McInnis
McIntosh
McKeon
Meyers
Mica
Miller (FL)
Montgomery
Moorhead
Morella
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Oxley
Packard
Parker
Paxon
Petri
Pombo
Porter
Portman
Pryce
Quillen
Radanovich
Ramstad
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Scarborough
Schaefer
Seastrand
Sensenbrenner
Shadegg
Shaw
Shuster
Skeen
Smith (MI)
Smith (TX)
Smith (WA)
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Upton
Vucanovich
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—12

Berman
Bonilla
Bryant (TX)
Clay
Goss
Kaptur
Largent
Molinari
Myers
Solomon
Torricelli
Waxman

□ 1755

Messrs. HOSTETTLER, BACHUS, and STOCKMAN changed their vote from "aye" to "no."

Mr. SCHIFF and Mr. PAYNE of Virginia changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there any further amendments to title I?

□ 1800

The CHAIRMAN. If not, the Clerk will designate title II.

The text of title II is as follows:

TITLE II—CONTROLLED CARRIERS AMENDMENTS

SEC. 201. CONTROLLED CARRIERS.

Section 9 of the Shipping Act of 1984 (46 App. U.S.C. 1708) is amended, effective on June 1, 1997—

(1) in subsection (a), by striking "in its tariffs or service contracts filed with the Commission" and "in those tariffs or service contracts" in the first sentence, and by striking "filed by a controlled carrier" in the last sentence;

(2) in subsection (b), by striking "filed" and inserting "published", in paragraphs (1) and (2);

(3) in subsection (c), by striking the first sentence;

(4) subsection (d) is amended to read as follows:

"(d) Within 120 days of the receipt of information requested by the Secretary under this section, the Secretary shall determine whether the rates, charges, classifications, rules, or regulations of a controlled carrier may be unjust and unreasonable. If so, the Secretary shall issue an order to the controlled carrier to show cause why those rates, charges, classifications, rules, or regulations should not be approved. Pending a determination, the Secretary may suspend the rates, charges, classifications, rules, or regulations at any time. No period of suspension may be greater than 180 days. Whenever the Secretary has suspended any rates, charges, classifications, rules, or regulations under this subsection, the affected carrier may publish and, after notification to the Secretary, assess new rates, charges, classifications, rules, or regulations—except that the Secretary may reject the new rates, charges, classifications, rules, or regulations if the Secretary determines that they are unreasonable.";

(5) in subsection (f), by striking "This" and inserting "Subject to subsection (g), this"; and

(6) by adding at the end the following new subsections:

"(g) The rate standards, information submissions, remedies, reviews, and penalties in this section shall also apply to ocean common carriers that are not controlled, but who have been determined by the Secretary to be structurally or financially affiliated with nontransportation entities or organizations (government or private) in such a way as to affect their pricing or marketplace behavior in an unfair, predatory, or anticompetitive way that disadvantages United States carriers. The Secretary may make such determinations upon request of any person or upon the Secretary's own motion, after conducting an investigation and a public hearing.

"(h) The Secretary shall issue regulations by June 1, 1997, that prescribe periodic price and other information to be submitted by controlled carriers and carriers subject to determinations made under subsection (g) that would be needed to determine whether prices charged by these carriers are unfair, predatory, or anticompetitive.".

SEC. 202. NEGOTIATING STRATEGY TO REDUCE GOVERNMENT OWNERSHIP AND CONTROL OF COMMON CARRIERS.

Not later than January 1, 1997, the Secretary of Transportation shall develop, submit to Congress, and begin implementing a negotiation strategy to persuade foreign governments to divest themselves of ownership and control of ocean common carriers (as that term is defined in section 3(18) of the Shipping Act of 1984 (46 App. U.S.C. 1702).

The CHAIRMAN. Are there any amendments to title II?

If not, the Clerk will designate title III.

The text of title III is as follows:

TITLE III—ELIMINATION OF THE FEDERAL MARITIME COMMISSION

SEC. 301. PLAN FOR AGENCY TERMINATION.

(a) No later than 30 days after enactment of this Act, the Director of the Office of Management and Budget, in consultation with the Secretary of Transportation, shall submit to Congress a plan to eliminate the Federal Maritime Commission no later than October 1, 1997. The plan shall include a timetable for the transfer of remaining functions to the Federal Maritime Commission to the Secretary of Transportation, beginning as soon as feasible in fiscal year 1996. The plan shall also address matters related to personnel and other resources necessary for the Secretary of Transportation to perform the remaining functions of the Federal Maritime Commission.

(b) The Director of the Office of Management and Budget shall implement the plan to eliminate the Federal Maritime Commission, beginning as soon as feasible in fiscal year 1996.

The CHAIRMAN. Are there any amendments to title III?

Are there any further amendments to the bill?

PARLIAMENTARY INQUIRY

Mr. SHUSTER. Mr. Chairman, I rise to clarify a matter with the distinguished chairman of the Committee on National Security, if he is on the floor. we have, Mr. Chairman, as far as I

know we have, the one amendment, and it is not controversial. However, there might be a parliamentary problem with it, and we are attempting right now to clear that matter with the gentleman from South Carolina [Mr. SPENCE], chairman of the Committee on National Security.

Mr. Chairman, I have parliamentary inquiry.

The CHAIRMAN. The gentleman will state his inquiry.

Mr. SHUSTER. At what title of the bill are we now in consideration?

The CHAIRMAN. We are at the end of the bill, I would advise the gentleman from Pennsylvania.

Mr. SHUSTER. Is it possible to return to an earlier title of the bill, or is that impossible?

The CHAIRMAN. It can be done by unanimous consent only.

Mr. SHUSTER. I simply am asking a parliamentary inquiry in order to give my friend from Michigan an opportunity to get to the microphone.

AMENDMENT OFFERED BY MR. STUPAK

Mr. STUPAK. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. STUPAK: At the end of the bill, add the following new title:

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. TRANSFER OF CERTAIN OBSOLETE TUGBOATS OF THE NAVY.

(a) REQUIREMENT TO TRANSFER VESSELS.—The Secretary of the Navy shall transfer the six obsolete tugboats of the Navy specified in subsection (b) to the Northeast Wisconsin Railroad Transportation Commission, an instrumentality of the State of Wisconsin. Such transfers shall be made as expeditiously as practicable upon completion of any necessary environmental compliance agreements.

(b) VESSELS COVERED.—The requirement in subsection (a) applies to the six decommissioned Cherokee class tugboats, listed as of the date of the enactment of this Act as being surplus to the Navy, that are designated as ATF-105, ATF-110, ATF-149, ATF-158, ATF-159, and ATF-160.

(c) TERMS AND CONDITIONS.—The Secretary may require such terms and conditions in connection with the transfers required by this section as the Secretary considers appropriate.

Mr. STUPAK (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. STUPAK. Mr. Chairman, the amendment is relevant to the Ocean Shipping Act because it deals with maritime commerce on the Great Lakes and involves foreign commerce with Canada, highly important to my district and to the region. My amendment, the text of my bill, H.R. 2821, simply attempts to save the American taxpayers a considerable cost that the U.S. Navy incurs.

Mr. Chairman, let me explain my amendment. I do believe that this amendment is relevant to the Ocean Shipping Act because it deals with maritime commerce on the Great Lakes and it involves foreign commerce on the Great Lakes and it involves foreign commerce with Canada, highly important to my district and to the region.

My amendment, the text of my bill, H.R. 2821, simply attempts to save the American taxpayers the considerable costs that the U.S. Navy currently incurs with the storage of six *Cherokee*-class tugboats that are destined for transfer to the Northeast Wisconsin Railroad Transportation Commission.

These tugboats are obsolete and left over from recent closures of naval bases and shipyards, including Long Beach in California. They originally were destined to be scrapped if a deadline of December 31 was not met in achieving a compliance agreement between the railroad commission and the U.S. Environmental Protection Agency.

The Chief of Naval Operations, Adm. Jeremy Boorda, personally assured me the Navy would not go ahead with the planned scrapping of these vessels if this agreement could be achieved as soon as possible. I have been informed that the U.S. Navy and Admiral Boorda support my measure to expedite this transfer, as long as the agreement can be achieved. I'm pleased to report that the environmental compliance agreement will be finalized within the next 7 days, according to officials with region 5 of the EPA.

If we cannot enact this transfer within the next few months, than additional costs for taxpayers will be incurred by forcing the Navy to tow these vessels up the coast of California to Suisun Bay for storages. According to the Navy, an additional $25,000 for each tugboat will have to be spent to place these vessels in interim storage, while the Navy currently pays more than $100,000 per year to continue the storage of these six vessels.

The Government shutdowns of last November and December disrupted the process toward achieving an agreement, and the final details have finally been resolved.

Mr. Chairman, my amendment simply attempts to minimize the costs and expenses that have resulted because of Government shutdowns and delays in reaching an agreement. Not only would the American taxpayers save, but the economy of the upper Great Lakes would benefit much sooner if these tugboats could be placed into service as soon as possible. This is truly a win-win situation for everyone, for the Navy, for American taxpayers, and for the economy of the Great Lakes region.

I appreciate the chairman of the committee not objecting, and I want to thank him, as well as JIM OBERSTAR, HOWARD COBLE, and BOB CLEMENT for their assistance. As well, I want to thank the chairman of the National Security Committee, FLOYD SPENCE, and the former chairman, RON DELLUMS.

Mr. SHUSTER. Mr. Chairman, will the gentleman yield?

Mr. STUPAK. I yield to the gentleman from Pennsylvania.

Mr. SHUSTER. Mr. Chairman, we have examined the amendment. We have no problem with it. We support the gentleman's amendment.

Mr. STUPAK. Mr. Chairman, with those comments from the distinguished gentleman, I would like to thank him, the gentleman from South Carolina [Mr. SPENCE], the gentleman from North Carolina [Mr. COBLE], the gentleman from Virginia [Mr. BATEMAN], the gentleman from Minnesota [Mr. OBERSTAR], and others for their help on this.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan [Mr. STUPAK].

The amendment was agreed to.

The CHAIRMAN. Are there further amendments to the bill?

Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. KINGSTON) having assumed the chair, Mr. REGULA, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2149) to reduce regulation, promote efficiencies, and encourage competition in the international ocean transportation system of the United States, to eliminate the Federal Maritime Commission, and for other purposes, pursuant to House Resolution 419, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendments? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER pro tempore. The question is on engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The CHAIRMAN. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. OBERSTAR. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 239, nays 182, not voting 12, as follows:

[Roll No. 144]

YEAS—239

Allard	Boehner	Christensen
Archer	Bono	Chrysler
Armey	Boucher	Clement
Bachus	Brewster	Clinger
Baker (CA)	Browder	Coble
Baker (LA)	Brownback	Coburn
Ballenger	Bryant (TN)	Collins (GA)
Barr	Bunn	Combest
Barrett (NE)	Bunning	Condit
Bartlett	Burr	Cooley
Barton	Burton	Cox
Bass	Buyer	Cramer
Bateman	Callahan	Crane
Bereuter	Calvert	Crapo
Bevill	Camp	Cremeans
Bilbray	Campbell	Cubin
Bilirakis	Canady	Cunningham
Bliley	Castle	Davis
Blute	Chabot	de la Garza
Boehlert	Chambliss	Deal

DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Goodlatte
Goodling
Greene (UT)
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martinez
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Meyers
Mica
Miller (FL)
Minge
Montgomery
Moorhead
Morella
Murtha
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Orton
Oxley
Packard
Parker
Paxon
Petri
Pombo
Porter
Portman
Pryce
Quillen
Radanovich
Ramstad
Regula
Riggs
Roberts
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Upton
Vucanovich
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NAYS—182

Abercrombie
Ackerman
Andrews
Baesler
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Bishop
Bonior
Borski
Brown (CA)
Brown (FL)
Brown (OH)
Cardin
Chapman
Clayton
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Cummings
Danner
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Durbin
Edwards
Engel
English
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Forbes
Ford
Frank (MA)
Frisa
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gilman
Gonzalez
Gordon
Green (TX)
Gutierrez
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson (IL)
Jackson-Lee (TX)
Jacobs
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kingston
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Metcalf
Millender-McDonald
Miller (CA)
Mink
Moakley
Mollohan
Moran
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Pickett
Pomeroy
Poshard
Quinn
Rahall
Rangel
Reed
Richardson
Rivers
Roemer
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schiff
Schroeder
Schumer
Scott
Serrano
Sisisky
Skaggs
Skelton
Slaughter
Smith (WA)
Spratt
Stark
Stokes
Studds
Stupak
Tejeda
Thompson
Thornton
Thurman
Torres
Towns
Traficant
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Williams
Wilson
Wise
Woolsey
Wynn
Yates

NOT VOTING—12

Berman
Bonilla
Bryant (TX)
Chenoweth
Clay
Goss
Graham
Kaptur
Molinari
Myers
Rogers
Torricelli

□ 1825

Mr. DICKS changed his vote from "yea" to "nay."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mrs. CHENOWETH. Mr. Speaker, I was unavoidably detained and missed rollcall vote 144. Had I been here, I would have voted "yes."

GENERAL LEAVE

Mr. SHUSTER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous matter on H.R. 2149 the bill just passed.

The SPEAKER pro tempore (Mr. KINGSTON). Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

CONFERENCE REPORT ON S. 641, RYAN WHITE CARE ACT AMENDMENTS OF 1996

Mr. BILIRAKIS. Mr. Speaker, I ask unanimous consent that it now be in order to proceed immediately to consider the conference report on the Senate bill (S. 641), to reauthorize the Ryan White CARE Act of 1990, and for other purposes, and that all points of order against the conference report and against its consideration be waived, and that the conference report be considered as read.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

Mr. WAXMAN. Reserving the right to object, Mr. Speaker, I want to clarify that this will allow us to move forward on the House floor to consider the Ryan White reauthorization bill, allowing discussion of that legislation and a vote.

Mr. BILIRAKIS. Mr. Speaker, if the gentleman will yield, I would say to the gentleman, yes, by all means.

Mr. WAXMAN. I withdraw my reservation of objection, Mr. Speaker.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The SPEAKER pro tempore. Pursuant to the unanimous consent agreement, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of Tuesday, April 30, 1996, at page 9719).

The SPEAKER pro tempore. The gentleman from Florida [Mr. BILIRAKIS] and the gentleman from California [Mr. WAXMAN] will each be recognized for 30 minutes.

The Chair recognizes the gentleman from Florida [Mr. BILIRAKIS].

□ 1830

Mr. BILIRAKIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of the conference agreement on the Ryan White CARE Act Amendments of 1996. This conference report represents a balanced compromise between the House and Senate positions and updates and improves these important programs.

I want to join my colleagues in saying how pleased I am that the conference on the Ryan White program has finally been completed. It has taken much longer than any of us would have liked. We are now at the point where the remainder of the fiscal year 1996 funds are about to be distributed to the States. Without the reauthorization and an adjustment to the formula, approximately 20 States were expected to lose a significant portion of their grants relative to fiscal year 1995. It is our expectation that those remaining funds will be allocated based on the formulas contained in the conference agreement.

I want to briefly summarize some of the key provisions of the conference agreement. The bill charges the criteria by which cities become eligible for title I funds and modifies both the title I and title II formulas. The allocations to cities under title I for emergency relief grants will be based on the estimated number of living cases of AIDS in the area over the most recent 10-year period.

The formula for the title II CARE grants to the States are based on two

distribution factors: The State factor and the non-EMA factor. The minimum allotments to States with 90 or more cases is increased from $100,000 to $250,000.

The conference agreement provides criteria for how members of title I planning councils should be selected; these criteria include conflict of interest standards. Additionally, it requires that the composition of the planning council reflect the demographics of the epidemic in the area. The conference agreement requires the Secretary to give priority in awarding supplemental grants to cities that demonstrate a more severe need based on the prevalence of: sexually transmitted diseases, substance abuse, tuberculosis, mental illness, and homelessness.

The bill also requires cities to allocate a percentage of its funds for providing services to women, infants, and children, including treatment measures to prevent the perinatal transmissions of HIV. It also defines and places limits on administrative costs.

Other provisions of the bill provide that: States must spend a portion of their grants on therapeutics to treat HIV disease including measures for the prevention and treatment of opportunistic infections; all four titles contribute 3 percent to the projects of National Significance; clarification that the intent of title IV is to increase the number of women and children in clinical research projects; transfer of the dental reimbursement program from title 7 of the Public Health Service Act; and reauthorization of all programs at such sums through fiscal year 2000.

This is a conference report which represents compromise and hard work by both the House and Senate. We are proud of our efforts and are hopeful that by passing this conference report today, we can provide much-needed services, education, and treatment to those afflicted with this terrible disease.

I also want to take this opportunity to thank my staff, especially Melody Harned, for their hard work on this legislation as well as Kay Holcombe of the committee's minority staff.

I include a section-by-section summary of the bill in the RECORD at this point.

SUMMARY OF CONFERENCE AGREEMENT ON S. 641, THE RYAN WHITE CARE ACT AMENDMENTS OF 1996

Section 1. Short Title.

Section 2. References.

Section 3. General Amendments.

Part A—Emergency Relief for Areas With Substantial Need for Services (Cities):

1. Eliminates the ability for an area to become eligible based on per capita incidence of 0.0025. Changes the timeframe of the cumulative AIDS case count from total cumulative (from the beginning of the epidemic) to the total for the 5-year period prior to the year for which the grant is being made.

2. Limits eligibility for new grants to cities with populations of 500,000 or more. (All cities currently receiving funds and cities which will receive funds in FY 1996 are grandfathered).

3. Adds to the list of representatives to be included on the planning councils: (a) federally qualified health centers, (b) substance abuse treatment providers, (c) individuals from historically underserved populations, (d) the State Medicaid agency and the State agency administering Title II, and (e) grantees under Part D.

4. Clarifies that in establishing priorities, planning councils are to use the following factors: (a) documented needs of the HIV-infected population, (b) cost and outcome effectiveness data of proposed interventions, (c) priorities of HIV-infected communities for whom services are intended, and (d) availability of other resources.

5. Requires the planning council to participate in the statewide coordinated statement of need.

6. Requires the composition of the planning council to reflect the demographics of the epidemic in the area. Also requires that nominations to the council be conducted through an open process based on publicized criteria which includes a conflict of interest standard. Prohibits the planning council from being chaired solely by an employee of the grantee.

7. Prohibits the planning council from designating or otherwise being directly involved in the selection of specific service providers.

8. Requires planning councils to develop grievance procedures. Requires the Secretary to develop model grievance procedures.

DISTRIBUTION OF GRANTS

1. Formula Grant—Specifies that no city may receive a reduction from the amount received in FY95 greater than 0 percent in FY96, 1 percent in FY97, 2 percent in FY98, 3.5% in FY99 and 5% in FY 2000.

2. Supplemental Grant—Requires cities applications for supplemental grants to demonstrate the inclusiveness of the planning council membership and that proposed services are consistent with local and statewide statements of need, and that funds for the preceding year were spent in accordance with the priorities developed by the planning council.

3. Supplemental Grant—Requires the Secretary to give priority in awarding supplemental grants to cities that demonstrate a more severe need based on the prevalence of: sexually transmitted diseases, substance abuse, tuberculosis, mental illness, and homelessness.

4. Prohibits the Secretary from awarding a grant unless funds for the preceding fiscal year were expended in accordance with the priorities established by the planning council.

USE OF AMOUNTS

1. Clarifies that substance abuse and mental health treatments and prophylactic treatment for opportunistic infections are permissible uses of funds.

2. Clarifies that substance abuse treatment programs and mental health programs are eligible to receive funds from cities to provide services.

3. Requires the city to allocate a percentage of its funds for providing services to women, infants, and children, including treatment measures to prevent the perinatal transmissions of HIV. The minimum for each city will be the percentage of the HIV population constituted by women, infants and children infected with HIV.

4. Specifies that administrative costs of all subgrantees may not exceed an average of 10 percent. Defines administrative activities.

APPLICATION

1. Authorizes the Secretary to phase-in the use of a single application and a single grant for formula grants and supplemental grants.

TECHNICAL ASSISTANCE; PLANNING GRANTS

1. Authorizes the Secretary to make grants of $75,000 to cities who will become eligible for Part A grants (cities) the following fiscal year. The purpose of the grant is to assist the area in preparing for the responsibilities associated with being a Part A grantee.

2. A maximum of 1 percent of Part A funds may be used for planning grants. If a city receives a planning grant, the amount it receives the subsequent fiscal year (under the Part A formula) will be reduced by the amount of the planning grant.

3. Permits current grantees to provide technical assistance to new grantees.

Part B—Care Grant Program (States)

1. Specifies that an authorized use of funds is to provide outpatient and ambulatory health and support services (services authorized under Part A).

2. Amends the 15 percent set-aside for women and children to require states to allocate a percentage of its funds for providing services to women, infants, and children, including treatment measures to prevent the perinatal transmissions of HIV. The minimum for each state will be the percentage of the HIV population constituted by women, infants and children infected with HIV.

HIV CARE CONSORTIA

1. Specifies that private for profit entities are eligible to receive funds to provide services, if they are the only available provider of quality HIV care in the area.

2. Clarifies that substance abuse and mental health treatment and prophylactic treatment for opportunistic infections are permissible uses of funds.

3. Requires the consortium to consult with Part D grantees in establishing a needs assessment.

4. Deletes the requirement that states with 1% or more of the AIDS cases must spend 50% of their grant on consortia.

PROVISIONS OF TREATMENTS

1. Requires States to spend a portion of its grant on therapeutics to treat HIV disease including measures for the prevention and treatment of opportunistic infections.

2. Requires states to document the progress made in making therapeutics available to individuals eligible for assistance.

3. Requires the Secretary to review State drug reimbursement programs and assess barriers to expanded availability.

STATE APPLICATION

1. Requires the State in its application to provide a description of how the allocation of resources is consistent with the Statewide statement of need. Requires the State to periodically convene a meeting of specified individuals to develop the statement of need.

PLANNING, EVALUATION, AND ADMINISTRATION

1. Prohibits States from using more than 10 percent of its grant for planning and evaluation. Prohibits states from using more than 10 percent of its grant for administration. However, the total for planning, evaluation and administration cannot exceed 15 percent. Requires states to ensure that the average of administrative costs of entities that receive funds from the states does not exceed 10 percent. Defines administrative activities.

TECHNICAL ASSISTANCE

1. Clarifies that the technical assistance which the Secretary may provide includes

technical assistance in developing and implementing statewide statements of need.

COORDINATION

1. Requires the Secretary to ensure that the Health Resources and Services Administration, the Centers for Disease Control and Prevention, and the Substance Abuse and Mental Health Services Administration coordinate Federal HIV programs. Requires the Secretary to report to Congress by October 1, 1996 on such coordination efforts.

Part C—Early Intervention Services

1. Requires grantees to spend not less than 50 percent of the grant, providing on-site or at sites where other primary care services are rendered, the following four service categories: (a) testing, (b) referrals for health services, (c) clinical and diagnostic services, and (d) provision of therapeutic measures.

2. Specifies that private for profit entities are eligible to receive funds to provide services, if they are the only available provider of quality HIV care in the area.

PLANNING AND DEVELOPMENT GRANTS

1. Authorizes the Secretary to make grants to assist entities in qualifying for a Title III(b) grant. The amount of each grant is not to exceed $50,000. Preference is given to entities that provide HIV primary care services in rural or underserved areas. A maximum of 1 percent of the Title III(b) appropriation is authorized to be used for such grants.

REQUIRED AGREEMENTS

1. Adds planning and evaluation to activities considered administration and increases the permissible percentage from 5% to 7.5%.

2. Requires applicants to submit evidence that the proposed program is consistent with the statewide statement of need.

AUTHORIZATION OF APPROPRIATIONS

1. Reauthorizes the program at such sums as necessary for fiscal years 1996 through 2000.

Part D—Grants for Coordinated Services and Access to Research for Women, Infants, Children, and Youth

1. Clarifies that the purpose of the grants is to (a) provide opportunities for women and children to participate as subjects in clinical research projects and (b) provide health care to women and children on an outpatient basis.

2. Clarifies that the Secretary may not make a grant unless the applicant agrees: (a) to make reasonable efforts to identify women and children who would be appropriate participants in research and offers the opportunity to participate, (b) to use criteria provided by the research project in such identification, (c) to offer other specified services such as referrals for substance abuse and mental health treatment and incidental services such as transportation or child care, (d) to comply with accepted standards of protection for human subjects.

3. In order for a grantee to continue receiving funds (in a third or subsequent year), the Secretary must determine that a significant number of women and children are participating in projects of research. Permits the Secretary to take into account circumstances in which a grantee is temporarily unable to comply with this requirement for reasons beyond its control (i.e., completion of the clinical trial). Authorizes the Secretary to grant waivers of the significant number requirement if the grantee is making reasonable progress toward achieving this goal. This waiver authority expires Oct. 1, 1998.

4. Clarifies that receipt of services is not dependent upon a patient's consent to participate in research.

5. Clarifies that grant funds are not be to used to conduct research, but to provide services which enable women and children to participate in such research.

6. Requires the Secretary to establish a list of research protocols to which the Secretary gives priority regarding the prevention and treatment of HIV disease in women and children.

7. Requires the coordination of the NIH with the activities carried out under this title. Requires the Secretary to develop a list of research protocols which are appropriate for the purposes of this section. Requires the entity actually conducting the research to be appropriately qualified. Specifies that an entity is to be considered qualified if any of its research protocols have been recommended for funding by NIH.

8. Reauthorizes the program at such sums as necessary for fiscal years 1996 through 2000.

EVALUATIONS AND REPORTS

1. Requires the Secretary to conduct an evaluation provided for in current law by October 1, 1996.

SPECIAL PROJECTS OF NATIONAL SIGNIFICANCE

1. Modifies the funding source for SPNS. Current law funds SPNS through a 10 percent tap on Title II. The bill would impose a 3 percent tap on all four titles.

2. Clarifies that special projects should include the development and assessment of innovative service delivery models designed to: address the needs of special populations and ensure the ongoing availability of services for Native Americans.

3. Requires the Secretary to make information concerning successful models available.

TRANSFER OF THE AIDS EDUCATION AND TRAINING CENTERS (AETCS) AND THE DENTAL REIMBURSEMENT PROGRAM

1. Transfers to Title 26 from Title 7 of the Public Health Service Act section 776, the AIDS Education and Training Centers (AETCs) and the Dental Reimbursement Program.

2. Clarifies that training health care personnel in the diagnosis, treatment, and prevention of HIV infection, includes the prevention of perinatal transmission and measures for the prevention and treatment of opportunistic infections.

3. Reauthorizes both programs at such sums as necessary for fiscal years 1996 through 2000.

Sec. 4 Amount of Emergency Relief Grants (Cities)

1. Modifies the Title I formula. Allocations to cities will be based on the estimated number of living cases of AIDS in the area. The number of living cases is determined through a weighted average of cases over the most recent 10 year period.

Sec. 5 Amount of Care Grants

1. Modifies the Title II formula. Distributes Part B funds to states based on a formula that calculates two distribution factors: the state factor, based on weighted AIDS case counts for each state and the non-EMA factor based on weighted AIDS case counts for areas within the state outside of Part A eligible areas. The state factor is given a weight of 80% and the non-EMA factor is given a weight of 20%. This formula results in the transfer of funds among states. As a result funding losses are capped at the following percentages relative to FY95 funding levels: 0% in FY96, 1% in FY97, 2% in FY98, 3.5% in FY99, and 5% in FY2000.

Minimum allotments to states with 90 or more cases is increased from $100,000 to $250,000.

Funds appropriated specifically for the Drug Assistance Program (an eligible use of funds under Part B) shall be allocated based on states entire weighted case counts. ($52 million provided for FY96).

Sec. 6 Consolidation of Authorization of Appropriations

1. Reauthorizes Part A and Part B at such sums as necessary for fiscal years 1996 through 2000.

2. Authorizes the Secretary to develop a methodology for adjusting the amounts allocated to Part A and Part B. Requires the Secretary to report on such methodology by July, 1996.

Sec. 7 Perinatal Transmission of HIV Disease

1. Requires all states to implement the CDC guidelines on voluntary HIV testing and counseling for pregnant women.

2. Authorizes $10 million in grant funds to: (a) make available to pregnant women counseling on HIV disease; (b) make available outreach efforts to pregnant women at high risk of HIV who are not currently receiving prenatal care; (c) make available to such women voluntary HIV testing; (d) implement mandatory newborn testing at an earlier date than required. Only states that implement the CDC guidelines are eligible for these funds. Priority is given to states with high HIV seroprevalence rates among childbearing women.

3. Requires the CDC, with 4 months of enactment, to develop and implement a reporting system for states to use in determining the rate of new AIDS cases resulting from perinatal transmission and the possible causes of transmission.

4. Requires the Secretary to contract with the Institute of Medicine to conduct an evaluation of the extent to which state efforts have been effective in reducing perinatal transmission HIV and an analysis of the existing barriers to further reduction in such transmission.

5. Within two years following the implementation of the CDC reporting system, the Secretary will make a determination whether mandatory HIV testing of all infants in the US whose mothers have not undergone prenatal HIV testing has become a routine practice. This determination will be made in consultation with states and experts. If the Secretary determines that such testing has become routine practice, after an additional 18 months, a state will not receive Part B funding unless it can demonstrate one of the following:

(a) A 50% reduction (or a comparable measure for states with less than 10 cases) in the rate of new AIDS cases resulting from perinatal transmission, comparing the most recent data to 1993 data:

(b) At least 95% of women who have received at least two perinatal visits have been tested for HIV; or

(c) A program for mandatory testing of all newborns whose mothers have not undergone perinatal HIV testing.

6. Requires states which implement mandatory testing of newborn infants to prohibit health insurance companies from discontinuing coverage for a person solely on the basis that the person is infected with HIV or that the individual has been tested for HIV. Prohibition does not apply to persons who knowingly misrepresent their HIV status.

Sec. 8 Spousal Notification

1. Prohibits the Secretary from making a grant to a State unless the state takes such action to require that a good faith effort be made to notify a spouse of a known HIV infected person that such spouse may have been exposed to HIV and should seek testing.

Sec. 9 Optional Participation of Federal Employees in AIDS Training Programs

1. Provides that a Federal employee may not be required to attend or participate in an AIDS or HIV training program if such employee refuses, except for training necessary to protect the health and safety of the employee (training in universal precautions to prevent transmission of HIV). Provides that an employer may not retaliate in any manner against such employee.

Sec. 10 Prohibition on Promotion of Certain Activities

1. Prohibits funds being used to develop materials, designed to promote or encourage, directly, intravenous drug use or sexual activity, whether homosexual or heterosexual.

Sec. 11 Limitation on Appropriation

1. Provides that the total amounts of Federal funds expended in any fiscal year for AIDS and HIV activities may not exceed the total amounts expended in such fiscal year for activities related to cancer.

Sec. 12 Additional Provisions

1. Adds funeral service practitioners to the definition of emergency response employee.

2. Makes technical and conforming changes.

Sec. 13 Effective Date

1. The effective date is October 1, 1996 except for the following provisions, for which the effective date is the date of enactment: (a) eligibility of new cities under Part A; (b) formula for Part A; (c) formula for Part B; (d) provisions concerning perinatal transmission of HIV; (e) consolidation of authorization for Part A and Part B; and (f) the setasides for Special Projects of National Significance.

Mr. Speaker, I urge my colleagues to join me in supporting this important conference report.

Mr. Speaker, I reserve the balance of my time.

Mr. WAXMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am extremely pleased we have completed our work on the House-Senate conference and we have reached an agreement to allow us to reauthorize the Ryan White Act. This is an important program in dealing with the AIDS epidemic throughout this country.

I think from the very beginning of this reauthorization everyone wanted to continue the program, but we had some issues that we had to resolve. One issue that took some discussion was the question of how to direct our attention to deal with trying to prevent the transmission of AIDS to newborns.

Appropriately, the conference said that we should put an emphasis on encouraging pregnant women to be tested so that if they were HIV positive and undertook therapy, they could in fact stop the transmission of HIV to the newborn. But in the case where there has not been a test with the mother, we wanted to establish a procedure for having newborns tested. I think we came up with a good compromise position that will move things in the right direction and deal constructively with this problem.

The second area that we had to resolve were the funding formulas for distribution of money under this act to cities and to States under title I and title II. It makes sense to continue the two separate authorizations for these two titles. Second, we agreed in changes in the formulas which were designed in light of new information and the changing nature of the AIDS epidemic. We did not want to allow large shifts in funding that cities and States severely affected by the epidemic would face, so we did have tight limits on any losses from these areas.

In addition, we tailored the funding formulas appropriately to take into account the continuing enormous need for funding in States and cities like my own State of California and Los Angeles district, as well as the State and city of New York, States of Florida and Texas, and others where the AIDS epidemic began and where it will always remain a significant problem.

On a personal note, I am pleased that the formulas we adopted do result in significant increases of funds for Los Angeles and for the State of California, where the need for services for people with HIV and AIDS and for access to drug therapies for the very large number of affected people remains to severe problem.

Mr. Speaker, in conclusion, and I am going to make a further statement for the RECORD to reflect the views that I have on this legislation, let me say I am extremely proud to have been the original author of the Ryan White CARE Act and to have been a part of its reauthorization. This is a law that has worked, and it will continue to be an integral and essential part of this country's response to the AIDS epidemic.

I want to express my appreciation to the chairman of the Committee on Commerce, Mr. BLILEY, and the chairman of the Subcommittee on Health and the Environment, Mr. BILIRAKIS, for the cooperative and truly bipartisan way in which this legislation has proceeded. I want to acknowledge the hard work of the GAO staff who helped us with title I and II formula calculations, and I want to thank the committee staff, Melody Harned of the majority and Kay Holcombe of the minority, for their significant contributions to this process.

Mr. Speaker, I am extremely pleased that we have completed our work in the House-Senate conference and have reached agreement about the reauthorization of the Ryan White CARE Act. Programs under this Act provide health care services for people with HIV disease and AIDS throughout this country, through public health departments in cities and states; through community-based organizations; and through a variety of primary care providers and social service organizations dedicated to helping patients and families affected by this devastating disease. One very important Ryan White program focuses on the need for more research on AIDS and HIV disease in woman and children. Another focuses on programs directed toward prevention of HIV infection and AIDS. In total, this legislation represents a successful and very important comprehensive approach to HIV and AIDS, and its reauthorization is surely among the most significant legislative accomplishments of this Congress.

I think from the very beginning of this reauthorization, Members on both sides of the aisle and on both sides of the Capitol have completely agreed on one point: that we should reauthorize these important programs. We did, however, have several areas of difference which needed to be resolved and have been resolved in the conference. One of these related to the matter of HIV testing of women and newborns. This is a difficult and contentious issue, and I am extremely pleased that we were able to reach agreement.

Under this agreement, we have broadened the grant program included in the House bill so that grants can be used to assist States to implement the CDC guidelines relating to counseling and voluntary HIV testing of pregnant women, as well as to determine the HIV status of newborns. I am especially pleased with this change because I think it places emphasis where we can do the most good—preventing the perinatal transmission of HIV infection. The legislation then asks the Secretary to make a determination, in consultation with appropriate medical organizations, about whether it is the standard of practice in medicine to test newborns for HIV. If the Secretary makes this determination, then, in order to continue to receive Title II funding under Ryan White, States would need to meet one of two performance standards. The State could demonstrate that, through voluntary counseling and testing programs, it is determining the HIV status of 95 percent of women who are in prenatal care. Alternatively, the State can demonstrate that it has reduced pediatric AIDS, contracted through perinatal transmission, by 50 percent, compared to the 1993 level. This date is important in that it reflects the time at which we learned that treatment of HIV-positive pregnant women with AT can prevent perinatal transmission.

Only if States cannot demonstrate the achievement of one of these specified goals would they be required to put in place either legislative or regulatory requirements relating to the mandatory HIV testing of newborns, as a condition of their continuing to receive title II funding under the Ryan White Act.

Further, any State that did choose this route would be required to have in place important protections such as requirements that health insurance could not be denied or canceled, based on the fact that an individual has been tested or is HIV-positive. These provisions are over and above the protections already provided in the Americans with Disabilities Act and under applicable State law.

The ADA requires that all persons with disabilities—including those with HIV or AIDS—be protected from arbitrary insurance discrimination. In other words, under the ADA, an employer or insurance company cannot treat people with HIV or AIDS differently from people with other serious conditions that pose equal financial risk. That is clear.

Many State laws also provide a State remedy already for such discrimination. That is also clear.

The Coburn-Waxman amendment as included in this bill would go further and provide protection to people who have simply undergone testing for HIV, whether or not they are perceived by the insurance company as having HIV. The goal of this amendment is clear. We are all trying to reduce any disincentives for anyone to be tested. The Coburn/Waxman amendment also provides a different enforcement device to assure that such discrimination is prohibited, that is, that States could lose their Ryan White money.

With all three of these protections in place—ADA, State law, and Ryan White, the conferees feel that we will make significant public health strides in getting people who may be afraid of being tested less afraid.

I am pleased with this result, because I think we have placed the emphasis where it should be—not on testing as an end in itself, but on reducing the number of babies born with HIV. Reaching pregnant women, and educating them about the importance, both to them and to their babies, of knowing their HIV status at a time when it will do the most good and actually prevent perinatal HIV transmission, is what we should be doing. After all, our goal here is to stop the transmission of HIV to babies. I think this compromise emphasizes and also helps us achieve that goal.

A second issue that has proven difficult to resolve is how funding under this act is distributed to cities and States. The conference report deals with these issues in three ways. First, the conferees agreed that, particularly in light of the increases in funding for both titles I and II under the fiscal year 1996 appropriations bill, it made sense to continue authorizing two separate appropriations for these two titles. Second, we agreed that although changes in the formulas were designed were needed, in light of new information and the changing nature of the AIDS epidemic, we did not want to allow such large shifts in funding that cities and States severely affected by the epidemic could not absorb them. Thus, while we have agreed to make significant changes in the way funds are allocated to cities and States, we have placed tight limits on losses.

In addition, we have tailored the funding formulas appropriately to take account of the continuing enormous need for funding in States and cities, like my home State of California, and my Los Angeles district, as well as the State and city of New York, and the States of Florida and Texas, and others where the AIDS epidemic began and where it always will remain a significant problem.

On a personal note, I am pleased that the formulas we adopted do result in significant increases of funds for Los Angeles, and for the State of California, where the need for services for people with HIV and AIDS and for access to drug therapies for the very large number of affected people remains a severe problem.

Mr. Speaker, in conclusion let me say that I am extremely proud to have been an original author of the Ryan White CARE Act and to have been a part of its reauthorization. This is a law that has worked and will continue to be an integral and essential part of this country's response to the AIDS epidemic.

And finally, I want to express my appreciation to the chairman of the Commerce Committee, Mr. BLILEY, and the chairman of the Health Subcommittee, Mr. BILIRAKIS, for the cooperative and truly bipartisan way in which this legislation has proceeded. I want to acknowledge the hard work of the GAO staff, who helped us with the title I and II formula calculations. I particularly want to thank the committee staff—Melody Harned of the majority and Kay Holcombe of the minority—for their significant contributions to the process.

Mr. Speaker, I reserve the balance of my time.

Mr. BILIRAKIS. Mr. Speaker, I yield 2 minutes to the gentlewoman from Maryland [Mrs. MORELLA].

Mrs. MORELLA. I thank the gentleman for yielding me the time.

Mr. Speaker, I rise in support of the passage of the Ryan White CARE Act, and I congratulate the conferees on their persistence in reaching agreement on several difficult issues. A final agreement on this reauthorization bill has been a long time in coming, and it is critical that we pass this bill today.

The CARE Act provides medical care to more than 350,000 people living with HIV/AIDS. Under the Act, local communities make the decisions as to how funding should be allocated, in a manner consistent with this Congress' efforts to give States and localities greater control.

In regard to the issue of HIV testing for infants and pregnant women, I commend the conferees for choosing to focus on the voluntary testing of pregnant women, instead of the mandatory testing of infants. This approach is supported by the medical and public health community as the most effective way of preventing perinatal transmission of HIV. The final provisions include funding to assist States to implement the CDC guidelines which call for voluntary HIV counseling, testing, and treatment for pregnant women.

Mr. Speaker, every Member here agrees that we must do everything possible to reduce perinatal transmission of HIV. The CDC guidelines will provide access to early interventions that will actually prevent perinatal transmission, and link them to HIV care and services.

Preserving a patient-provider relationship of trust is essential to keeping women in the health care system. Many voluntary counseling and testing programs exist, at Harlem Hospital and others; the physicians who run these programs will tell you that it is because the testing is voluntary that they are successful. In these programs, almost all women, after talking with their provider, will choose testing and the treatment recommended by their provider. We should devote our resources to replicating these models, rather than to efforts that will do nothing to prevent perinatal transmission.

Mr. Speaker, this bill is not perfect, but is the best agreement that could be reached.

Mr. Speaker, I congratulate the chairman of the subcommittee, the full committee, the ranking member of the full committee, the subcommittee, and the conferees. We should all vote for this bill.

Mr. WAXMAN. Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts [Mr. STUDDS], who played such a very important role in the work on the Ryan White bill and our approach to the full AIDS epidemic.

Mr. STUDDS. Mr. Speaker, as an original cosponsor of this legislation, I rise to express my strong support for the conference report. This agreement is a welcome one which was far too long in coming.

Nearly 6 years ago, I joined with colleagues on both sides of the aisle in passing the Ryan White Care Act. Since then, this legislation has been a lifeline for hundreds of thousands of people in States and communities across the land.

We could not know then that AIDS would become the primary killer of American men and women in the prime of their lives. Nearly half a million cases have been reported to the Centers for Disease Control and Prevention, and nearly half that number have died. Included in those sobering statistics are two former Members of this House and many members of our families and our official family.

As the AIDS epidemic has expanded, it has placed an enormous burden on the public health system, including both the communities in which the early cases were concentrated and those in which significant case loads are a more recent development. The public health burden has also increased with the emergence of promising but costly new drugs for treating the disease. The conference report attempts to reconcile these competing demands in a way that will help ensure continuity of care for every person living with HIV/AIDS.

I would also like to say a word about one provision that has attracted a good deal of attention and concern—the portion of the bill dealing with the HIV testing of newborns. The compromise that has been reached is precisely that—a compromise. On the one hand, it affirms explicitly what I think we are believe: That every pregnant woman should be tested for the AIDS virus, that those who test positive should be offered the best treatments currently available, and that the soundest and surest way of ensuring that both of these things will happen is to provide the woman with counseling and voluntary testing.

On the other hand, a State that fails to meet specified targets through these voluntary measures could conceivably find its title II funding curtailed unless it agrees to institute mandatory testing of newborn infants. While I respect the convictions of those who favor such

a result, the simple fact is that mandatory newborn testing cannot prevent HIV transmission from mother to child and is not supported by the responsible medical community.

Under the conference agreement, no State would be required to institute mandatory testing of newborns unless the Secretary finds that the medical community has changed its mind and such testing has become routine practice. In essence, it could not be required unless it is already taking place—a logic which Yogi Berra would surely appreciate. Nevertheless, I think it would have been wiser to give State health authorities the resources they need to implement voluntary testing without holding a gun to their heads and threatening the very funds on which so many vulnerable people depend.

Fortunately, the agreement we have reached virtually assures that no State will ever be put in that position. I believe the provision will allow every State to reduce its rate of perinatal transmission by voluntary means to a level and within a time frame that is both achievable and desirable, in a manner that is respectful of the critical relationship between the woman and her physician.

The effort to reauthorize this legislation has been a long and tortuous process. It has been, from first to last, a bipartisan effort. This is as it should be, for the AIDS virus does not discriminate by race or creed or sexual orientation—or even by party affiliation. This is a crisis that compels us to put aside such differences, and I commend Chairman BILIEY, Mr. BILIRAKIS, Mr. WAXMAN, and our fellow conferees for doing so.

I urge my colleagues to join together in that spirit to pass the conference report without delay.

Mr. BILIRAKIS. Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. BILBRAY], a member of the subcommittee.

Mr. BILBRAY. Mr. Speaker, I would like to commend Chairman BILIRAKIS and the ranking member of our Health Subcommittee, Mr. WAXMAN, for the cooperative effort that we see here today. I hate to say it is too bad, that you watch, you will not see this on the front page of the papers or you are not going to see this on national television, the cooperative effort on something that is a major, health issue. I hope we see more of this kind of cooperation and I hope that the American people take notice of this success.

I am pleased to see the conference report, Mr. speaker, that adequately funds the communities that are in desperate need of these funds to be able to address the heavy impacts of AIDS and HIV. I am also very pleased to see that this legislative piece actually directs and corrects some of the mistakes that were made from the past.

Both Republicans and Democrats have worked together at developing a formula that is fair and equitable and truly applies to the need. The old formula actually had misconstrued numbers in it, Mr. Speaker, where there were actually communities getting funds based on numbers of people that had already passed away.

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I do not think anybody meant that to happen. What I am very proud of is this body, bipartisanly, has been able to work together to straighten out the mistakes of the past and make the Ryan White CARE Act not only stronger and better, but also fairer.

I would like to take a moment to address one item, and that is an item brought up, and that is the issue of testing. I have an AIDS Advisory Committee member in my district that consists of health care experts and also advocates in San Diego for the AIDS community. They express major concerns about the mandatory testing component that was originally included. But by trying to work together and find a good compromise, this bill, through the conference process, has been able to work it out and actually present an alternative.

I think the conference report addressed the concerns that allow the time in the States of this Union to be able to work with the Centers for Disease Control and their regulations to make a voluntary system that will work out, to counsel pregnant women, make sure there is the money, up to $10 million, to help not only to test, but also to counsel in the case of high risk women who fall in this category.

With this compromise, we are able to get the job done. We are going to be able to break new ground, enter into new territory, and try to be more proactive in the first truly aggressive prevention strategy. I think that we should be very proud of that, Mr. Chairman.

I understand that my advisory committee looked at this compromise, and though they had major concerns about the original proposal, feel that this is a very sound and humane way to approach this. I think it is one of those issues that will show that we not only can be humane, but we can also be smart and intelligent. With a crisis like the AIDS crisis we are confronted with, this is going to be something we need to do more of.

Again, I thank Chairman BILIRAKIS and also my colleague from California for a job well done, and let us begin with this as an example of what we need to do more of, and not allow it to end here.

Mr. WAXMAN. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. TOWNS], a very important member of the subcommittee who played an active role in the reauthorization of this legislation.

Mr. TOWNS. Mr. Speaker, I am very pleased that we finally have the opportunity to vote on a conference concerning the reauthorization of the Ryan White CARE Act. I want to particularly commend the Chairman of the committee, the gentleman from Florida [Mr. BILIRAKIS], for his tireless efforts to reauthorize this legislation. I want to also thank the ranking minority member, the gentleman from California [Mr. WAXMAN], for his work not only on this bill but also for the tremendous role he has played in the past in working on the Ryan White Act. And, I am certain the majority and minority staff are to be equally commended for their efforts.

There is no more critical issue than funding for health care services to combat the AIDS virus. Those of us from New York State continue to have the unfortunate distinction of the highest number of AIDS and HIV infection cases in the Nation. In fact, the Ft. Greene community in my congressional district, has the highest incidence of new AIDS cases of any area in New York City.

Mr. Speaker, Ryan White programs have been critical to New York's ability to provide a continuum of care which has greatly improved the quality of life for people with AIDS and HIV infection. For example, as a result of Ryan White dollars, the HIV/AIDS dental program was able to provide over $300,000 to Brooklyn Hospital in my district for oral health services to AIDS patients who had little or no dental insurance.

The changing nature of the AIDS epidemic and its impact on minority communities is recognized in this legislation. The average person would assume that the leading cause of death for African-American men is homicide. They would be wrong, however. AIDS now kills more black men than gunshot wounds. Eighty-four percent of the AIDS cases involving children, age 12 and under, can be found in the Black community. And, AIDS has now become the second leading cause of death for black women. I.V. drug use and T.B. have exacerbated these mortality statistics in minority communities.

It is my hope, Mr. Speaker, that with today's action we can move quickly to provide the funds that our cities and small towns so desperately need to address the AIDS crisis in communities across this Nation. I believe that this reauthorization of the Ryan White CARE Act meets the needs of rural and suburban areas without devastating our metropolitan areas, which still have the burden of treating the largest number of AIDS and HIV infected patients.

This bill has been a long time coming, and I am happy we were able to get through the conference process and where we are today. I would like to encourage my colleagues to vote for the passage of this legislation.

There is a need for this legislation to pass and to pass very quickly. I am not totally pleased with the formula, but I am happy that some sensitivity was shown to those large areas, those metropolitan areas, that have a severe crisis.

So I would like to again salute the leadership on both sides, the minority and the majority, for taking these factors into consideration. It is not perfect and a lot still needs to be done, but I am happy we are moving in the right direction.

Mr. BILIRAKIS. Mr. Speaker, I yield 2 minutes to the gentleman from Wisconsin [Mr. KLUG], a member of the subcommittee and full committee.

Mr. KLUG. Mr. Speaker, to my colleagues on the Health Subcommittee on Commerce, this is a nice way to end the day after fairly contentious hearings on trying to figure out a way to reform the Food and Drug Administration, so that we can get pharmaceutical products and medical devices to the market faster, but at the same time not compromising public safety.

This is a fitting end for the day, because we end occasionally, as this subcommittee can, and I hope will more often in the future, in a strong spirit of bipartisan cooperation to move forward a very important piece of legislation.

This is an interesting kind of coming together of the minds, not only from both sides of the aisle, but, frankly, an interesting collaboration from people who represent very different parts of the country.

I represent Madison, WI, which, like most other smaller cities in the United States, also has AIDS problems. But in the past we feel that we have been shortchanged because so many of the resources were plowed into New York and San Francisco, which obviously just based on current numbers had a much more serious problem. But in the future communities like Madison and Milwaukee will be just as dramatically impacted. I am glad to see the gentleman from California [Mr. WAXMAN] and the gentleman from Florida [Mr. BILIRAKIS], as well as the gentleman from Michigan [Mr. DINGELL] and the gentleman from Virginia [Mr. BLILEY], were able to move closer to Senate spending levels, which at the end of the day frankly will take funding in Wisconsin that was just a little bit over $1 million and, with the different kind of grant programs, push it to nearly $2 million.

I think we have all learned over the last decades that AIDS affects every part of the country, and, obviously, given the name of the bill itself, affects very different demographic groups, whether it is a young boy who has been victimized by the AIDS virus as a result of being exposed to hemophilia in a blood transfusion, or somebody who contracts AIDS from intravenous drug users, or whatever the case may be. The bottom line is all of those people need compassion and at the end all of those people need money.

Again, I congratulate the gentleman from Florida [Mr. BILIRAKIS] for his leadership, and the gentleman from California [Mr. WAXMAN] for all of his help on this bill as well.

Mr. WAXMAN. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from New York [Mr. ACKERMAN].

Mr. ACKERMAN. Mr. Speaker, I rise in full support of the conference report and want to take a moment to thank the chairman and the ranking member of the subcommittee and the full committee as well for the hard work and dynamic leadership that they have exhibited in bringing all parties and points of view together in this very, very important legislation.

I want to especially take a moment to acknowledge the hard work and important work that has been done in what has been called the AIDS baby part of this legislation. This is a very, very important and creative first step that we are taking, first emphasizing as strongly as we can the voluntary aspects, to try to get as many pregnant women counseled and tested for the HIV virus and then absent that, or after that, to whatever extent that does or does not work, and we all hope that will be as effective a method as possible, to then take those neonates whose mothers' HIV status is unknown, and to mandatorily test them so as to be able to save additional lives and to put off the onset of so much tragedy and emotion in so many people's lives.

I want to thank the members of the conference committee and urge everybody to support the report.

Mr. BILIRAKIS. Mr. Speaker, I yield 3 minutes to the gentleman from Wisconsin [Mr. GUNDERSON].

Mr. GUNDERSON. Mr. Speaker, first I rise in support of the conference report; to the commitment tonight continues. Second, I rise to extend my deep and sincere appreciation to the gentleman from Florida [Mr. BILIRAKIS], the chairman of the subcommittee, to the gentleman from Virginia [Mr. BLILEY], chairman of the full committee, certainly to the gentleman from California [Mr. WAXMAN], to the gentleman from Oklahoma, [Mr. COBURN], and others who have worked so hard to bring this day to its reality.

The fact is that this is a difficult process and there were some issues that were obviously very difficult, the infant testing issue, the formula for title II. But both of those issues have been resolved in, I think, a very positive and constructive way.

I can tell you from a Wisconsin perspective, because we now have some reforms in the title II program, we can look toward an increase in our funding in 1996 over 1995 of from $1 million to $1.5 million. In addition, because we now have a drug assistance program, we can look at the potential because it has been funded under the appropriation process, of literally $254,000 in that regard.

I would hope that we would send a message tonight, a message that has been developed over the last 2 weeks, that shows that this Congress on a bipartisan basis, and, yes, that includes the Republican majority, has sent the word that we understand and we care and we want to help. We did it first and foremost last week when we repealed the DOD–HIV provisions. We did it second last week when we included money for the AIDS drug assistance program, because we recognize that the new protocols are there but the funding is going to be one of the emerging challenges in the next few years to deal with in this area. We did it, third, because we increased the overall funding for Ryan White. Whoever thought under a Republican-controlled Congress that we would stand here tonight and tell you that Ryan White funding is up 17 percent over what it was last year? And now, tonight, we bring you a reauthorization of the Ryan White program.

It has been a good two weeks and it is important. Many of you recall, certainly those of you who attended that hearing that began this reauthorization process a few months ago when Mr. BILIRAKIS gave me the honor of being the lead witness, I brought a former Republican staff member who had retired November a year ago with AIDS with me to that witness table and said "Hear from one of our own on Capitol Hill who has AIDS."

Tonight as we pass this reauthorization, some 8 months later, his partner died of AIDS in November, and he lies in Sibley Hospital himself tonight as the ravage of this disease continues. I think it is important as those among the 300,000-plus in this country who have lost their life to AIDS, and the over 1 million who continue to battle the fight continue, that they know as their battle goes on they do it with the support of the U.S. Congress.

Mr. Speaker, I am happy to speak in favor of the Ryan White CARE Reauthorization Act conference report. To say that this reauthorization has been a long time in coming may be an understatement. Certainly, we all had hoped that this reauthorization could have been completed sooner, but the issues this conference committee grappled with were delicate and complex. Importantly, their deliberations were careful and fair, and I think that their final product is one of which they can be proud and which we should all support. I congratulate the conference committee on their work. I plan to vote in favor of this conference report, in favor of reauthorization, and I urge my colleagues to do the same.

HIV disease, including AIDS, is devastating and has already wreaked a tremendous toll on this country and its citizens. The Centers for Disease Control and Prevention [CDC] reports

that over a half million Americans have been diagnosed with AIDS, and that already over 300,000 have died. It is estimated that approximately 650,000 to 1 million more Americans are infected with HIV, and that roughly 40,000 new infections occur in the United States each year. The costs, financially, emotionally, socially, and legally, that HIV has extracted from this country have been great, but what these projections indicate is that they will only increase in the years ahead. The Ryan White CARE Act programs represent the most visible and significant response the Federal Government has made to the HIV epidemic. It has provided services and support for thousands of people affected by this disease, and through this reauthorization, we can insure that such programs will continue to be available for the next 5 years.

I would like to offer a few comments on some of the specific successes that I see in the reauthorization conference report. I view these as successes because workable and bipartisan compromises were reached, compromises that will allow us to move forward in effectively meeting the challenges HIV poses to this country.

First, funds for emergency assistance programs, those programs that serve metropolitan areas hit hardest, and for comprehensive care programs, will be linked and appropriated based on a plan devised by the Health and Human Service Secretary. This linkage will help prevent needless fighting for funds within the AIDS community and between different organizations and advocates that all have the common goal of improving the lives of people affected by HIV. In addition, the big picture of the HIV epidemic will most likely determine the disbursement of funds rather than narrowly circumscribed geographic regions or special interests.

In addition, the formula that was adopted for the distribution of title II, or part B, funds moves toward greater fairness. Previously, all funds were distributed based on all AIDS cases in a State. AIDS cases are not distributed equally across States, however, so there was great disparity in the funding levels for different States. But, the suffering caused by AIDS knows no State boundaries and is not limited to the States with the highest case counts. The new formula recognizes this important fact and disburses funds based on total AIDS case counts in a State as well as AIDS case counts that occur outside of hard-hit metropolitan areas.

My home State of Wisconsin, for example, has reported 3,239 cases for AIDS through March 1996. This total may not sound like much to my colleagues from New York, California, Florida, or Texas. But, the fact remains that for each of these cases, there is an individual whose life has been irrevocably changed, who faces new challenges everyday, and whose family and friends have been affected. Many of us know firsthand the pain of HIV and AIDS, including the pain of losing a loved one too early, and this pain is not diminished simply because we live in a low incidence area or State.

In addition, the CDC recently reported that the rate of proportionate increases in AIDS cases was high in the Midwest, and higher than the rates in the Northeast and West. In fact, during the period between 1993 and October 1995, higher proportions of cases among adolescent and young adults occurred in small metropolitan and rural areas in the Midwest and the South. Total case counts do not reveal the depth of suffering inflicted by AIDS, nor do they reveal where changes in transmission patterns are occurring. The new formulas for distributing funds move us forward in being responsive to these changes and to alleviating the suffering of all Americans affected by HIV.

Also in the name of fairness, this reauthorization stipulates that money to support AIDS drug programs, appropriated at $52 million in fiscal year 1996, will be based on total case counts. The committee has adopted the simple and compelling logic that these drugs and drug programs are intended to benefit anyone and everyone in a State with HIV disease. As long as funds for drugs and treatments remain a separate provision in appropriations, they will continue to be distributed based on the numbers of people who are affected in a State.

Lastly, there is a provision in the reauthorization that insures that cities that receive funds under title I will not lose money. For the first 2 years, these cities are held harmless and the funds that could be lost are capped at 5 percent in fiscal year 2000. Thus, there is relative insulation from dramatic changes in funding levels, even if there are substantial changes in AIDS case counts.

These formulas for distributing funds, complicated as they may be, insure that there are no losers. The States with relatively large case counts are protected from losing money, yet the new formulas benefit States with relatively few cases, too. It is a delicate balance to divide funds to combat a truly national epidemic; this conference report has successfully accomplished this difficult task.

Another issue on which a delicate compromise has been crafted has to do with perinatal testing for HIV. HIV testing, and whether it should be anonymous or confidential, mandatory or voluntary, has long been a controversial topic. I believe that testing today is a critical part of good public health. Recent advances in the treatment of HIV disease have been developed and are becoming increasingly available. To test HIV positive is no longer the death sentence that many perceived it to be previously. For individuals to access these new and effective treatments, however, they must know that they are HIV positive. Testing should be encouraged and should take place in a supportive and sensitive context. With respect to pediatric HIV, scientific research also has indicated that early treatment of a mother can reduce the risks that her baby will be born with HIV.

An important piece of this reauthorization is the way in which perinatal testing has been addressed. Rather than imposing a strict and perhaps impossible testing standard on all States, the reauthorization is flexible in its treatment of different States. In addition, critical goals or guideposts are laid out by which States can gauge their progress toward eliminating needless and tragic infant HIV infection. The conference committee has succeeded in providing carrots and not just sticks for implementing effective HIV testing programs as well as evaluation criteria by which success can be judged.

To conclude, I urge a vote in favor of this conference report. Let all of us demonstrate our compassion, concern, and commitment to fighting the HIV epidemic in this country and to ensuring the high quality of life of Americans affected by HIV disease.

Mr. WAXMAN. Mr. Speaker, I am pleased to yield 2 minutes to the gentlewoman from Texas [Ms. JACKSON-LEE].

Ms. JACKSON-LEE of Texas. Mr. Speaker, may I take a moment of personal privilege to offer my gratitude to the conference committee, to the leadership, the Republican leadership, and chairman and ranking member, and as well to the ranking member and subcommittee chairs that have worked so actively. In particular, let me add my applause and appreciation to the gentleman from California [Mr. WAXMAN] who has visited the 18th Congressional District in Texas and noted in fact that my district has one of the highest rates of HIV cases in this Nation.

So I humbly come to applaud the work, primarily because we should recognize that HIV is not a respecter of sex or race. High numbers of Hispanics and African-Americans in my community are now suffering from HIV.

This effort, the Ryan White CARE Act, also brings groups together, those who are in a different lifestyle, along with other members of the community. It is important to know that this HIV, which results in AIDS, affects people of all ages, genders, races, social and economic status and sexual orientations.

In the years following the disease's discovery, nearly half a million Americans have been diagnosed with AIDS and more than a quarter of a million men and women and children have died of AIDS. In Texas, the cumulative number of reported AIDS cases from the beginning of the epidemic in 1981 through 1994 is 30,712. The cumulative number of reported AIDS deaths for this time period is 18,435.

When I visited the Thomas Street Clinic that works not only with adults between the ages of 25 to 44, but senior citizens and children, I see the grip of AIDS. More importantly, I think it is important that this conference committee has come together to allow for voluntary testing of pregnant women and as well counseling. That helps the unborn child, the innocent child. That will help as we look toward the total elimination of the HIV virus and its devastation.

Again let me add through the Ryan White program, over 300,000 Americans living with HIV receive community-based care and support that allows them to live in their homes and neighborhoods. I join and hope my colleagues will give this an enormous vote of confidence by voting for the Ryan White CARE Act of 1996.

Mr. Speaker, let me again applaud my colleagues so that we can work together to ensure that people will live and not die from HIV.

Mr. Speaker, I rise today in support of the conference report for the Ryan White CARE Act Amendments of 1996. Next to the Medicaid Program, the Ryan White CARE Act represents the single largest Federal investment in the care and treatment of people living with HIV/AIDS in the United States.

This act authorizes a set of Federal grant programs to provide assistance to localities disproportionately affected by the HIV epidemic. Grants are made to States, to certain metropolitan areas, and to other public or private nonprofit entities both for the direct delivery of treatment services and for the development, organization, coordination, and operation of more effective service delivery systems for individuals and families with the HIV disease. The CARE Act supports a wide range of community based services, including primary and home health care, case management, substance abuse treatment and mental health services, nutritional and housing services. Through Ryan White programs, over 300,000 Americans living with HIV/AIDS receive community-based care and support that allows them to live in their homes and neighborhoods and avoid costly in-hospital care, care that is currently the most expensive kind of health care in America. Particularly in the urban AIDS epicenters, Ryan White funds form a safety net holding communities that have been devastated by the epidemic together.

The CARE Act promotes cost effective systems of care for people living with HIV/AIDS. The use of case management services and community based alternatives ensures that the federal government is using its resources most effectively. Similarly, antibody testing and early intervention services provided through title III(B) allow individuals to monitor their health status on a regular basis and receive early, preventative care, rather than waiting until an acute episode requires more costly hospitalization.

The CARE Act provides maximum flexibility to cities and States, allowing them to develop local systems of care based on the specific service needs of people living with HIV/AIDS in their area. Title I of the CARE Act requires that each local HIV services planning council—comprised of local public health, community-based service providers and people living with HIV/AIDS assess local needs and make recommendations as to which services are needed. Similarly, through title II, each State is given maximum flexibility to craft a service mix that is responsive to the specific service needs in that State.

One of the most important programs funded by the Care Act in Texas is the AIDS Drug Assistance Program [ADAP]. Texas' ADAP is administered by the HIV/STD Medication Program at the Texas Department of Health and it provides free or low-cost HIV prescription drugs to individuals who would otherwise have no access to basic HIV treatments. The program currently has 4,775 clients enrolled and so far in fiscal year 1996 3,437 have been provided with medications they might not have otherwise received. Approximately 35 to 40 percent of the clients are Medicaid eligible at some time. Funds from the ADAP are only used to pay for drugs the clients cannot receive with Medicaid benefits. All clients have incomes below 200 percent of the poverty line.

Mr. Speaker, the AIDS epidemic is one that cries out for immediate and forceful action. The human immunodeficiency virus [HIV], which causes AIDS, does not discriminate. It affects people of all ages, genders, races, socioeconomic statuses, and sexual orientations. In the years following the disease's discovery, nearly half a million Americans have been diagnosed with AIDS, and more than a quarter of a million men, women, and children have died of AIDS. In Texas, the cumulative number of reported AIDS cases from the beginning of the epidemic in 1981 through 1994 is 30,712. The cumulative number of reported AIDS deaths for this time period is 18,435.

Mr. Speaker, AIDS is the leading killer of Americans between the ages 25 and 44. AIDS is killing the youngest and most vital part of our workforce and our whole Nation suffers as a result. The Centers for Disease Control and Prevention estimated that in 1992 the indirect cost of the AIDS epidemic to the U.S. economy was $23.3 billion, primarily due to wages lost by workers. Clearly, we must invest in HIV prevention, education and treatment. I support the conference report and I urge my colleagues to do so as well.

Mr. BILIRAKIS. Mr. Speaker, I yield 3 minutes to the gentleman from Florida [Mr. FOLEY].

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Mr. FOLEY. Mr. Speaker, let me thank the gentlewoman from Texas for her acknowledgment. That was very gracious and very kind, and I hope I hear more of that tonight from the other side because this truly is a bipartisan effort in helping people that have been stricken by a very deadly and tragic disease.

With the passage of the conference report on the Ryan White CARE amendment today we have a valuable opportunity to continue our commitment in the fight against AIDS. This legislation secures vital medical care and treatment for Americans suffering with this tragic disease and gives States more flexibility to provide them with a wider range of support services.

Since 1981, over 250,000 Americans have died from AIDS and more than a million others are expected to be infected. Sadly, the number of women, children, and teenagers infected with HIV continues to grow dramatically.

In my home district in Florida, the city of West Palm Beach has the single second highest rate of HIV infections in females. The legislation recognizes these concerns and sets up special grants to provide health services to women, infants, and children.

As more and more of our Nation's communities are affected by the AIDS epidemic, preserving the partnerships we have developed between the Federal, State and local governments to meet these health care needs is critical.

I want to single out the gentleman from Florida [Mr. BILIRAKIS] for his leadership on this important legislative initiative, but I also want to take a moment to thank some people that are often derided by both the media and the other side of the aisle as the radical extreme of this party. I want to say, thank you, Mr. NEWT GINGRICH. He first brought the Ryan White Act onto this House floor under a suspended calendar to prevent it from being intruded on by harmful amendments.

Let me thank the gentleman from Louisiana, BOB LIVINGSTON, chairman of the Committee on Appropriations, for working so closely with Mr. BILIRAKIS to secure $105 million additional for the funding of the Ryan White Act this year alone.

Let me thank my Republican colleagues for recognizing the severity of AIDS; that it affects Republicans, that it affects Democrats, that it affects Independents, that it affects men, it affects women, it affects blacks, whites, and Hispanics, that it affects heterosexuals as well as homosexuals. It affects America, our families, our children.

This legislation brings us to the point where we are fighting a dreaded disease and we are fighting it in a bipartisan spirit, caring for the soul of the human being rather than their ethnicity, their race, their gender, their preference or their voting status.

I think we embark today on a day of bipartisan spirit, and I hope the media genuinely reflects that it is a Republican majority that brings a bill to this floor to show care and compassion for human beings; it is a Republican majority, in concert with the gentleman from California [Mr. WAXMAN], and the minority who brings a bill together that funds a tragic, tragic thing in American life. It fights AIDS, it fights the battle, and it provides for human suffering when they need help the most.

Again my commendations to the gentleman from Florida [Mr. BILIRAKIS] for his excellent leadership, and I urge the floor to vote solidly for the reenactment of the Ryan White Act.

Mr. WAXMAN. Mr. Speaker, I yield 2 minutes to the gentlewoman from Connecticut [Mrs. KENNELLY].

Mrs. KENNELLY. Mr. Speaker, I thank the gentleman from California [Mr. WAXMAN] for yielding the time, and I rise in strong support of the conference report for the Ryan White CARE Reauthorization Act.

My State knows all too well the pain and agony that HIV and AIDS bring. Connecticut has the fifth highest number of AIDS cases per capita in the Nation. In my district, the city of Hartford has been particularly hard hit. AIDS is clearly a health crisis we must address now.

Last fall, Hartford and two adjoining counties were, for the first time,

awarded title I Ryan White funding. This money will enable people living with AIDS to receive services so important to those ill—from housing to child care to respite care.

The formula under this conference report ensures that communities, like Hartford, with growing caseloads get the emergency funds they need to respond to this crisis. More importantly, it ensures the thousands of men, women, and children affected by the disease get the support they need to live their lives with dignity.

I urge a "yes" vote on this conference report.

Mr. BILIRAKIS. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. HORN].

Mr. HORN. Mr. Speaker, I join others in commending the gentleman from Florida, Chairman BILIRAKIS, for bringing the Ryan White Act to the floor for reauthorization.

Mr. Speaker, I rise today in strong support of S. 641, the Ryan White Comprehensive AIDS Resources Emergency Reauthorization Act of 1995. Thousands of men and women and children with HIV and AIDS depend on the continuation of these vital services and this vital program.

Ryan White services include outpatient health and medical services, pharmaceuticals, funding for the continuation of private health insurance and home care, which is essential. Without such assistance, tens of thousands of people will be adversely affected. Without such assistance increased suffering will ensue.

I have been an early active supporter of the Ryan White program since coming to Congress in 1993, and in the 103d and the 104th Congresses this bipartisan act and appropriate funds and increases have been allocated by the Members with overwhelming majorities. Sufficient funding for AIDS research, care, and prevention must be the consistent goal of all future Congresses until this horror is eradicated from the Earth.

Mr. WAXMAN. Mr. Speaker, I yield 1 minute to the gentleman from New Jersey [Mr. PAYNE].

Mr. PAYNE of New Jersey. Mr. Speaker, I would like to commend my colleagues for their work in the fight against AIDS in our community. By producing this very important document, we here, in the spirit of bipartisanship, have taken another step to deal with the devastation and the threat that this disease poses to our society.

AIDS is growing fastest among women and children in our society. By early 1993, 253,448 people in the United States had been diagnosed with AIDS.

In my district in Newark, we have one of the highest reported percentages of women with AIDS. In fact, I held the first congressional hearing in my district on the AIDS issue.

Later, we held a hearing on the problem of abandoned infants, where women infected with AIDS testified about the problems they encounter and their personal plight.

As an original cosponsor of the Ryan White bill, I know the real travesty of this disease and we can prevent it. If this document is any indication, I believe there is some hope that we turn this tragedy into a triumph.

I look forward to working very closely with my colleagues to eliminate the threat to our community and our society.

Mr. BILIRAKIS. Mr. Speaker, I yield 2 minutes to the gentleman from Oklahoma [Mr. COBURN] who has added an awful lot of grassroots and personal experience to the subcommittee and to the full committee and, obviously, to this particular piece of legislation, and we are very grateful for his work on Ryan White.

(Mr. COBURN asked and was given permission to revise and extend his remarks.)

Mr. COBURN. Mr. Speaker, I thank the chairman of the committee. We come here tonight happy that we have accomplished some things that are new, some things that are important, but, most of all, to provide support for those that need our support in terms of facing HIV infection.

Some things have been added to this bill, which needed to be added a long time ago, and the first of those is a prohibition on discrimination based on either HIV status or the seeking of an HIV test. It is long overdue and I am glad to see it included.

Spousal notification is something that is needed. It is right. It is proper. It is a part of this bill as well.

And then, finally, putting in perspective where we have seen the best AIDS research come forward; that in terms of treating newborn infants and infants conceived to women who are HIV positive. The science is great, the science is very promising, and, hopefully, this science will lead to further discoveries and further breakthroughs that will treat those that are so ravaged by this disease.

Mr. Speaker, I want to thank the gentleman from California [Mr. WAXMAN] and those of the other side of the aisle who worked to help us forge out a compromise. I believe we have forged out a good one and I am hopeful we can get this money going straight away to help those who need it.

Mr. WAXMAN. Mr. Speaker, I yield myself 2 minutes for the purpose of engaging in a colloquy with the gentleman from Florida.

Mr. Speaker, this bill provides that funds appropriated solely for the drug assistance program be allocated based on statewide case counts. I ask the gentleman from Florida; is that correct?

Mr. BILIRAKIS. Mr. Speaker, will the gentleman yield?

Mr. WAXMAN. I yield to the gentleman from Florida.

Mr. BILIRAKIS. Mr. Speaker, I would say to the gentleman that that is correct.

Mr. WAXMAN. The bill also specifies that 3 percent of the appropriations for each title of the Ryan White program be set aside for the special projects of national significance; that 1 percent be set aside for technical assistance; and 1 percent for the Public Health Service evaluation funds.

It was my understanding that the $52 million for the drug assistance program would not be subject to these set-asides nor would this sum be included in calculating the set-aside taken from the formula grant. Was that the gentleman's understanding as well?

Mr. BILIRAKIS. Mr. Speaker, if the gentleman will continue to yield, yes, it was my understanding, Mr. WAXMAN, and I hope this colloquy and conversations with the Health Resources and Services Administration will help to clarify this point prior to funds being distributed to States.

Mr. WAXMAN. Mr. Speaker, I thank the gentleman for entering into this colloquy so we can clarify this.

Mr. BILIRAKIS. Mr. Speaker, I yield 2 minutes to the gentleman from Connecticut [Mr. SHAYS].

Mr. SHAYS. Mr. Speaker, I just really want to express my gratitude to the gentleman from Florida [Mr. BILIRAKIS] and the ranking member, the gentleman from California [Mr. WAXMAN], for working so well together, and the full chairman of the committee as well as the gentleman from Oklahoma [Mr. COBURN], in particular, a new member who has helped bring together and help forge some very important elements to this bill.

Mr. Speaker, I am grateful that we are seeing a 17 percent increase in the Ryan White funding over last year. I am particularly grateful that we are seeing for the first time the prohibiting of health insurance discrimination against someone who suspects or in fact is HIV positive.

We have a million people in our country who are HIV positive, we have 300,000 who have died of AIDS. This country needs to come together to heal the wounds and to help them, and I am just extraordinarily grateful for the leaders on both sides of the aisle who have depoliticized this and made a significant step forward in helping the people in our country who need the help the most.

Mr. GILMAN. Mr. Speaker, over 250,000 Americans have died from AIDS, the dreaded equal opportunity killer which first became known to Americans in 1981. It is a health crisis which must be addressed now. This legislation accomplishes many of our most important goals—to modify the eligibility requirements and allocation formulas for grants to State and local governments; to give States increased flexibility to provide a wider range of

treatments and support services; to emphasize the provision of services for women, infants, and children by instituting special grant set asides; to cap administrative and evaluation expenses for grant programs, and; to require states to implement center for disease control guidelines regarding HIV testing and counseling for pregnant women.

In short, this legislation not only demonstrates bipartisan humanitarian spirit of this Congress, but by working together in areas of mutual concern we can accomplish worthy goals. Accordingly, I am in strong support of the Ryan White CARE Act amendments conference support and urge its immediate passage.

Mr. BLILEY. Mr. Speaker, I am pleased that we are bringing to the floor the reauthorization of the Ryan White CARE Act.

I am particularly pleased that we were able to work on a bipartisan basis to develop this legislation. I believe that we have developed a bill that responds to changes in the HIV and AIDS epidemic, addresses some concerns with the current implementation of the Ryan White program, includes provisions regarding the perinatal transmission of HIV, and attempts to reach a compromise on funding formulas.

As is always the case, the funding formulas proved to be the most difficult issue to resolve. It was further complicated by the fact that States have not adopted the new definition of AIDS in a uniform fashion, which without a reauthorization would have resulted in large shifts of money this year. In addition, there have been some very exciting therapeutic breakthroughs over the past several months. While these breakthroughs represent tremendous hope in the treatment of HIV/AIDS, they result in additional financial strains on States. For these reasons, I believe it was very important, in agreeing on the title II formula, that we kept in mind both the disruptions caused by large shifts in money and the need to provide the non-EMA States with greater funds.

We believe we have achieved a fair compromise between the original House and Senate positions. We significantly increase funding for non-EMA States while limiting the losses to large States with title I cities. The formula we have agreed upon is a modified version of the Senate formula. I do want to point out however, that in the fiscal year 1996 appropriations bill, which just passed, an additional $52 million was provided solely for the drug assistance program. The conference agreement provides that these funds will be allocated based on the statewide case count rather than the Senate formula. I believe this is important because the States provide drugs to all individuals with HIV/AIDS regardless of where they live through the drug assistance program.

The other key issue was that of perinatal transmission of HIV. All the conferees, and I am certain all Members of the House and Senate, share the same goal—reducing the transmission of HIV to infants, and in those cases where transmission is not prevented, identifying and treating those babies as soon as possible. It is our sincere hope that the provisions included in the conference agreement will achieve that goal.

I also want to point out that we have received a letter from CBO stating that the bill does not invoice the Unfunded mandates Reform Act of 1995. And I ask that the letter from CBO follow my statement.

I want to thank all the conferees and their staffs for their perseverance and hard work on this conference agreement. I also want to thank the staff at the General Accounting Office who spent many long hours running iterations of the formulas.

I urge my colleagues to join me in supporting the conference agreement.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 1, 1996.

Hon. THOMAS J. BLILEY, Jr.
Chairman, Committee on Commerce, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: At the request of your staff, the Congressional Budget Office has reviewed the conference committee's discussion draft of S. 641, the Ryan White CARE Act Amendments of 1996, for intergovernmental and private sector mandates. The bill contains two intergovernmental mandates and no private sector mandates. The cost of the intergovernmental mandates would not exceed the $50 million threshold established in Public Law 104–4, the Unfunded Mandates Reform Act of 1995.

S. 641 would require states to determine annually the number of AIDS cases reported within their boundaries that result from perinatal transmission. The cost associated with this requirement would be insignificant because most states are already gathering this type of information.

The bill would also require states to adopt the Center for Disease Control's (CDC's) guidelines concerning HIV counseling and voluntary testing for pregnant women. In order to offset the costs associated with adopting these guidelines, the bill would authorize the appropriation of $10 million in each of fiscal years 1996 through 2000. Any state that does not adopt the guidelines would not be eligible for this funding, but the bill does not clearly relieve states of responsibility for adopting the CDC guidelines if they choose not to take any of the grant money. While CBO does not expect the costs of promulgating the CDC guidelines to be significant, public hospitals and clinics could face additional costs in implementing the guidelines. However, many hospitals and clinics are already carrying out these AIDS-related activities on their own or because their states have already adopted the CDC guidelines. In the time available, CBO has not been able to estimate the additional costs with precision, but we believe that the costs to public facilities would be well below the $50 million threshold. Furthermore, the bill authorizes funds that would at least partially offset these costs.

Finally, as a condition of receiving their Ryan White grant money, states may have to require all newborns to be tested for HIV. This requirement would not be a mandate as defined by Public Law 104–4, because it is clearly a condition for receiving federal financial assistance.

If you wish further details on this estimate, we will be pleased to provide them. The analyst for intergovernmental mandates is John Patterson, and the analyst for private sector mandates is Linda Bilheimer.

Sincerely,

JUNE E. O'NEILL, *Director.*

Mr. LAZIO of New York. Mr. Speaker, I rise today to support S. 641, the Ryan White CARE Act amendments conference Report. I am a cosponsor of the House bill. It is long overdue and I am glad that Congress is finally completing its work on this measure.

New York has been hit especially hard by the AIDS epidemic as close to 20 percent of all AIDS cases are in my home State.

Since its enactment, the Ryan White CARE Act has provided a wider range of services for people of all racial, ethnic, and social-economic classes throughout the United States who are struggling with HIV disease. These funds provide a coordinated continuum of care for these individuals. Some of the services supported by the CARE Act include outpatient health and medical serrices, pharmaceuticals, funding for continuation of private health insurance, and some health care.

As a society we have a responsibility to provide for those who are truly needy. Since its original enactment the Ryan White program has helped tens of thousands of AIDS victims in my home State of New York State as well as those throughout the country.

We need to reauthorize the Ryan CARE Act without any further delay and I urge all my colleagues to vote for its passage.

Mrs. MINK of Hawaii. Mr. Speaker, I rise in strong support of the conference report on the Ryan White CARE Reauthorization Act of 1995. The importance of this act cannot be overstated; in the 6 years since its enactment, it has been a lifeline of support to hundreds of thousands of AIDS and HIV victims throughout the country.

The challenges of our fight against AIDS are not unfamiliar to us. Since the onset of this epidemic over 15 years ago, we have struggled to contain this virus via surveillance and prevention efforts, as researchers worldwide scrambled for a cure. Meanwhile, numbers of people affected with the AIDS has spiraled upward. According to the Centers for Disease Control, more than 440,000 cases of AIDS have been reported in this country, and over 1 million are HIV-infected. Over 100 Americans die each day from the disease. Health care costs for treating the virus have risen astronomically, taking an unwieldy economical toll on its victims. Discrimination rising out of fear and lack of awareness about the AIDS and HIV has exacerbated the sense of emotional isolation faced by its victims. This is all in addition to the physical agony the disease wreaks on the body.

The scope of this crisis clearly commands the attention and resources of the American people. The Ryan White CARE Act of 1990 made available much needed Federal money to help ease the physical, emotional, and economic toll of the disease on its victims. Our Nation was caught so unprepared for the advent and explosion of AIDS and HIV in the last two decades, that this legislation provided needed relief for our reeling health services delivery system. In the 6 years since the law authorized grants to States and cities for AIDS treatment and support programs as alternatives to inpatient care, much of the burden that urban and rural hospitals face has been alleviated and the quality of life for those suffering with the virus has greatly improved. National AIDS organizations and Federal, State, and local public health officials have testified to the success of the program, while underscoring that the urgency of the AIDS epidemic has not subsided and that there exists a continued need for the CARE Act.

We are entering a new phase in our battle against the virus. A recent article in the New York Times discussed the arrival of a new class of drugs known as protease inhibitors, which, taken in combination with standard older drugs, provide the most potent therapy against HIV to date. These new treatments are unfortunately very expensive. Where Medicare and private insurance defer some of the cost, many patients are depending on the AIDS drug reimbursement program of the CARE Act as a means of easing their suffering. I strongly believe that it is especially critical as we are on the brink of medically treating this disease, that we do not withdraw our funding support.

Fighting against this killer virus is the universal charge of all Americans. AIDS is no longer a disease of a select few, but instead touches the lives of more and more people in our society. The epidemic has spread into suburban and rural areas in every State of this country and entered the ranks of sports heroes and movie stars. AIDS is currently the No. 1 killer of all Americans between the ages of 25 and 44. It does not discriminate between gender or sexual orientation. It cuts across all races and socio-economic classes. As of July 1994, 5,000 children had received an AIDS diagnosis. It is our collective social responsibility to provide for our most vulnerable citizens the best that we can, and I urge my colleagues to support this conference report.

Mr. KOLBE. Mr. Speaker, I join my fellow colleagues today in support of the Ryan White CARE Act conference report. Additionally, I would like to extend my appreciation to the conference team, chairmen BLILEY and DINGELL, and subchairmen BILIRAKIS and WAXMAN for all their hard work to see this legislation through fruition.

I also come forward today for the thousands of men, women, and children whose lives depend on the continuation of the services provided under the Ryan White CARE Act. This legislation is essential to the AIDS community. Ryan White CARE provides people living with AIDS a tool to obtain emergency care services. Ryan White CARE gives the support needed to provide AIDS patients to live their lives to its fullest potential.

Specifically, this bill requires recipients of CARE grants to utilize a portion of their funds to provide health services to women, infants, and children. This bill aims to serve all individuals infected with the AIDS virus, but acknowledges the growing number of infants and children infected with the virus. With advancements in research to deter the virus in infants, the bill targets our future—our children.

The reauthorization of the Ryan White CARE Act sends another important message. We have worked in a bipartisan manner to ensure passage of this essential legislation. This legislation is an act of simple compassion and humanity that anyone and everyone can support.

I have been a supporter of the Ryan White CARE Act since its inception, and I hope that future Congress will continue to promote its services in future Congresses. Mr. Speaker, I urge my colleagues to vote in support of the reauthorization of the Ryan White CARE Act.

Mr. SKAGGS. Mr. Speaker, this bill is long overdue, and it's the least we can do for those of our fellow citizens suffering from HIV and AIDS. I want to thank the conferees for this good final product and this step forward in the long fight against this disease.

In the Denver metro area, nearly 6,000 Coloradans and their families struggle with HIV or AIDS every day. For them, Ryan White programs provide some hope and some small measure of security.

As we take this good step today, we should also keep our eye on the ultimate goal of unlocking the secrets of this disease and someday making these Ryan White programs as obsolete as the iron lung. The research mission here has begun producing real results and fresh hope, and we should rededicate ourselves to that effort today.

This isn't a perfect bill, and I do have concerns about the provisions that could lead us down the path to mandatory HIV testing. While it's good for physicians to encourage testing, for the sake of children and mothers at risk, we must guard against the unintended and unwanted effect of discouraging women from getting the help they need. The bill does give us a couple of years of breathing room on this, and I hope we reexamine this issue with the attention it deserves.

That significant issue aside, this bill meets a dire need, and I urge my colleagues to support it—along with the other prevention and research components that are just as crucial to the fight against HIV and AIDS.

Mr. WAXMAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BILIRAKIS. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore (Mr. EWING). The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. GUNDERSON. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 402, nays 4, not voting 27, as follows:

[Roll No. 145]

YEAS—402

Abercrombie
Ackerman
Allard
Andrews
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Baldacci
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Bass
Bateman
Becerra
Bentsen
Bereuter
Bevill
Bilbray
Bilirakis
Bishop
Blute
Boehlert
Boehner
Bonior
Bono
Borski
Brewster
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clayton
Clement
Clinger
Clyburn
Coble
Coburn
Coleman
Collins (GA)
Collins (IL)
Collins (MI)
Combest
Condit
Conyers
Cooley
Costello
Cox
Coyne
Cramer
Crane
Crapo
Cremeans
Cubin
Cummings
Cunningham
Danner
Davis
Deal
DeFazio
DeLauro
DeLay
Dellums
Deutsch
Diaz-Balart
Dickey
Dixon
Doggett
Dooley
Doolittle
Dornan
Doyle
Dreier
Duncan
Dunn
Durbin
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Eshoo
Evans
Everett
Ewing
Farr
Fattah
Fawell
Fazio
Fields (LA)
Fields (TX)
Filner
Flake
Flanagan
Foglietta
Foley
Forbes
Ford
Fowler
Fox
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Frost
Furse
Gallegly
Ganske
Gejdenson
Gekas
Gephardt
Geren
Gilchrest
Gillmor
Gilman
Gonzalez
Goodlatte
Goodling
Gordon
Graham
Green (TX)
Greene (UT)
Greenwood
Gunderson
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (FL)
Hastings (WA)
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hilliard
Hinchey
Hoekstra
Hoke
Holden
Horn
Hostettler
Hoyer
Hunter
Hutchinson
Hyde
Inglis
Jackson (IL)
Jackson-Lee (TX)
Jacobs
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, E. B.
Johnson, Sam
Johnston
Jones
Kanjorski
Kasich
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kim
King
Kingston
Kleczka
Klink
Klug
Knollenberg
Kolbe
LaFalce
LaHood
Lantos
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Lipinski
LoBiondo
Lofgren
Longley
Lowey
Lucas
Luther
Maloney
Manton
Manzullo
Markey
Martinez
Martini
Mascara
Matsui
McCarthy
McCollum
McCrery
McDermott
McHale
McHugh
McInnis
McIntosh
McKeon
McKinney
McNulty
Meehan
Meek
Menendez
Metcalf
Meyers
Mica
Millender-McDonald
Miller (CA)
Minge
Mink
Moakley
Mollohan
Montgomery
Moorhead
Moran
Morella
Murtha
Myers
Myrick
Nadler
Neal
Nethercutt
Neumann
Ney
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Oxley
Packard
Pallone
Parker
Pastor
Paxon
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Rahall
Ramstad
Rangel
Reed
Regula
Richardson
Riggs
Rivers
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Roukema
Roybal-Allard
Royce
Rush
Sabo
Salmon
Sanders
Sanford
Sawyer
Saxton
Schaefer
Schiff
Schroeder
Schumer
Scott
Seastrand

Sensenbrenner	Stupak	Walker
Serrano	Talent	Walsh
Shadegg	Tanner	Wamp
Shays	Tate	Ward
Shuster	Tauzin	Waters
Sisisky	Taylor (MS)	Watt (NC)
Skaggs	Taylor (NC)	Watts (OK)
Skeen	Tejeda	Waxman
Skelton	Thomas	Weldon (PA)
Slaughter	Thompson	Weller
Smith (MI)	Thornberry	White
Smith (NJ)	Thornton	Whitfield
Smith (TX)	Thurman	Wicker
Smith (WA)	Tiahrt	Williams
Solomon	Torkildsen	Wise
Souder	Torres	Wolf
Spence	Towns	Woolsey
Spratt	Traficant	Wynn
Stark	Upton	Yates
Stearns	Velazquez	Young (AK)
Stenholm	Vento	Young (FL)
Stockman	Visclosky	Zeliff
Stokes	Volkmer	Zimmer
Studds	Vucanovich	

NAYS—4

Funderburk	Scarborough
Istook	Stump

NOT VOTING—27

Ballenger	de la Garza	Kaptur
Barton	Dicks	Livingston
Beilenson	Dingell	McDade
Berman	Engel	Miller (FL)
Bliley	Gibbons	Molinari
Bonilla	Goss	Shaw
Boucher	Hayes	Torricelli
Bryant (TX)	Hobson	Weldon (FL)
Clay	Houghton	Wilson

□ 1933

Messrs. MARKEY, DIXON, and COBLE changed their votes from "nay" to "yea."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. WELDON of Florida. Mr. Speaker, on rollcall No. 145, I was inadvertently detained. Had I been present, I would have voted "yea."

PERSONAL EXPLANATION

Mr. GOSS. Mr. Speaker, on Wednesday, May 1, I was unavoidably detained for rollcall votes 141 through 145.

Had I been present, I would have voted "aye" on votes 141, 142, 144, and 145. I would have voted "no" on rollcall No. 143.

PERSONAL EXPLANATION

Mr. BALLENGER. Mr. Speaker, on May 1, 1996, I was detained and did not cast a vote on S. 641, the Ryan White CARE Act conference report. Had I been present, I would have voted "yea" on rollcall vote No. 145.

GENERAL LEAVE

Mr. BILIRAKIS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and submit extraneous material on the conference report to S. 641.

The SPEAKER pro tempore (Mr. TAYLOR of North Carolina). Is there objection to the request of the gentleman from Florida?

There was no objection.

RYAN WHITE CARE ACT REAUTHORIZATION

(Ms. PELOSI asked and was granted permission to address the House for 1 minute.)

Ms. PELOSI. Mr. Speaker, I rise in support of the Ryan White Care Act reauthorization conference report. This legislation is needed to continue the vital services provided under the Ryan White Program. I commend the conferees for their hard work in reaching agreements on many difficult issues.

The final agreement revises formulas for distribution of funds for the emergency assistance program for cities and for the grants to States for AIDS-related health care. The conferees have balanced their approach to maximize fairness to all involved.

With regard to the newborn testing issues, the conferees have endorsed the CDC guidelines which emphasize voluntary testing and provided authorization for an outreach program to encourage voluntary testing of pregnant women. This would allow these women to take advantage of the latest treatments available to prevent the transmission of HIV to their babies. I am pleased that the conferees have managed to avoid approaches which may have driven many pregnant women away from medical care.

This authorization bill also allows for an orderly distribution of funds to States for new drugs recently approved by the FDA to improve longevity and quality of life for people with AIDS. Last week, Congress approved President Clinton's request for an emergency supplemental appropriation of $52 million for this important AIDS Drug Assistance Program [ADAP]. Now these funds can be more fairly distributed to the States.

Again, I commend Chairman BILIRAKIS and Mr. WAXMAN, as well as the other conferees, for their hard work in reaching agreement on these important provisions. The bill—and the 17-percent increase in funding provided in the appropriations bill—bring hope to people with AIDS, their caregivers, and their loved ones.

LEGISLATIVE PROGRAM

(Mr. BONIOR asked and was given permission to address the House for 1 minute.)

Mr. BONIOR. Mr. Speaker, I rise for the purposes of engaging the distinguished majority Whip about the schedule for the rest of this week and next week.

Mr. DELAY. Mr. Speaker, will the gentleman yield?

Mr. BONIOR. I yield to my friend from Texas.

Mr. DELAY. I thank the distinguished minority whip for yielding, and, Mr. Speaker, I am pleased to announce that we have concluded our legislative business for the week.

On Monday, May 6, the House will meet in pro forma session. There will be no legislative business and no votes on that day.

On Tuesday, May 7, the House will meet at 12:30 p.m. for morning hour and 2 p.m. for legislative business. Members should note we do anticipate votes soon after 2 p.m. on Tuesday.

Mr. Speaker, on Tuesday, May 7, we will consider a number of bills under suspension of the rules. I will not read through the list at this time, but a complete schedule will be distributed to all Members' offices.

After consideration of the suspensions we will take up two crime bills, both of which are subject to rules: H.R. 2974, the Crimes Against Children and Elderly Persons Increased Punishment Act, and H.R. 3120, a bill regarding witness retaliation, witness tampering and jury tampering.

For Wednesday, May 8 and the balance of the week the House will consider the following bills:

H.R. 3322, a bill to authorize appropriations for fiscal year 1997 for civilian science activities; two resolutions, House Resolution 416 and 417, establishing a select subcommittee to investigate the United States role in Iranian arm transfers to Croatia and Bosnia; H.R. 3286, a bill to help families defray adoption costs and promote the adoption of minority children; and H.R. 2406, the United States Housing Act of 1995.

Mr. Speaker, we should finish legislative business and have Members on their way home to their families by 2 p.m. on Friday, May 10, and I thank the gentleman for yielding me this time.

Mr. BONIOR. Mr. Speaker, I thank my colleague for his remarks, and I just have two questions for my friend from Texas.

Could the gentleman inform the House when we will consider the budget resolution?

Mr. DELAY. Unfortunately, we were not able to mark up the budget this week. We anticipate marking it up next week and bringing it to the floor the following week.

Mr. BONIOR. And how about the health care bill? When do we expect to go to conference on the health care bill?

Mr. DELAY. Evidently we are working with the other body, and we hope to appoint conferees sometime next week.

Mr. BONIOR. Mr. Speaker, I thank the gentleman, and I wish him well this weekend.

Mr. DELAY. Mr. Speaker, I thank the gentleman for yielding to me, and I wish everyone a safe weekend.

ADJOURNMENT FROM THURSDAY, MAY 2, 1996 TO MONDAY, MAY 6, 1996

Mr. DELAY. Mr. Speaker, I ask unanimous consent that when the House adjourns on Thursday, May 2, 1996, it adjourn to meet at 2 p.m. on Monday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

HOUR OF MEETING ON TUESDAY, MAY 7, 1996

Mr. DELAY. Mr. Speaker, I ask unanimous consent that when the House adjourns on Monday, May 6, 1996, it adjourn to meet at 12:30 p.m. on Tuesday, May 7, 1996, for morning hour debates.

The SPEAKER pro tempore. Is there objections to the request of the gentleman from Texas?

There was no objection.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. DELAY. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with on Wednesday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

RESIGNATION AS MEMBER OF COMMITTEE ON THE BUDGET

The SPEAKER pro tempore laid before the House the following resignation from the Committee on the Budget:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, April 25, 1996.

Hon. NEWT GINGRICH,
Speaker, U.S. House of Representatives, The Capitol, Washington, DC.

DEAR MR. SPEAKER: I hereby resign from the Committee on the Budget.

Sincerely,

HARRY JOHNSTON.

The SPEAKER pro tempore. Without objection, the resignation will be accepted.

There was no objection.

□ 1945

SPECIAL ORDERS

The SPEAKER pro tempore. (Mr. TAYLOR of North Carolina). Under the Speaker's announced policy of May 12, 1995, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

ICWA SPELLS HEARTBREAK FOR FAMILY IN OKLAHOMA

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Ohio [Ms. PRYCE] is recognized for 5 minutes.

Ms. PRYCE. Mr. Speaker, I rise today to address the Indian Child Welfare Act, to explain that as it stands today, it has struck tragedy in the hearts of countless children, birth parents, and adoptive families throughout this entire country.

The Indian Child Welfare Act, or ICWA as it is called, was intended to stop State court abuse of Native American children in involuntary placements. In its current form, ICWA is a factor in every single adoption in this country, because it is nearly impossible to determine what child may be part Indian due to some remote part of its heritage.

I have already recounted several tragic incidences due to the misapplication of ICWA on this House floor. Today I want to tell the Members about an especially sad story that took place in Oklahoma. A couple, Rick and Kathy Clarke, who were seeking to adopt, were notified that they had been selected for possible placement and home study by a tribal worker from the birth mother's tribe. The home study was conducted by the manager of the tribe's division of children and family services.

After conducting the home study, the tribal manager told the prospective parents that ICWA could be waived, and that the tribe had only the best interests of the child at heart. He further suggested that the child be enrolled in the tribe and be allowed to explore his or her cultural heritage.

The couple enthusiastically agreed to this suggestion. Rick and Kathy Clarke were with Shonna Bear, the birth mother, when the child was born. It was a joyous and special occasion. Little did they know that because of the misapplication if ICWA, the little boy they already loved so much would be taken from them.

Mr. Speaker, the court ordered Rick and Kathy to turn the child over to the tribe. Tribe officials, using ICWA, succeeded in securing a relinquishment order, even after assuring the Clarkes that they would not. Mr. Speaker, the sad irony is that Shonna Bear wanted her baby to have a loving and stable home with these adoptive parents. She, a loving and courageous birth mother who chose life for her baby instead of abortion, had a right to feel comfortable and confident that she, in her judgment as the birth mother, had made the right decision for her baby. But her decision was overturned. The adoption plan she had so carefully and lovingly made was overturned by the court.

ICWA was never intended to cause such pain and anguish for potential parents, birth parents, and children. Rick Clarke, the adoptive father, did not enter into this adoption carelessly or without the utmost due diligence to the law that applied. He is an Oklahoma judge, very well-versed in the law and its many pitfalls.

Let me quote from the letter that Rick sent to me:

> We had less than an hour and a half to say good-bye to our baby. I will never forget Kathy sitting in Jeffrey's room, holding him and saying, "We are never going to see him again, are we?" The pain in Kathy's eyes tortures me even now.

He goes on to say:

> For weeks we were totally depressed. We cried every day. Even with the help of our pastor, we needed the help of other professionals to pull us out of our tailspin. Even now, months later, when we think of him we get so upset. When we think if adopting another child, we get fearful of this type of thing happening again.

Mr. Speaker, that is exactly the point of this legislation. Surely we want to correct our legislative overbreadth so these individual tragedies do not occur again to loving, well-meaning families, but more importantly, we must realize that this correction will be one small step this Congress can take to encourage adoption in our Nation, rather than foster impediments to it.

How many children languish in foster homes and are shuffled about from one setting to the next, year after year after year, because otherwise willing and wanting families are afraid to go through what might end up being a heartbreaking experience? I will tell the Members how many: 500,000 children are awaiting an adoptive home. We have a chance to remove yet another one of the roadblocks to adoption, that fear of being the next front page story.

Let me read one more line of Judge Clarke's letter:

> Because we committed all our resources to this adoption, after having the approval of the tribe, we are effectively prevented from attempting to adopt again.

The minor changes I have offered to the Indian Child Welfare Act go a long way towards avoiding such tragedies, while maintaining the intent of the act. Rick and Kathy will never see the little boy again that they love so much, but we can make that right, Mr. Speaker. Rick Clarke is absolutely right: This fight is for the children. I urge my colleagues to join me by supporting the adoption legislation on the floor next week.

Mr. Speaker, I include for the RECORD the letter from Rick Clarke.

The letter referred to follows:

RICK AND KATHY CLARKE,
Tulsa, OK, April 25, 1996.

Hon. DEBORAH PRYCE,
U.S. Representative,
Columbus, OH.

DEAR CONGRESSWOMAN PRYCE: Enclosed you will find a summary of what my wife and I experienced dealing with one Indian tribe and the Indian Child Welfare Act. Also, I am sending along a copy of the letter the tribal worker sent us when they agreed to waive ICWA and place Jeffrey in our home. I send this information to you at Nichole's request.

Nichole and I talked earlier today about your goals with the present legislation pending before Congress. She was very informative, professional and still compassionate concerning our ordeal. Please thank her again for me.

As you will see from our story, the effect of the ICWA is sometimes devastating to not only potential adoptive parents' lives, but even more so for the children it imprisons. Kathy and I wholeheartedly support your efforts to limit the ICWA's abusive and disastrous results. You are fighting a good fight for the sake of innocent children all over this nation. May God bless you in your battle.

We stand ready to offer any assistance you need in winning this fight. I know our story and pain don't even begin to compare to those of others, but we will do what we can to help. Please let us know how we can assist.

Sincerely,

RICK CLARKE.

EARLY NOVEMBER

John O'Connor called and said that he had someone who wanted to see a biography on us. We revised the one that we have previously given out and sent it to him. We also found out at this time that the baby's father was part Indian. We were not very optimistic because Indian tribes seldom will approve non-Indian homes for placement. However, since we thought they could waive that requirement, we went ahead and tried.

Kathy has said that if we don't have a baby by the end of the year, she wanted to stop looking for a baby and try to get an older child. With this possibility, we both agree to try.

DECEMBER

John called on 12/16/94 and told Rick that the tribal worker had agreed to do a homestudy of us. At that point, we had given up hope because we had not heard anything for a while. We assumed that since we were not Indian, the tribe had declined. However, even knowing we were not Indians, they agreed to see us.

On 12/17/94 Scott Johnson, Manager of the Division of Children & Family Services for the Muscogee (Creek) Nation, came to our home for the purpose of conducting a homestudy. Mr. Johnson spent close to three hours in our home talking to us and asking us questions. He informed us that his goal, and that of the tribe, was to make sure that the child's best interests were served by the adoption.

Mr. Johnson told us that the primary reason for the strict requirements on adoption of Indian children was to make sure that the Indian children became members of the tribe and to avoid the wholesale baby-brokering of Creek children. We made it clear to him that we were concerned about not being Indian and he told us that the preferences in the ICWA could be waived by the tribe when they thought it would be best for the child. He said that most tribal authorities were most concerned about keeping the numbers of enrolled members high—it somehow effected their financial support. The only conditions he asked us to agree to were to enroll the baby with the Creek Nation and to allow the child to freely explore his cultural heritage if he wanted to do so. We joyfully agreed to those conditions as we both thought they would be in a child's best interest.

As we talked with Mr. Johnson, he made it clear to us that he knew the Bear family. He said that the father of this child, Freddie Bear, had several children the tribe knew about that he was not providing for. His general impression of the whole family was not very favorable. He said he was happy that this child would have a chance to be raised in a better environment than would his siblings and relatives.

As Mr. Johnson left our home, he commented that he rarely had been in an adoptive home where there was as much peace and love as he felt in ours. With that, he informed us that he would approve our home as an adoptive placement for this baby and that the tribe would not intervene.

Needless to say, we got very excited. We went out almost immediately and began to buy baby stuff. We still didn't unwrap many of the items because we had such a long road ahead of us.

On 12/21/94, we met with John in his office at 4:30. He said that things were looking very good. He told us at that point we could back out of the process and there would be no legal expense to us since everything up to then was somewhat preliminary to even considering this baby. However, since the tribe was the only party that was previously unknown and they were now with and for us, there appeared to be nothing standing in the way of a successful adoption. Based on that, we agreed to go full steam ahead and committed to adopting this baby and paying all expenses to accomplish that goal.

We thought that the baby might be born around Christmas due to the mother having some complications. It was not meant to be, however.

JANUARY

Because of a lack of communication and possibly stress on the mother, we though that the adoption may be off in early January. Shonna's father did not think we were paying enough of her bills. We, however, wanted to avoid the appearance of baby-buying. We agreed to meet with the mother on 1/15/95, and were pleasantly surprised. She restated her commitment to having us adopt the baby. She also told us that we were really the only couple she seriously considered. She read several biographies and liked ours the best by far.

On 1/31/95, Shonna went he OU Medical Clinic and is told that the doctor want to induce labor. As soon as we find out, we went to the hospital and talk to her and then wait for the big event. At around midnight, we went home to let the dog out. We were only home for a few minutes when we got the call saying to return to the hospital immediately—the baby was on his way.

As we got off the elevator, we met John O'Connor and he congratulated us on the birth of a son. Jeffrey Adam was born at 12:53 A.M. on 2/1/95 and weighed 7 lbs. 20 ozs. He was 21 inches long. Without a doubt, he was and is a perfect baby.

JANUARY 1, 1995

We stayed with Jeffrey the nursery until around 6:00 A.M. Kathy got a bracelet so we could visit and take him out of the nursery. Rick went to work, but met Kathy and her mom at the hospital at noon. We went in the room with Jeffrey and the mother and had a wonderful visit.

We went back up to the hospital after work that evening. Because there was a problem with the bracelet, we could only take Jeffrey to another room if a nurse went with us. While upsetting, we agreed because we just wanted to spend time with our baby boy.

FEBRUARY 2, 1995

Again, Kathy and Rick met at the hospital at noon to visit Jeff. Rick's court guard and some friends were there also. Jeff was not in the nursery, so we thought something was wrong. He was in Shonna's room with her. She told us that her mother-in-law and other family members were up and wanted to see the baby. We think they had seen him and that was the reason why he was in her room. Kathy and her mom stayed up at the hospital for a long time after Rick went back to work. Then they went shopping to get Jeffrey a "going home outfit."

When we went back that evening, everything got much worse. We know she had been moved to a different room and went directly to the new room. When we passed the nurses desk, we saw an Indian woman and several younger Indians asking for someone's room number and being told she (later found out to be Shonna) was not at the hospital. The would-be visitors were not happy.

Shonna told us that the family was looking for her. Because she did not want to see them, she had been listed in the hospital directory as not a resident. Her door was even marked "No admittance. Check at nurse's desk." Jeffrey was in her room at that time. We sat and held him for a short time.

Then, a nurse came in the room and told us "I have to take the baby to the nursery." She would not tell us why so we would not let her take him. She returned a few minutes later and told us she had to sit in the room with us if he could not go to the nursery. We eventually found out that there were three lighthorsemen (Creek Nation tribal police) in the lobby with a tribal court pick-up order for Jeffrey. This order, I understand, requested that the child be placed in the custody of the manager of the Family Services Division of the Creek Nation That person was Scott Johnson, the same person that had previously approved us as adoptive parents for Jeffrey. When I walked through the lobby, I saw three Indian men sitting in the waiting room—one dressed in a uniform with a gun and the other two in plain clothes with guns.

At this point in time, Jeffrey had not been released by his pediatrician to leave the hospital—any removal would have to have been "Against Medical Advice." The hospital staff had called the "risk management" department who eventually got their lawyer involved. The hospital lawyer showed up at the hospital late in the evening. He told the lighthosemen that they had no authority to be on the hospital property, threatened them with trespassing and they finally left the hospital with the threat to return with a different order. Also, apparently the date on the order was incorrect.

Needless to say, during this time we were extremely upset. We were calling everybody we knew that might be able to help. This included our attorneys, Shonna's attorney, tribal members involved with children's services, and even tried to get a hold of Scott Johnson. All of our efforts proved futile. Had it not been for the hospital attorney, we would have lost Jeffrey right then.

After they left, we stayed at the hospital until Shonna checked out at around 2:00 A.M. on 2/3/95. Jeffrey was returned to the nursery.

2/3/95

We met Shonna at the hospital around 9:00 A.M. with the intent to take him home with us. Because of the tribe's actions and the cloud of uncertainty it caused, we decided not to file the adoption petition that morning. However, because Shonna and we were still in agreement about us adopting Jeffrey, we decided to take him home with us. The hospital required that Shonna check him out and leave with him. We immediately took

physical custody of him after she left the hospital with him. That was one of the happiest moments we have ever experienced.

Within 20–30 minutes after we got home with our new baby, I received a call from people at my work. They told me that Mr. Charles Tripp, Assistant Attorney General with the Creek Nation, was at the Juvenile Bureau asking Judge Crewson to sign a pick-up order for Jeffrey. It is my understanding that the reason for this was because the mother agreed to give her baby up for adoption, she was not a fit mother and the child was at risk because of that.

Our extreme joy was immediately turned into utter terror. Because of our love and concern for Jeffrey, we felt it was in his best interest to return to his mother's physical custody as opposed to the possibility of being placed in a shelter for "deprived children." We know that there was a strong possibility that she would get attached to this lovely baby boy. Also, her two sons had been told all along that the baby would not be coming home with her, but she was having him for someone else. This had to confuse them, too.

We called Shonna and told her that the tribe was still trying to remove him from our care and our fear of Jeff going to a shelter. We all agree that it would be close to impossible for the tribe to remove him from her custody and to meet in order to return Jeffrey to Shonna temporarily.

While Kathy takes Jeffrey to Shonna, Rick is on the phone with Judge Sellers (acting as presiding Judge while Judge Winslow was out of the courthouse.) Mr. Tripp was before Judge Sellers asking him for the pick-up order since Judge Crewson had recused. After Mr. Tripp talked to the tribal judge, there is an agreement to allow Jeffrey to stay in our home, without tribal interference, until a full hearing could be held in front of Judge Winslow. That hearing was to be set on 2/14/95. However, by the time the agreement was made, Kathy had already returned Jeffrey to Shonna.

The rest of that day we spent crying our hearts out. Not only for ourselves, but also for Jeffrey. He had to go back to his mom who could not afford or want to have him. He was the lifetime victim.

2/4/95

Early on Saturday we called Shonna to see if everything was all right. Since she was not prepared to take him home, we were concerned for everybody. She seemed elated and relieved to hear from us. She said she could not handle what was going on and still wanted us to adopt Jeffrey. She even suggested that we go out of state and do the adoption and lie about who the father was and say the child was not Indian. We obviously could not do that, but we told her we could come and get him and keep him until the court date.

Once again, we were overjoyed. Our hope that the Creek Nation would do the right thing for this child took over. We met Shonna and took physical custody of Jeffrey early in the afternoon. Even though we were just "baby-sitters" at that point, we felt like a family.

2/4/95 TO 2/11/95

Kathy has taken off work to spend all of her time to be with Jeffrey. We take him to church on Sunday and introduce him as our baby. We take him to friends homes, bring him to my workplace, and everywhere else we go normally. We are a family.

2/11/95

As we were eating breakfast, Shonna called and asked if she could see Jeffrey to say good-bye. Because of all the problems the tribe caused, she did not have a chance to do that. As Rick talked to her, it became obvious that she was probably changing her mind. The time she had to spend with him due to the tribe's interference forced her to bond with him. We do not believe that she did this maliciously or with the intent to just get some bills paid. Of interest, is that even now the father has not seen the baby nor expressed any interest in Jeffrey.

We had less than an hour and half to say good-bye to our baby. I will never forget Kathy sitting in Jeffrey's room, holding him and saying "We are never going to see him again, are we?" The pain in her eyes tortures me even now.

I met Shonna for the last time with only Jeffrey—Kathy could not bear having to hand him over to her. We gave her almost all of the clothes and toys we had bought for him. We knew she did not have anything to take care of him. We wanted Jeffrey to be happy and safe and have plenty of things he needed. After I gave Jeffrey to Shonna I drove away with a feeling of total loss. I had never wanted something to happen more nor experienced so much pain when it didn't.

For weeks we both were totally depressed. We cried every day when we thought of Jeffrey. Even with the help of our pastor, we almost needed the help of other professionals to pull out of our tailspin. Gradually, our pain subsided. However, even seven months later, when we think of him we get upset. Also, when we even think about adopting any other child we get fearful of this type of thing happening again. That is in addition to the fact that we have no money to even begin the adoption process since we spent so much on the failed attempt.

AFTER JEFFREY'S RETURN TO HIS MOTHER

We have been told that after this mess happened, Scott Johnson was called before tribal authorities and told to change his ways concerning his representation of the tribe's position on adoption. This is born out by his behavior. During the time we had Jeffrey in our home, Mr. Johnson called our home and talked to Kathy. He told her we were still the best place for Jeffrey to be and he still would continue to fight for that to happen. He had not, at that time, changed his opinion at all.

After his meeting with tribal authorities, we are told that he now says that he never promised us that the tribe would consider us as an adoptive placement for the child and that the tribe would follow placement guidelines as it always does, without exception. Obviously, his letter is clear on this point.

Both of us, during separate conversations with Mr. Johnson, expressed our concern over him personally and the possible negative impact he may suffer for his bold and appropriate position for the best interests of this child. He apparently has changed his position.

Two days after the article about the failed adoption was in the May 28, 1995 Tulsa World, Shelly S. Crow, Second Chief of the Muscogee (Creek) Nation called Rick at the office and wanted to meet. Within a week after that, Ms. Crow showed up at the courthouse and met with him. She informed Rick that she was very disturbed by the article and wanted to know what she could do to make everything right. She said something like what happened to us should never happen and that the tribe was concerned about Indian children. She also said that sometimes the best thing for Indian children was to be placed outside an Indian family, "as in your case."

Ms. Crow informed me that she was contacted by the paternal grandmother and told of the circumstances. She proceeded to write letters to put a stop to the adoption and insisted that the tribe intervene just as it eventually did. I asked her if she was aware that Mr. Johnson had approved our home when she decided to intervene and she said she did not know that nor had she seen the letter. She was also surprised to learn that the paternal grandmother had seven other grandchildren living with her on a permanent basis and that all were being supported by state and tribal assistance in substandard housing. She acted without even considering the best interests of Jeffrey.

Since Ms. Crow felt so guilty about her actions, she was very free with even more information. She went on to tell me that after Mr. Johnson changed his "official" position, he got promoted to a better/easier job with an extra $3,000 a year salary increase. She believed that Mr. Johnson had been reprimanded at least four times in recent years by the tribe for various infractions while employed by the tribe.

Her last comment about Mr. Johnson was that his father worked somewhere in the federal government, possibly for the Department of Housing and Urban Development. Because of this, and the fact that if the tribe did anything to Mr. Johnson the federal government may cut funding, Ms. Crow thought the tribe would put up with him no matter what he did wrong.

CONCLUSION

The Creek Nation should not be allowed to ruin so many innocent children by their selfish, destructive conduct. Not only have they shattered our lives, after encouraging us to go forward with this adoption, but they have sentenced Jeffrey to live a life in an environment where he was not wanted and could not be provided for adequately—They have not only destroyed our lives, but, more importantly, Jeffrey's.

In addition, because we committed all of our resources to this adoption, only after getting the approval by the tribe, we were effectively prevented from attempting to adopt again for some time.

The Creek Nation should suffer for the pain they have caused.

MUSCOGEE (CREEK) NATION
Okmulgee, OK, December 29, 1994.

Mr. JOHN O'CONNER,
Newton and O'Conner Law Firm,
Tulsa, OK.

DEAR MR. O'CONNER. A homestudy was conducted on the home of Richard Randal and Kathy Jean Clarke for the purpose of placing the unborn child of Ms. Shanon Boar whose spouse and father of the said child is an enrolled member of the Muscogee (Creek) Nation. The home was found to be of extraordinary quality. Mr. and Mrs. Clarke are people of integrity with high morals and quality values. Seldom have I met a couple with such character and desire to be good parents. Rarely do I have the opportunity to enthusiastically recommend a home for placement without reservation. In this instance however, I am delighted to approve this home for placement.

As a duly appointed Officer of the Court and representative of the Muscogee (Creek) Nation Division of Children and Family Services we accept the home of Mr. and Mrs. Clarke as suitable placement for the unborn child of Ms. Shanon Bear. The Muscogee (Creek) Nation declines to intervene in the adoptive placement of said child to the Clarke family. However, if an alternate placement is made, the Muscogee (Creek)

Nation reserves the right to intervene at a later time.

SCOTT A. JOHNSON,
Division Manager.

BONE MARROW TRANSPLANT FOR TOM WELCH

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts [Mr. MEEHAN] is recognized for 5 minutes.

Mr. MEEHAN. Mr. Speaker, I have come to the floor this evening to ask for the Nation's help. A long time family friend of mine, Tom Welch, who lives in the town of Chelmsford, MA, is in serious need of a bone marrow transplant. Tom is a community activist, who tirelessly works to help others. He is employed by Hewlett Packard and he also serves as a town selectman—a position to which he was recently elected. He has a wife, Maureen, and two sons—a family to which he is absolutely committed.

Well-read and smart; a lover of jazz music, Tom is—to all who know him—an all around great guy. That is why it is with great sadness that I make this plea tonight.

In January of this year, Tom was diagnosed with Myelodysplastic Disorder, a condition which inhibits reproduction of the body's blood cells and destroys its ability to combat infection. Tom's condition is the result of long-term exposure to several forms of radiation therapy as, over the years, he has battled Hodgekin's Disease, Melanoma, and Basil-Cell Carcinoma. While his cancer is in remission, his life is now threatened by this immuno-deficient condition, and the last hope for a cure is to perform a bone marrow transplant. Such a procedure would replace his damaged bone marrow with another person's, much healthier marrow, restoring his body's blood-cell production and adding years onto his life. Since Tom is in good health, the procedure should be successful; the real obstacle is finding an acceptable donor match.

Each year over 9,000 Americans are diagnosed with Tom's condition. Unfortunately, less than 30 percent of those in need ever receive a bone marrow transplant. Matching potential donors is an extremely difficult process. Currently, two agencies in the United States are coordinating the effort: The American Bone Marrow Donor Registry, and the National Marrow Donor Program. Worldwide, over 3 million potential donors have been cataloged, but the demand for transplants still outnumbers the known supply.

Today, in my district, the friends of Tom Welch are holding a donor drive in an attempt to find a match for Tom, and this where I need America's help. I want to first encourage all Americans to contact their local donor registry to be listed as a potential donor. I also want to urge for help with the tremendous financial burden involved with such a drive. Take Tom's case for example, the cost to catalog each potential donor is approximately $50. One can easily see that such a drive quickly becomes very expensive.

So tonight I am asking, on behalf of Tom Welch and all other patients in need of a bone marrow transplant, for help. Behind me is the address and phone number of the friends of Tom Welch. I urge everyone to call and pledge your support.

In closing, I want Tom and Maureen to know that they are in my prayers and in the prayers of people across the nation. With the help of the entire Nation, donors will be found for Tom and all others in need.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair would request that Members address the Chair and not the television audience.

URGING HOUSE REPUBLICAN LEADERSHIP TO DROP CONTROVERSIAL PROVISIONS IN PROPOSED HEALTH INSURANCE REFORM MEASURE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey [Mr. PALLONE] is recognized for 5 minutes.

Mr. PALLONE. Mr. Speaker, as health insurance reform goes to conference between the House and the Senate, I want to stress again tonight in the 5 minutes that I have that the Republican leadership needs to drop controversial provisions that I think are likely to scuttle this very important health insurance reform. Of course, the most important aspect of this, the most controversial provision, the one that I think really needs to be dropped, is what we call medical savings accounts; the tax breaks, if you will, for the wealthy and the healthy.

Mr. Speaker, last week the Senate passed the Kennedy-Kassebaum health insurance reform bill unanimously, 100 to zero. But the Senate bill, unlike the House bill, does not include these divisive provisions that doom the chances of this very important health insurance reform from becoming law.

The so-called medical savings accounts are essentially tax-free savings accounts from which participants could pay for everything but catastrophic health care costs. The problem with these accounts is that they would be a good deal, again, only for the healthiest and wealthiest people in our health care system, those who do not have high health care costs on a regular basis.

But health insurance costs would then increase for the average American, because essentially when we talk about health insurance, it all involves a health insurance risk pool which has all kinds of people in it. If we take out all the healthiest and the wealthiest people, we are essentially leaving in the pool the people that are the highest risk, that need the most attention or health care, so we destroy the whole basis for the health insurance pool and drive up the costs, essentially, for those who are left after those have been taken out of the pool.

Mr. Speaker, some people have asked me, why is this happening? Why is Speaker GINGRICH, why is the Republican Presidential candidate, talking and so insistent about including the medical savings accounts? Basically, it is a financial windfall for the Golden Rule Insurance Co., whose top executive has given Republican political committees over $1 million in contributions in the last 4 years.

What I am saying, Mr. Speaker, is let us forget about the political contributions. Let us forget about Golden Rule Insurance Co. Let us do what is right for the average American.

Mr. Speaker, again, I wanted to point out that medical savings accounts are designed to accompany the purchase of very high-deductible catastrophic insurance policies. They offer a myriad of tax breaks for those who can afford to save up money to pay the vastly increased out-of-pocket costs caused by an out-of-reach deductible.

I think that three questions have to be asked. Every American basically should ask the Republican leadership or every Republican lawmaker three questions with regard to these medical savings accounts: First of all, who wins if they are incorporated in this insurance reform; who loses; and why the Republican leadership insists on continuing to push for the medical savings accounts.

Who wins? The answer is simple. The wealthy win. They are the only ones who can afford to contribute thousands of dollars to a savings account. In fact, less than 1 percent of all people who might use medical savings accounts earn less than $30,000 a year, even though these families account for nearly half of all American taxpayers.

Who loses? Everyone else who relies on standard insurance. In fact, if medical savings accounts are available, some businesses could make it impossible for many families to even afford adequate health insurance.

□ 2000

The cost for premiums of regular health insurance could increase by more than 60 percent. Our goal at all times should be to try to increase the amount of Americans that have health insurance and to try to make health insurance more affordable.

We will do exactly the opposite with these medical savings accounts. We are

creating tax breaks for the wealthiest and the healthiest among us and we are making costs less affordable, and we are probably making it so that fewer people in the long run would have health insurance. It makes no sense.

The only thing I can say is that I have to hope that over the next few weeks, it was mentioned earlier this evening by the gentleman from Texas [Mr. DELAY] that we may go to conference on the Kennedy-Kassebaum bill later next week. The conference has been held up essentially because there has been an effort to appoint a lot of conferees on the part of the Republican leadership who would favor these tax breaks for the wealthiest and the healthiest among us.

What I hope is that that position will change over the next week, that we can appoint conferees, and that this conference will quickly accede to the Senate version of the bill which does not include these tax breaks for the wealthiest and healthiest among us. What we need is a clean Kennedy-Kassebaum bill. Why? Because it will provide for portability and it will provide coverage for those with preexisting conditions.

The whole point of this health care reform this year, and it was stated by President Clinton in his State of the Union address, is that we must get to those people who change a job, who lose their insurance because they change jobs or become self-employed, and we must get health insurance for those people who have preexisting medical conditions. Let us deal with those problems now. Let us forget these other controversial provisions.

WE NEED TO RAISE THE MINIMUM WAGE

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Georgia [Ms. MCKINNEY] is recognized for 5 minutes.

Ms. MCKINNEY. Mr. Speaker, I have tried to compile the reasons why the Republican majority will not allow us to vote on a minimum wage increase, and the first reason I came up with was, of course, stated by Majority Whip DELAY, who says that minimum wage families do not really exist. He says, "Emotional appeals about working families trying to get by on $4.25 an hour are hard to resist. Fortunately such families do not really exist."

An honorary member of the Republican freshman class, Rush Limbaugh, says on the official poverty line, "14,400 for a family of 4? That's not so bad."

Now he said that in November 1993.

Earlier he said, "I know families that make $180,000 a year and they don't consider themselves rich. Why, it costs them $20,000 a year to send their kids to school."

Unfortunately, the House majority leader, DICK ARMEY, has said that he will resist a minimum wage increase with every fiber in his being. He says that the minimum wage is a very destructive thing.

Limbaugh goes on to say, "All of these rich guys like the Kennedy family and Perot, pretending to live just like we do and pretending to understand our trials and tribulations and pretending to represent us, and they get away with this."

Well, in 1993 while Limbaugh was equating himself with the average American family, Limbaugh's 1993 income was estimated to be $15 million. That is from Forbes, April 1994.

One of the freshmen who also does not know about middle-class living, real middle-class living, says, "300,000 to $750,000 a year, that's middle class."

I think that is out of touch. And anyone who makes above $750,000 a year, he says, "that's upper middle class." Now, this is a real person who is representing all of the American folks in this Congress.

But what about the people who really are working hard and making minimum wage and need a little bit of representation down here on the floor of this House? Who is it that our Republican majority is representing, and who is it that people who are fighting for a minimum wage increase are representing?

This is a cartoon from the National Journal. How long does it take to make $8,840? Full-time minimum wage worker, it takes this poor woman one year, because most of them are women. And the average CEO of a large U.S. corporation? Half a day.

So we do need to raise the minimum wage.

Finally, I keep coming back to this poster, because it so accurately describes what is going on in Washington today with this new Republican majority. It says, "The 104th Congress may be the worst in 50 years."

And while we cannot get an increase, a vote on increasing the minimum wage, we learned that the GOP has decided that they want their committee Chairs to look into abuses of the Clinton administration and of labor organizations. This very well could go down in history as the worst Congress in 50 years.

URGING BIPARTISAN SUPPORT FOR MINIMUM WAGE INCREASE

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from North Carolina [Mrs. CLAYTON] is recognized for 5 minutes.

Mrs. CLAYTON. Mr. Speaker, I rise again to urge bipartisan support for the minimum wage increase and there is great precedent for such an effort. The last time the minimum wage was raised—in 1989—135 Republicans in the House voted for it, including Mr. GINGRICH, 36 Republicans in the Senate voted for it, including Mr. DOLE, and President Bush signed the bill into law.

Since that increase, according to the Center on Budget Priorities, "Inflation has eroded nearly all effects of this increase and the annual value of the minimum wage has returned to its 1989 level."

In other words, if we want our workers to have the same earning power in 1996 that they had in 1989, a modest, two-step increase in the minimum wage is required.

But, the bipartisan spirit from 1989 appears to be missing in 1996, at least among Republican leaders.

One Republican leader wants to abolish the minimum wage, another is quoted as saying that minimum wage families "do not exist," and a third has vowed to "commit suicide" before voting for the minimum wage increase.

Mr. Speaker, the American worker has not changed in 7 years—they still need a fair wage.

What has happened to the Republican Party?

Between 1979 and 1992 the number of working poor in America increased by 44 percent.

Again, Mr. Speaker, I would not promote a policy to help the working poor if it was shown that such a policy would substantially hurt small businesses.

According to the best evidence I have seen, a modest increase in the minimum wage will help the working poor, without hurting small businesses.

A recent survey of employment practices in North Carolina after the 1991 minimum wage increase, found that there was no significant drop in employment and no measurable increase in food prices.

The survey also found that workers' wages actually increased by more than the required change.

In another study, the State of New Jersey raised its minimum wage to $5.05 while Pennsylvania kept its minimum wage at $4.25.

The researchers found that the number of low wage workers in New Jersey actually increased with an increase in the wage, while those in Pennsylvania remained the same.

In 1991, the increase enjoyed bipartisan support, with President George Bush signing the bill.

Since 1991, the minimum wage has remained constant, while the cost of living has risen 11 percent.

If the Republican leadership in the House would allow a vote, I believe we would pass the minimum wage increase—with a bipartisan vote.

It is the right thing to do; it is the fair thing to do.

I care about small businesses, and it will not hurt small businesses.

WHAT BUSINESS SAYS ABOUT MINIMUM WAGE INCREASE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arkansas [Mr. DICKEY] is recognized for 5 minutes.

Mr. DICKEY. Mr. Speaker, I would like to talk in opposition to the minimum wage increase from the standpoint of what business would have to say about this. I do not know if that has been brought into this discussion.

Mr. Speaker, I am an employer, I am a restaurant owner, I own two different restaurants in Pine Bluff, AR, as well as being a politician. This is 100 percent politics that we are talking about here and not any of economy or not any from consideration of the people who are involved.

I first want to say that the people who pay the price of the minimum wage are the consumers. They do it in one of two ways. They either pay a higher price or they pay with less service when they go to purchase things and they go into the marketplace.

What people do not understand and what may need to be clarified in this discussion is what goes into the higher price. If you are in the restaurant business, you think, well, the labor that you have to pay is all that you would experience.

□ 2015

There is the tax, the additional tax, the payroll tax that comes from the additional pay. But there is also another factor, and it kind of compounds, and that is that the lettuce that is bought from the store or brought in is going to be at a higher cost because of the minimum wage. The meat, the condiments, all of the things that go into making the product are going to be higher.

So the restaurant owner or the business owner is sitting, looking, and thinking, what is the consumer able to stand? The first reaction is that we need to cut the number of employees because we have got price as a barrier in so many instances. When that is the case, then they usually cut the most inexperienced employee, leaving the other employees more stressed and less able to handle the press of business.

If that does not work and then you start adding back the employees, then you are faced with facing the consumer with a higher cost of the item. Now, when that happens, the consumer then has to deal with one or both of these issues, higher price or less service, and they then make choices that most of the time will bring about less sales.

When you have less sales and you confirm that in an operation, and you do that on a month-to-month basis, you then start cutting employees because the sales are down. Now, that is what can happen, it probably will happen in this particular case, and it is not necessary.

From the employee's standpoint, there is another viewpoint that needs to be looked at. The employees who are there know that when they come in to work at a minimum wage, that they are coming at a training wage, and that this is something where they probably are more of a liability to a business or an industry than they are an asset at the early stages. So they work up.

When they work up and they try to progress in this area, they have to do it in relationship to other employees. So if you have an employee who is given a raise, that employee is compared to others and there is kind of a standard that is set. If you have the Government coming in for the sake of politicians and just setting an automatic raise, you sort of disrupt all of that process.

It also gives the employee the idea that this is all I am going to make, so we take away the incentive that they have for improving themselves, which the minimum wage, as it stands right now as a starting wage, as a training wage, is in fact an indicator or a starting place for the employees.

So what I am really saying is no employer really wants his employees to stay on minimum wage. If they stay on minimum wage and they think that is all they are going to get until the politicians come and help them, they will not be committed to productivity, they will not be committed to improvement or achievement, and they will just sit there. When that happens, there is a staleness that takes place, and those employees that want to stay on minimum wage and they figure that is all they are going to do eventually need to be moved off the work force, because they are not responsive to the customer. Again, the customer is the king. He is the boss, and they are the people we are trying to please.

There is also the employee who is remaining when the cutbacks come. They have to work under more stress and confusion, and that hinders and hurts the operations.

Now, if you think through all of that and you assume all of that for the sake of this discussion as being true, coming from someone who is actually in the pits of working with consumers and with employees and trying to deal with all these forces, if those things are true, then what you have is a question of why in the world then do we do it?

I have finally concluded that the liberals, the liberal politicians, are using this as a front, using the emotionalism of this issue as a front to charge more taxes, to take more money away from businesses, and that is wrong also. That has an effect.

So these are the reasons for my being against raising the minimum wage.

THE CIVILITY PLEDGE

The SPEAKER pro tempore. Under the Speaker's announced policy of May 12, 1995, the gentleman from Massachusetts [Mr. BLUTE] is recognized for 60 minutes as the designee of the majority leader.

GENERAL LEAVE

Mr. BLUTE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the subject of my special order.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. BLUTE. Mr. Speaker, we tonight gather for a special order of a different kind, not like many of the ones that deal with substantive issues that we hear every day here in this Chamber of the people's House of Representatives. Tonight we are going to deal with an issue that I think is very important with how we conduct our business here in the House of Representatives, and that is on the civility of the House debate as it has evolved over the course of our history, but also as it has evolved within recent years, which has caused many of us to be very troubled with the nature of the discourse here in the House of Representatives.

We are being joined with Members from both parties, in both the Democratic Party, the Coalition, and also with the Mainstream Alliance of which we are Members on the Republican side, Members who are commonly referred to as Blue Dogs, Blue Dog Democrats and Blue Dog Republicans, joining here together to talk about an issue that we think is very important, that we think the American people should understand why it is so important that we conduct our business here, conduct our debates, in a way that brings credit upon us and upon this institution.

Thomas Jefferson once remarked that it was very material that ordered, decency and regularity be preserved in a dignified public body. Frankly, there have been too many incidents here in our body over the last few years that have brought, I think, discredit on the membership of this body and further eroded the public's confidence in the way we conduct our business.

After all, we pass the laws that the people have to live up to. If they do not respect the institution, then it becomes more difficult for them to respect the laws that we ultimately pass, which they think is very important.

Certainly some of the incivility we have seen in the House of Representatives and in our political cultures relates and emanates from the general society's growing trend toward incivility, toward lack of respect for one another. U.S. News & World Report had a cover story called "In Your Face, Whatever Happened to Good Manners?"

So we are a reflection of the larger society. We think it is important that we be responsible and address our own problem in this area. We think that by

doing this, we can improve this institution's reputation with the American people.

We have authored, the Blue Dogs jointly, Democrats and Republicans, a civility pledge that some of the Members will talk about later, but basically it commits Members of the House of Representatives to treating each other in a respectful manner during our differences of opinion. We believe that one can have tremendous disagreements, that one can have a vigorous debate on the issues that our great country faces, the divisive issues we face, without the type of acrimony and the type of personal invective that we see all too often in this House.

We are making the effort tonight, we have been doing it for a couple of months, we have over 70 cosponsors, but we wanted to have this special order to bring focus to this issue, to try to get more support within the House for this effort, and we think ultimately if we are successful, we are going to return this body to the place where it really should be, the people's House, where we can disagree without being disagreeable.

At this time I would like to yield to someone who is a great leader of this House, he is someone who in his day-to-day conduct represents the kind of civility we are talking about, and that is the chairman of the Subcommittee on Energy and Power of the Committee on Commerce, Congressman DAN SCHAEFER from Colorado.

Mr. SCHAEFER. Mr. Speaker, I thank the gentleman very much for giving me this opportunity to speak to this body and to the American people very briefly on exactly what it is we are doing.

Mr. Speaker, a quick survey of congressional history shows that lawmakers often have received low marks for their patience and civility. In past decades, physical violence marred the political landscape, but more recently, in civil language has increasingly come into political debate.

Serious violent episodes took place in the House during the years before the Civil War. In 1832, Representative Sam Houston had to be formally reprimanded for attacking Representative William Stanberry, who in turned tried to shoot at Houston. Six years later, a duel between two freshmen Congressmen ended in the death of one of them.

Then, in the 1850's, a pistol hidden in a House Member's desk accidentally discharged and instantly there were a full thirty or forty guns in the air.

The altercations didn't cease with the end of the Civil War. Resort to fists, pistols, knives and fire tongs, in addition to verbal weapons was reflective of the time. A contested election in 1890 led to three days of tumultuous debate that a reporter said looked more like a riot than a parliamentary body.

I'm glad to say we have moved past using physical violence to settle disputes, but we can improve our current inflammatory rhetoric. Last spring, in an effort to restore civility and respect back to the House of Representatives, I formed the Mainstream Conservation Alliance—known as the Republican Blue Dogs. This group of Republicans, along with the Democrats' Blue Dogs, are working together to reach across the aisle to find bipartisan solutions in the best interest of all Americans.

Given the enormity and the importance of the many difficult issues facing us, dissension is inevitable—but hostility is not. This civility pledge goes a long way in restoring the respect this chamber and all Members of Congress deserve. I encourage all of my colleagues to sign the civility pledge written by my friend, PETER BLUTE.

Mr. BLUTE. Mr. Speaker, at this time I would yield to the distinguished chairman of the Subcommittee on Health and Environment of the Committee on Commerce, who earlier today showed what bipartisanship in forging leadership positions together can mean in the passage of the Ryan White authorization bill, Chairman MICHAEL BILIRAKIS from Florida.

Mr. BILIRAKIS. Mr. Speaker, my compliments and commendation to the gentleman from Massachusetts [Mr. BLUTE] for his great work on this matter. I thank him, of course, for yielding to me.

Mr. Speaker, I am proud to serve as a United States Representative. I consider it an honor and a privilege to represent the residents of the Ninth Congressional District of Florida. I have heard from many of my constituents who believe, rightly so, that the debate in the house has become very partisan and inflammatory.

While we each hold strong beliefs and values, these can be expressed in a constructive manner to facilitate debate, rather than in a manner which relegates debate to caustic, partisan attacks.

As a Member of the mainstream conservative alliance, I gladly signed the civility pledge, and intend to continue to debate the issues before us honestly, fairly and in a constructive manner. As the pledge states, we should "respect the people who elected us through proper conduct, including honoring and showing consideration to one's colleagues regardless of ideology or personal feeling."

I believe Members of this Congress all want the same thing. We want to educate our children, take care of our senior citizens, protect our environment and ensure that everyone has the opportunity to succeed in our society. We may differ on the means to achieve these goals, but I believe we all agree on the goals themselves.

I have consistently made it a point, when speaking on the floor of this House, to debate constructively and without resorting to personal attacks. Regardless of ideology or party affiliation, we must all respect each other, this institution and our constituent by promoting civility, comity and adherence to the House rules above party loyalty.

Mr. Speaker, I will continue to accept the trust of my constituents and respect them by honoring this venerable institution. I would urge my colleagues on both sides of the aisle to join me in this pledge.

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Mr. BLUTE. Mr. Speaker, I want to thank the distinguished gentleman from Florida and congratulate him on his great work on the health issue and for passing that important bill today with regard to our fellow citizens who unfortunately have been afflicted with that terrible disease AIDS. The Ryan White Act reauthorization is a very important bill.

At this time I recognize for 5 minutes one of our freshmen leaders here in the 104th Congress, someone from the great State of Tennessee, ZACH WAMP.

Mr. WAMP. Mr. Speaker, I want to thank Mr. BLUTE. One of the greatest honors that has been bestowed on me since I got here was being elected as a freshman as the cochairman of this Blue Dogs group over here on our side of the aisle, a group that does seek bipartisan solutions, willing to work with people on the other side, trying to find the principles and values that we might come together on and leave partisan politics and shallow rhetoric aside so we can try to get together and do the people's business.

Many of us, as myself, are former Democrats who joined the Republican Party. I know for a fact in my life there are many, many good people in both parties across the country. And, in fact, neither party has an exclusive on integrity or ideas.

Right down here on the dais, in this great room in the House of Representatives, are the words ingrained in the wood, "Peace, liberty, tolerance and justice." I think we need to remember peace and tolerance more often as we do our business here in the House of Representatives.

Not a day goes by, Mr. Speaker, that I am still not just fascinated by this opportunity that I have to serve in this incredible Capitol of ours that really has not changed much since Abraham Lincoln was the President of our country. And as I show young people through this place, I am constantly just enthralled at the magnitude of what this opportunity really means.

I think we owe it to our predecessors, we owe it to the American people to put this institution above our own careers, our own ambitions, our party's agendas. Anything that may demean or degrade this institution needs to be set aside.

The fabric of the American quilt is woven with diversity, diversity of religion, color, culture, and ideas. The thing that is different about America is that we in this country can passionately and aggressively argue the issues of the day but remain civil and come back as a Nation, come back as people at the end of the day, having argued passionately, taken sides, we can come back at the end of the day in a civil and respectful manner. And I think that is an important lesson for our children. It is an important lesson for our colleagues. It is an important lesson for the leadership of either party.

Because, frankly, if the leadership of either party thinks they are always right and the other party is always wrong, they are tragically mistaken. And the American people know better. The American people expect us to find ways to work with each other, and I think we need to do this for them.

The shallow and harsh rhetoric that has pervaded this institution in recent months needs to be set aside, from both parties. And now that the emotion of the new Congress, after 40 years of one party rule, is kind of mellowing out, I think some Members of both parties need to cool their jets just a little and get along with each other and remember that while we can disagree, we have to put this institution above the passion of the moment.

I want to close, Mr. Speaker, by talking about a word that I think is the greatest need in our country and in our world today and that word is reconciliation. I think if people, men and women, young and old, all across this country and this world would reconcile with each other, we would be so much better off. That is the No. 1 problem that separates people. It causes anxiety and division.

We are, in fact, Mr. Speaker, all God's people, and I think it is important that we remember as we come together tonight as Democrats and Republicans and talk about this issue of civility, that we remember the two great commandments; put God first and treat everybody else the way we want to be treated. And if we treat in this body everybody else the way we expect to be treated, the meanness would go away. Kindness would permeate because we would expect to be treated with that same respect and dignity. And we need to do that.

I look forward to the days ahead where we can work with our friends on the other side of the aisle, do the people's business and disagree. By George, I am not going to sacrifice my principles for anything. But if we agree on principle, we need to come together here on the floor of this House.

Mr. BLUTE. Mr. Speaker, I thank the gentleman from Tennessee for his leadership on this issue.

At this time I yield 5 minutes to another leader of the movement for more civility here in the House of Representatives. He is someone who has already shown how to work on both sides of the aisle to forge consensus on issues like telecommunications reform, securities litigation reform, private property rights. Those are very difficult contentious issues, but he has worked very closely with Members of both sides of the aisle in a very constructive way, and that is BILLY TAUZIN from Louisiana.

Mr. TAUZIN. Mr. Speaker, I thank my friend from Massachusetts, and I commend him and all of the Members of the Republican Blue Dog Alliance and the Democratic Blue Dog Coalition for initiating this effort of a civility pledge in this House.

As Mr. BLUTE pointed out, over 70 Members have now signed that pledge. It is a simple pledge. It simply pledges that we agree to respect the people who elected us, through proper conduct, including honoring and showing consideration of one's colleagues, regardless of idealogy or personal feeling.

It says that we pledge to promote civility and comity and adherence to House rules over party loyalty, and to follow these guidelines as the presiding officer in making rulings, and as Members in adhering to those rulings.

Now, we will be urging others Members of this body to sign up. We hope to get the entire membership to sign this pledge and to introduce it formally as a resolution of this House. It is so important that we begin that process here in this House.

Now, Mr. BLUTE referred to the article in U.S. News and World Report in which U.S. News and World Report wrote about the American uncivil wars, "How crude, rude and obnoxious behavior has replaced good manners and why that hurts our politics and culture." In the article, U.S. News reports that a poll that they conducted in February by Bozell Worldwide reveals a vast majority of Americans feel that the country has reached an ill-mannered watershed. Nine out of 10 Americans think that incivility is a serious problem. Nearly half think that it is extremely serious. Seventy-eight percent say the problem has worsened in the past 10 years, and their concern goes beyond annoyance at rudeness.

Respondents see in incivility evidence of a profound social breakdown. More than 90 percent of those polled believe it contributes to an increase in violence in our country; 85 percent believe it divides the national community, and the same number see it eroding healthy values like respect for others.

One of the contributors to the article, a Martin Marty, who is a philosopher of religions, wrote that civility should be the glue holding dialogue together. The alternative to civility is, first, incivility, and we have seen too much of that. And then, he says, the next alternative is war. It is the violence that this Chamber saw before the Civil War and after that Civil War when Members actually assaulted one another. And it is the violence we see on the streets as respect for one another has worsened in our country.

I am ashamed to tell my colleagues that when Americans sized up civility of different groups in our country, politicians came out almost dead last. We came out behind police officers, who 86 percent thought to be civil; athletes, 74 percent thought to be civil; government workers scored a 71 percent civility rating; lawyers got 60; journalists got 56; and politicians received a 55 percent civility rating. Forty percent thought all politicians had reached a low of incivility.

It is time we begin to change that, Mr. Speaker. The civility pledge we have introduced is just the beginning. Recently the CRS, the Congressional Research Service, issued a report for Congress entitled "Decorum in House Debate." It tracked the history of incivility in our Chamber. It told us about the violence that had preceded this Congress and other Congresses. It told us about how speech had worsened from time to time, and how disrespect and nonharmonious relations had contributed to a worsening and a polarization of attitudes in this Chamber and in America.

And then it issued a series of recommendations on how we could begin to change things. It literally listed a series, including the recommendation that the Chair should be more responsible in advising Members about breaches of decorum. The Chair should be a teacher, advising Members in the middle of a debate: You are about to step over the line, calm yourself down; you are about to breach the rules of this House; you are about to insult this institution that you fought so hard to be a Member of; you are about to bring it down in the eyes of the American public and destroy its credibility with our Nation; you are about to treat this institution as some kind of second class organization, when it is bigger than you, more important than you, and you should leave it a better place than you took it. The Chair ought to be more responsible in doing that.

The CRS report says that after the Chair, the Members ought to take more responsibility for one another. We ought to be more calming of one another's tempers and emotions. We should be advising Members when we think they have gone beyond the pale, when they have gotten out of hand.

And then our leadership ought to take a role in that regard. The leadership, for example, should restructure the 1-minutes in the morning, which have become theme-team efforts just to excite and aggravate, to get sound bites for television, rather than a healthy discourse on the issues.

The leadership ought to take responsibility by issuing Dear Colleagues to Members, advising them on what the rules require of all of us to respect this institution and one another.

The Committee on Standards of Official Conduct has established a separate Office of Advice and Education. That office ought to hold briefings for Members on what our rules require, particularly the new Members as they come in and the older Members who constantly violate those rules and have to have their words taken down.

There ought to be joint hearings of the House Committee on Rules and the Committee on Standards of Official Conduct in which we can examine the lack of decorum in our Chamber. The joint leadership could appoint Members from both aisles to informally serve as a task force on decorum to assist in maintaining respect in this Chamber.

The majority leader ought to make sure that he appoints Members to the Chair during House proceedings who really know the rules and will helpfully advise Members when they are about to violate those rules. Perhaps we could have a bipartisan summit, if it gets intolerable during this election season, and maybe we could consider stronger sanctions.

A former Member, Representative Larry Wynn of Kentucky, upon his retirement, wrote: "The growing rancor between Republicans and Democrats in the House of Representatives is deeply worrisome." Many House Members, including me, fear that this may be an ongoing trend rather than a temporary phenomenon.

It is important now for both Republicans and Democrats to recognize that a continuation of this rancor will undercut the legislative process. It is my firm belief that the majority of Members of both sides of the aisle would like to reduce the level of tension and the partisan clashes and get on with the business of this country. It is up to us all to cool off, to sit down, to talk and come up with some suggestions for restoring greater civility, tolerance, and pragmatism in our procedures. If not, not only Members of this House, but the country will suffer.

And so, Mr. Speaker, our little group, the alliance, the Blue Dog Republicans, and the small group on the other side, the Blue Dog Coalition, are nowhere near a majority of this Chamber, but we have begun what we hope is a groundswell. We hope other Members will sign up to our civility pledge. We hope tonight is just the beginning of this discussion. We hope to have future discussions about civility and incivility in this Chamber.

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We hope as a result of what we begin tonight this House will be a place where people come to honor and respect this institution and the people who sent us up here by being more respectful of one another, by being more tolerant of the different views in this House, and by debating the issues instead of insulting and questioning the motives of one another as we enter serious debate for the sake of our country.

Our two little groups are dedicated to that, to put our party hats aside and to act like Americans in this Chamber, and to act like respectful Americans who came to this Chamber with an incredible amount of honor and respect for the folks who sent us here. If we can behave in that regard after we get here, we will not only honor this institution, we will honor this country and the people who made it so great, and who have made this institution the most and I think the greatest democratic institution in the world. We owe that to the American public and we owe that to this House.

Tonight we begin that process, but we will not stop here. We will rise occasionally when the debate gets too heated and try to calm things down. We will try to get some of these recommendations adopted into our procedures in the House. We will talk to our leadership and see if we cannot get some of these improvements made. Most importantly, we will continue to counsel with one another across this aisle about the importance of being good Members of this House and good Americans when we come here, simply that and nothing more, to honor the folks who sent us here as we honor this institution.

Thank you very much, Mr. BLUTE.

Mr. BLUTE. I thank the gentleman very much.

Mr. Speaker, at this time, I yield 5 minutes to the distinguished gentleman from Arkansas [Mr. DICKEY].

Mr. DICKEY. Thank you, Mr. BLUTE. What I would like to do if we can is hold you three here. I am kind of tagging along. I was here on another matter of businesses, and your discussion is most intriguing and I think constructive. I would like to, if we can, just go through a couple, a few things and ask you all questions specifically, and then you all ask each other questions and let us make some dialog here.

I am sitting here thinking while you all were talking as to why we do what we do, and it appears to me that we somehow may be deceived by thinking that the people who are listening to us want us to be this way. It may be that we are doing that. If that is the case, I think it is misguided because what we are probably trying to do is to show our independence.

Folks think we get up here and deal with each other, and that we say we are going to do one favor for you and one favor for you and so forth, and we would not date say anything bad about each other or disagree because we are up here swapping out and that sort of thing. I think maybe some of us got elected by saying we do not want to be a part of that up there, so we come here and to prove that. We might have in the back of our minds an unconscious goal of trying to offend people and say back home, "Look, for sure I don't get along with Mr. TAUZIN. I'm not dealing with him because we're arguing, we're fighting."

But I think what we have got to learn is that we need to learn how to disagree with each other without disliking each other. There are two perspectives.

Then I would like to talk to you all and let you tell me what you all think, since you have been on this thing a little bit more.

There is a little store out from Camden, AR, about 4 miles that is called Harvey's Grocery. I have gone there ever since I have run, and I am close friends with Bobby Hildebrandt, his two sisters and his mom. She just had her 87th birthday. We sat around, and we just sat there with Miss Minnie, and she is that old.

You sit and you say, "Well, what do you think are we doing up there?" They are saying, "Why are you all so childish? Why are you so partisan?" Folks are offended and put off by our bickering when we might be thinking we are pleasing them. We just may be missing it this way. What they are seeing, they are left out of this deal when we are bickering.

Of course it is adverse to what is said in the Bible, too, ZACH, if we are not able to show love to each other. But we have got to get the balance of being independent, having honest discussion and dialog without tearing each other up.

Mr. WAMP. Will the gentleman yield?

Mr. DICKEY. I certainly will, ZACH.

Mr. WAMP. To me, the greatest tragedy of all, Congressman DICKEY, our young people in this country are watching what we are doing. I know, as the gentleman from Louisiana said, when the parties come down on the 1 minutes in the morning, sometimes the 1 minutes from the people on my side of the aisle, they are doing it, I am going, "Oh, why does he have to do that? Why does she have to do that?"

The people back home know better. They have designed these games to trash the other party and to play the blame game, and the American people are tired of the blame game. They want solutions. They sent us all up here to work together on some solutions, and the greatest tragedy is our young poeple are looking at it and saying, "Well, I know one thing, I don't want to go into that business. I would rather play basketball for a living or go make some money and be a professional."

All those are good aspirations, but I yearn for the day when there is a young man or woman in this country

who wants to be Thomas Jefferson, who wants to be a leader, who wants to go and help other people and to run this country and to say, "I am so proud to be American, and I am so proud of my people in Congress and what they are doing and how well they regard each other, and is not it interesting how they disagree on the issues but they come back and respect each other. They do not trash each other."

We owe it to our kids. Our kids do not want to be involved in politics. It is a mean, dirty business and it should not be. We are disconnecting them from their own future, JAY. That is the greatest tragedy of all.

Mr. BLUTE. If the gentleman would yield on that point, I think he says it very well. The issues is that none of us here thinks that we should have less debate—this should be made very clear—that we should have less debate, that we should examine these very difficult, divisive issues that we have to deal with on a day-to-day basis any less.

I think most of the people supporting this, certainly Mr. TAUZIN, are some of the finest, toughest debaters. They bring information to the table and boy, the clash of ideas is very important, we all believe that. But when you move beyond that clash of ideas and I think show a lack of respect or mutual admiration really of your colleagues, regardless if they are the most liberal or conservative views that are totally opposite of yours, if you get down below that level, I think that is when what happens, what you are saying. The people watch it, they tune out, they turn off.

But a great high-level debate which has the clash of ideas is something that we need. Our system was made to be adversarial, there is no doubt about that. In the Federalist Papers Hamilton wrote that ambition should be made to counteract ambition. So the ambition of one ideology or one idea would be counteracted by another ideology or another idea, and that would be the way that we would have checks and balances, keep an eye on each other.

So this is an adversarial system, just as our justice system is adversarial. You are a distinguished attorney. When you go into court, it is an adversarial system. It is tough. It is information, it is defining an issue and then exploiting perhaps weaknesses in the argument of the other side. But it is not meant to disparage, bring down, ridicule the other person. I think if we get into that, that is when the young people say, "Boy, I don't want to be in a profession that engages in that type of activity."

Mr. TAUZIN. Mr. Speaker, Will the gentleman yield?

Mr. BLUTE. Mr. Speaker, I yield to the gentleman from Louisiana.

Mr. TAUZIN. I think part of the problem, too, is that we fail to separate the politics of how we get here.

Mr. DICKEY. That is right.

Mr. TAUZIN. And how we return here in reelection campaigns with the art of governing. There is a huge difference between those two activities, yet we confuse them. Our politics have gotten meaner. Negative campaigning is the way in which candidates are now elected. Citizens are left with choosing the lesser of two evils, because they learn so many horrible things about all the candidates that they cannot really believe in any of them anymore.

Time magazine wrote an article once that said that if Burger King and, say, McDonald's——

Mr. DICKEY. How about Taco Bell?

Mr. TAUZIN. Or Taco Bell, I should not fail to mention Taco Bell—had instead of talking about the good quality of their products, of their tacos and their hamburgers, if they had instead for 10 years got on television and talked about how rotten and awful and cancer-causing these products were, people would not be choosing between Taco Bell and Burger King and McDonald's. They would turn off on the whole mess. They would not go to fast-food restaurants anymore.

The point is, our politics has led us to that. Our negative campaigning and our politics has led us to the point where the American public has kind of turned off on so much of the process by which we get elected.

Then we come to this Chamber and we confuse our role again. We think we are all campaigning still, and we get into these heated fights, these partisan debates, these acrimonious accusations. There is questioning of motives, this attribution of ill intent, all these things we do as though we are still campaigning and running negative ads against one another.

The art of governing is something else. The art of governing is putting the election behind you and debating ideas, and seeing which ideas have force and which have power and which can compel a majority to support them, and which make better common sense for the good of all the people of our country.

In that clash and debate of ideas, we ought not have this, the politics of negative campaigning, but somehow it has infiltrated into this room, and our negative campaigns go on for 2 years. We ought to somehow call that to Members' attentions, and as Americans ask one another to separate the campaigns and the negative, ugly politics from the art of governing.

Mr. BLUTE. If the gentleman would yield on that point. I think does it not begin by ceding to your opponent here in this well or on the clash of ideas over these very divisive issues, it begins by ceding one thing to your opponent up front, that their motivation is, in their view, in the best interest of their constituents.

Mr. TAUZIN. Yes.

Mr. BLUTE. And the American people.

Mr. DICKEY. Yes.

Mr. BLUTE. They are patriotic. They believe their philosophy is something that will help people. I think to some extent we have gotten away from that, and we think of our opposition in a debate format as someone who actually is out to hurt the people. That is just not the case.

Mr. DICKEY. There is a biblical principle, and that is, find first what you have in common with somebody.

Mr. BLUTE. Right.

Mr. DICKEY. Both of you talked about something that is excellent. BILLY is talking about the fact that we are bringing the politics on this floor. How can we be statesmen if we continue to try to play to the polls and to the negative things? We have some duty, as he was talking, we have some duty to educate and try to lead our constituents away from the negative that they see is sometime enjoyable. Sometimes they see that.

Let me mention two other things. One is, generalizations are so harmful. Just to say all people from Arkansas are like that in a debate, and particularly when it gets heated, all you Republicans are that way, all Democrats are that way, and someone will say, "Wait a minute, I'm an exception." That is not finding something in common with somebody, that is finding something negative, and I think we all do it.

The other perspective I want to bring to you all, before you interrupted me and just carried this debate too far, is the people who sit up here, that have sat up here for years, ask them the next time you have a chance, just go and say, how is it different? They will, the ones I have talked to and the ones that answered me, their countenance kind of falls and they say, "It's not near like it used to be. There's too much bickering." There is even one person who said, "We have never heard the profanity like we have here."

You see? That is dragging us all down, and what Billy is saying is so true. If we are constantly complaining about each other, you see, not talking about issues but each other, it is going to be destructive and we are not going to be doing what we need to do for the people of America.

Mr. TAUZIN. If the gentleman will yield, let me draw a distinction. I think the American public expects us to vigorously debate ideas.

Mr. DICKEY. That is right.

Mr. TAUZIN. And I do not think there is anything wrong with your characterizing my idea. You can characterize my idea as you see it. When you go from characterizing my idea to attacking me personally——

Mr. DICKEY. And questioning your motives.

Mr. TAUZIN. And questioning my motives or my intent, it has gone beyond the pale. It has gotten out of the debate and gotten into the negative politics, is my point. If we could all, I hope every day, listen to the speeches on the floor of the House and all of us start thinking, is that really a debate over the idea? Or is that a debate challenging the motives or the intentions of the individual?

And every time you find that difference, kind of go up to that individual and say as a friend, as a colleague, "Maybe you stepped over the line. You went too far. Go back to debate the idea, please. That person over there got elected just like you, by people just like your people back home, who love this country and sent you over here to do a good, honest day's work in debating ideas, not challenging people's intentions and motives."

Mr. BLUTE. If I could just interrupt for a second, Jefferson had a great line. I do not have the exact line, but he said that we should always believe that our opposition is at least, there is a 10-percent chance that they may be right, that we may be wrong. We should always leave that opening for us all as we debate. If we do that, it is a wise statement, then we kind of keep a broader mind.

Mr. WAMP. Another interesting dynamic, if my colleague would yield, please, is that many of the new Members feel that the seniority system in this institution that had grown out of touch over a period of time needed some reform, that the seniority system did not serve us too well, because whoever was around the longest got to be in charge, and some things just inherently were not fair. They did not reward hard work and effectiveness, they really rewarded the seniority of Members.

I think in the passion of the day, even some of my freshmen colleagues failed to recognize that while the seniority system is moving aside, I think after the last election, half this body about had been here less than 3 years, and after the next election, based on the turnover we anticipate, it may be two-thirds of this body will be here less than 5 years. So the seniority system is being moved out.

As the seniority system moves out, we have to recognize that the respect has got to stay. We cannot move it all out and replace it with some kind of bomb-throwing mentality, that we are going to storm this place and rock this place. This place is unreal. It is magnificent. It sends chills up and down your spine when you walk the hallowed Halls of the U.S. Congress.

□ 2100

We got to leave it that big. It is that big, and it deserves that.

Mr. BLUTE. The gentleman would yield, and I think he is right on target here. It is not just the history. It is the actual individuals who serve here. I have been shocked in my 4 years to see the quality of the individual, but also some of the histories are fascinating. For example, the guy in the office next to me is SAM JOHNSON from Dallas, TX, who is an American hero. And then to think that he spent 7 years of his life for his fellow citizens in a North Vietnamese prisoner-of-war camp, the Hanoi Hilton, facing torture and abuse and solitary confinement for 2 years. Now that is incredible.

Mr. Speaker, but then we look over on the Democratic side and see someone like SAM GIBBONS, who landed at D-day, and that was a long time ago. I have read about it in the history books, but to be able to sit next to someone and perhaps engage in a conversation about, boy, what was that like?

I mean, this is an incredible place. JOHN LEWIS marched with Martin Luther King.

Mr. DICKEY. And got beaten up.

Mr. BLUTE. Stood up for his people, for their civil rights. That is a tremendous history. And I think from my own area, the Kennedy family and their great history and contributions to America. You have got PATRICK KENNEDY and JOE KENNEDY. I mean, this is an incredible place. We should have on both sides of the aisle high quality individuals, men and women from all kinds of different backgrounds.

I just think that we should reflect that high quality in our debates.

Mr. DICKEY. Mr. Speaker, let me introduce one other thought to this discussion, and that is good humor. I know you all have it, and we kid each other a lot. But you know, if we could get our personalities in this thing and do jokes some, you knows, there are some good things that can be said in the heat of a debate. We can laugh, and there is nothing wrong with it.

Now some people, if you bring good humor to debate here, they say that is not congressional, you see. But if we use it as part of a dose of medicine, it is awfully good.

Now, I want to suggest something here that might seem a little trivial, it is, that we have V chips. You understand that we all have V chips. When we get over the line and we bring the politics in, somehow we cut off like we do on television.

We can do it. One of you all mentioned that we can go up to our colleagues, particularly those on the same side of the aisle, and say you have gone over the line a little bit, the V chip went off, you see.

But what do you all think of good humor and how have you seen it work to help and, BILLY, you probably have story after story.

Mr. TAUZIN. Of course, I can tell you countless stories, particularly from my Louisiana experience in the Louisiana legislature, about how Members who have spent time with another and have come to know and love, and respect one another in the same way that PETER has talked so admirably about some of my Democratic colleagues who have such a history of contribution to our country, who in the heat of debate gently, with humor, brought each other back to a point of civility when things were getting out of hand.

Mr. Speaker, I recall once we were debating the institution of a board of contractors so that the Government would not appoint all the contractors. The board will end up doing it. One of the oldest gentlemen in the House stood up and said, "Now, BILLY, you know you can't take politics out of politics any more than you can take kissing out of loving."

And I said, I know you cannot take politics out of politics, and I certainly would not want to take kissing out of loving. We just are trying to take a little kissing out of politics.

The humor of that moment of course made a point, but it also kept what otherwise was sometimes heated debate in line, and it is a useful tool. But I think the most important tool of all the tools that are available to us is a recognition that you came here the same way I did. I ought to respect you, and I ought to respect your ideas because you speak with not your own voice. You speak with the voice of 500,000 or 600,000 people who sent you up here to be their voice. And if I cannot respect you and your voice, I am disrespecting them in their homes. If I have that attitude, that is the most important tool in my arsenal to make me a little more civil in this body.

Mr. DICKEY. Is it not true that you respect my voice a little bit more because we are closer to Louisiana right on the border? Is that not true? Do you not listen to me a little bit more because it is home folks talking?

Mr. TAUZIN. You are bigger than me.

Mr. BLUTE. I just noticed that we are surrounded by Southerners here. But of course we do not have any accents up there in New England, of course.

You know, some of the finest moments that I have experienced here were interparty tributes. For example, I recall when our colleague, RAY LAHOOD, I thought did a nice job when he took the floor, Republican, to pay tribute to a Democratic colleague, BILL RICHARDSON, upon his successful diplomatic effort to liberate American citizens from Saddam Hussein's Iraq. That was a great example I think of mutual respect.

Perhaps the other one that I enjoyed so much was when our distinguished colleague from Illinois, HENRY HYDE, recognized JIM BUNNING on the day he was elected into the Baseball Hall of

Fame. We all know how important that was.

Mr. DICKEY. And there is nothing wrong with crying, letting a tear fall every now and then.

Mr. BLUTE. But again, you know, we need to have vigorous debate. I mean, again the people who were promoting this civility resolution are some of the hardest, toughest debaters, and I have heard ZACH out there. JAY gave a speech earlier on the minimum wage, on his position on that minimum wage. It was very focused on the issue. You did not characterize the other side as wanting to kill jobs, but that you felt the result would be that there would be jobs lost, and I think that is what we want.

We want a vigorous debate, tough, tough minded, tough characterizations, but we need to keep it within a limit so that we do not turn off the American people because, frankly, they need to hear and be educated about some of these very complicated issues.

Mr. TAUZIN. You know, PETER, if you yield, I think you are right. Some of the most stirring moments have been when Members have done that, have risen to congratulate Members on the other side of the aisle, and not only a good collegial way, but in a way that I think Americans said, hey, maybe these people are not just a bunch of kids. They are Americans first. Maybe they are not just Republicans and Democrats. Maybe they do care about something other than their reelection. Maybe they care about this country, and maybe they respect one another enough once in a while to say something nice about one another.

And maybe, just maybe, just thinking aloud with you, PETER, maybe that is one thing we in our two groups ought to try to encourage more, that we do more of those kinds of speeches on the floor when another Member, particularly from the other side who has had a success, who has had a tragedy, who has had something happen that is to them and to the folks that sent him here, that we rise on the floor and show our admiration, our feelings of sympathy, whatever it may be, to literally demonstrate that we do, to the American public, that we do respect one another more than our words sometimes indicate.

Mr. BLUTE. I think a great example of this was the political relationship between somebody who I have a great deal of respect for, who brought me into Republican politics. That was our former President, Ronald Reagan, and his relationship with Speaker of the House Tip O'Neill, who had tremendous differences over policy. I mean, they literally hated each other's views and direction they wanted to take the country, but, boy, they also communicated a mutual respect, a mutual admiration, and even a certain friendship.

Mr. TAUZIN. Mixed with good humor, if you remember.

Mr. BLUTE. And with some great humor exchanges between them which communicated to the American people that the Government at least could ultimately decide on things, move forward on that key question that we respect each other as Americans first and then we have differences on policy.

Mr. WAMP. If the gentleman would yield, and the theme and the message there is what you said earlier. We are reflective of the American people. I said as a candidate that I thought that Congress was a mirror image of America. Whoever is sent here is in fact a mirror image of what is out there.

Mr. Speaker, if we are mean and shallow and harsh, the country is mean and shallow and harsh. If we are kind and respectful and dignified, the country is kind and respectful and dignified. That is how important this is. This is a critical issue.

I think we should take the initiative, Congressman TAUZIN, to actually discourage the leadership of both parties from engaging in these short speeches, just openly critical, playing the blame game. I think we ought to as a group, we ought to take the lead on that to say, you know, it is time because it does not matter who wins or loses in the political blame game here. What matters most is that this institution is sinking in esteem and that our young people are seeing the wrong thing, and we need to take that off.

I like your V-chip idea. We ought to V that right out. We ought to get that right off the page here. Both parties would not be any better or any worse off if we did away with that because each party gets equal time, and they are basically just blaming each other. I do not think the people out there in the hinterland, whether they agree or disagree with people, much care for that kind.

Mr. DICKEY. Mr. Speaker, I do not think we respect ourselves when we do that. I think we walk over here saying, boy, but there is a feeling that settles in that I miss the point by doing that.

Mr. BLUTE. Some of the debates I think we all agree that we walk into here coming from our offices, we cringe at the level that it has sunk to because we may have been en route here.

Mr. TAUZIN. If the gentleman will yield, you know, Americans like a good fight. We are not talking about not having some good healthy fights over issues. We are not talking about, you know, some little-pinkie gentility in this Chamber. We are not talking about being less than healthy, hearty debaters on the issues that face America.

There are some enormous divisions in this body and in America on many of these issues. There is an extreme need for us to debate those things in a healthy fashion so that we either come to closure or realize we cannot, one or the other, and then we let the American people settle it in the next election.

That is all healthy. We ought to have those vigorous, hearty, healthy debates. Americans ought to see a good battle on this floor of ideas, not of personalities. You ought to see a healthy fight when it comes to what is right and what is wrong in terms of legislation, but they ought to never see, they ought never see us behaving like Boy Scouts without a troop leader.

Mr. DICKEY. I agree with that. Now you know, let us say something that is positive here. We are having an enormous change in our Nation. You know, ZACH was talking about it is a mirror image. But what the people of America see when they see us debating here is a change that cannot take place in any other government in the world. We are changing. I mean, we have cut $40 billion out of the budget this year, you see, for this year. We have cut spending like we have, and how have we done it? We have done it through debate, and there are some people that are still suffering. There are still some people that are still bitter, and reconciliation is a real key.

But let us change topics a second. What can we do, what permission do we have from our voters to get to know each other than on this floor, and how is the best way to do it? Now, I think we have thrown aside the trips that we take for pleasure and all the things, all the excesses that way. But what are some of the things, because that is what happens, is when you sit there and you know that you have been at a prayer breakfast with so and so, or you have been on a committee with so and so. But what can we do to promote our getting to know each other better away from the floor?

Mr. WAMP. Amazingly, as a freshman, it shocked me when I got here how from the day you are here as a new Member they separate you, Republicans over here, Democrats over here. Republicans get this training, Democrats get this training. The freshman class did not even meet as a freshman class. It was the Republicans over here the Democrats over here. And so the only way to build bridges is one on one, interactively. We even sit over here, they sit over there.

Mr. Speaker, I mean, that is amazing to me because, as BILLY said, we all had to fight the same fight to get here, and we all represent the same number of people or thereabouts, and so I think you have to.

I am in a weekly small group, bipartisan, Democrats and Republicans. We meet every week to just walk through the problems with our lives here and to hold each other accountable while we are separated from our families, while we are here. It is a great thing, and it

is bipartisan. Some of my greatest relationships here: MIKE DOYLE of Pennsylvania and BART STUPAK of Michigan, are Democrats, are in my small group. Some of my greatest relationships now have been built with my friends from the other side of the aisle.

I think these small group efforts sometimes, if you exercise, you need to physically keep your body alive, you develop relationships exercising with friends from the other party. You mentioned the prayer breakfast. There are some retreats that are now planned in a bipartisan way so that people can build relationships because, once you build a relationship with somebody, you are not going to trash that person's ideas or ideology.

Mr. DICKEY. Let me ask you this. Do you not think that getting to know somebody away from here helps you with a perspective, too?

Mr. WAMP. Amen.

Mr. DICKEY. I mean, these trips are bad as we have seen the excesses, but getting away and looking back together about what we are doing here helps in the relationships, and I think it will help the dialogs if we do more of it.

Mr. TAUZIN. If the gentleman would yield, I think he has touched on a good point. The point is that we have separated one another by party in this place. We are led by party leaders who serve a dual function.

□ 2115

One of their functions is to represent their party on this floor, and party positions. The other function is to be the leadership of the House. They are two different functions. I think sometimes that gets confused. As leaders of different parties, I think they probably would like to keep us separate in that role.

But there is a bigger role they play, the leadership of the House, and perhaps we could appeal to them every once in a while to literally look for ways that would bring us a little closer; maybe, as this report indicates, to hold summit conferences, where we could talk about this obligation to this House, to one another, and to the folks who elected us; where we could literally get to know one another a little better.

I am always amazed when we do have these kinds of meetings, whether it is a prayer breakfast or whether it is a joint meeting, a gathering, a coalition of mainstream Republican members, how once we learned a little bit more about one another, not only does our respect deepen, because everybody comes over here with so much experience and talent, and when you learn about it, you say, "Wow, I did not know that about you. I did not realize you had that much to offer." We are surprised sometimes about what quality people you find here. It does get harder then to debate with them and be ugly to them.

Mr. DICKEY. That is the excess. The excess of congeniality can be harmful, too. That is the balance.

Mr. BLUTE. If the gentleman will yield, many of the senior Members, reflecting back on their long careers here, mention that "In the old days we used to get along, we used to do other things, so that our wives knew each other, our husbands knew each other, our spouses." So yes, I think in recent years there has been a separation, as the gentleman from Tennessee, ZACK WAMP, said.

I remember when my freshman class in 1992 came, we did not get a chance to do anything together, either, between the freshman Democrat and Republican class. We called it separated at birth, that we were just kind of put in different camps, and it was months, really, before we ever got a chance to say, "Hey, you got elected this year, too. How did you get elected? What issues did you talk about?" Then you find out that many of them were the same issues, because we are reflecting, I think, politically what the American people are thinking they want. They want change, they want reform, and they want reasonableness in our public policy and in our public debate.

Mr. DICKEY. Where are you all going with this?

Mr. TAUZIN. There is another thing we ought to mention before we conclude this special order tonight. That is that we all share some responsibility for the decline of civility in this place, for the decline of civility in politics in general.

A recent study by the Center for Media and Public Affairs, a nonpartisan foundation group, did a study of the 1996 Presidential race coverage. They found that it was so negative. They found that it was highly negative coverage, heavy but misleading coverage of the horserace, and much less attention on the meat, the debate that was going on between the candidates.

We are in an election year right now. We see too much of that, I think, in the coverage of this Chamber. C-SPAN now brings this debate to so many people's homes, and I think when we look at television coverage of our campaigns and we see that negativism, we think maybe they ought to see it on C-SPAN, too, and we emulate it here.

I think all of that contributes generally to the decline of civility, not only in our politics, not only in this Chamber, but in the society at large. I think ZACH probably said it best: We should be a better example for America. If we expect our children and our citizens to lead a more civil life, to not run each other on the road, and to insult one another and eventually drive-by shoot one another, we ought to start by being a little more civil in this Chamber, where they watch us every day on C-SPAN.

Mr. DICKEY. Where are you going with this now?

Mr. BLUTE. We are closing out our special order now.

Mr. DICKEY. After this, what is the next thing?

Mr. BLUTE. Mr. Speaker, we are going to continue this. We are going to continue to pursue signatories. We have 70 cosponsors. We think, as the gentleman from Louisiana [Mr. TAUZIN] said, every Member should sign it. It is basically fairly basic stuff most people, I think, can agree with. It takes, I think, a commitment to try, and all of us have to do it.

Sometimes we get angry, sometimes we get upset at mischaracterizations on the debate floor, but it means thinking about, you know, let us keep this in check. I think this special order is a step forward, but also the pledge. We are also trying to get more people, so if you could help us with that, that would be very, very helpful.

Mr. TAUZIN. Mr. Speaker, if the gentleman will yield, there is nothing like peer pressure. If we all work to get each other to sign this pledge, and having signed it, to feel embarrassed when we violate it, we will have done one major step towards restoring civility in this Chamber. That is our first goal.

Our second goal is to see some of these recommendations of CRS enacted: The leadership reforms, the role of the Chair in educating the Members, the role of Members to help one another stay within the lines of decorum and, eventually, maybe some of the ideas you expressed tonight; maybe getting us together in a bipartisan way once in a while, just to know one another a little better and to learn to respect each other a little more.

Mr. DICKEY. Thank you for including me.

Mr. BLUTE. We would like to thank all of the Members who came out tonight on both sides of the aisle to participate in this special order. We think it is an important issue, and we believe that the American people think it is an important issue. We are going to move forward on this.

Ms. PRYCE. Mr. Speaker, I appreciate the opportunity to talk about civility and decorum in the House of Representatives tonight because I believe it is a very important subject. I want to thank my friends and colleagues, PETER BLUTE and PETE GEREN, for organizing this special order tonight.

The Blue Dogs were originally organized to reach across the aisle and find bipartisan, commonsense solutions to our problems. As a member of the blue dog organization, I am dedicated to seeking new ways of cooperation between members of both parties to develop a solution-oriented approach to Government. A very important part of seeking a new level of cooperation is to create a more civil and cooperative environment for the exchange of ideas.

Since the establishment of this great institution, it has been recognized that courtesy and

decency among Members of Congress was necessary in order to enhance the ability of the membership to hear opposing views in the process of reaching a consensus. Further, without the presence of civility and mutual respect, the process of legislating becomes much more difficult. Hostility limits creative thinking and the sharing of views so important to good government.

But all of these logical and worthy reasons for improving decorum pale in comparison to the reasons I would like to touch on this evening. You see, when people talk about civility and decorum in Congress, we commonly hear about past confrontations involving canes, guns, and even duels. Fortunately today we don't face quite such drastic measures, but I would submit that the general lack of comity and decorum on this very floor has a wide reaching impact that I urge my colleagues to consider every time they speak on this floor.

The reason for this is television. Whenever a Member of this body stands in this well to speak, he or she is not speaking only to other Members of this body, but they are also speaking to thousands of Americans throughout our country. All of us were elected to represent the American people. We owe it to the people we represent to conduct ourselves in a respectful and proper manner. If you think about it, we are all ambassadors of our districts.

As public officials and leaders, I believe we have a responsibility to conduct ourselves in a manner that is respectful to the American people. Every poll shows that the American people hold Congress in low regard. It is no wonder they hold us in such low regard when every time they turn on the television, they see an argument taking place.

Before running for Congress, I was a judge. I had a wonderful career in the law, where respect and dignity are highly valued. When I announced to my family that I was going to run for Congress, my mother was really shocked, and maybe a little disappointed. "Why do you want to go down there and join that sleazy institution?" she asked me. Well, I will tell you the same thing I told my mother. I came here to try and do everything I could to make Congress a place the American people can once again be proud of.

We teach our children to resolve their differences peacefully and civilly. We teach them to listen to others and to air their grievances in a positive, respectful manner. Many schools in our Nation today have conflict resolution programs that are aimed at teaching our children to resolve their differences through civil negotiation and compromise. It is time we start to practice what we preach. I passionately believe that one of the most important responsibilities bestowed upon every Member of Congress as a leader, is to set an example. We have set the wrong example for our children and for the American people. How can we expect our children to heed our appeals for respectful and compassionate conduct if we do not conduct ourselves in the same manner?

Many of the issues that we debate here on this floor have great national import. Members hold firm and passionate views about these issues. And they should. There is plenty of room for vigorous and energetic debate. And we should have that. But no matter how passionately one feels about a particular issue, it is no excuse for name calling or other uncivil conduct. I cannot emphasize enough my belief that we must—must set an example for the American people, especially for our children.

In closing, let me say that the issue of conduct on this floor goes beyond any single legislative fight. It even goes beyond the issues of decorum and comity in debate. This issue is about respect. Respect for ourselves and our views as well as respect for the views of those who may disagree with us. We owe it to ourselves to conduct business in a professional and courteous manner, but most importantly, we owe it to the American people.

So I would urge my colleagues to think, every time they step onto this floor to speak, to think about the example they want to set for the people of our country, especially the children.

A DEBATE ON INCREASING THE MINIMUM WAGE

The SPEAKER pro tempore (Mr. MICA). Under the Speaker's announced policy of May 12, 1995, the gentleman from Louisiana [Mr. FIELDS] is recognized for 60 minutes as the designee of the minority leader.

Mr. FIELDS of Louisiana. Mr. Speaker, I want to also thank the gentleman to my right for their special order tonight, Mr. Speaker. I want to thank them for their colloquy, and I want to thank them for such a great expression of the issues in terms of bringing this body to a level that this body should be at.

I am very encouraged by the gentleman's pledge, and want to pledge to the gentleman that I will be one gentleman who will sign his pledge, and I thank the gentleman for bringing it to the floor tonight to talk about it in a special order.

Mr. TAUZIN. Mr. Speaker, will the gentleman yield?

Mr. FIELDS of Louisiana. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Speaker, I want to thank the gentleman, my fellow colleague from Louisiana [Mr. FIELDS] and I go back a long way to his first days in politics. I want to say something publicly, CLEO, that needs to get said, I think.

You have made an incredible and enormous contribution to politics in Louisiana, and to government, and to this body, and I want to thank you for joining and signing this pledge. You and all of us, I think, signing it and being a part of it can help make it real and help make this place a better governmental institution. I know that was one of your goals when you came here. Thank you for that, CLEO.

Mr. FIELDS of Louisiana. Mr. Speaker, I thank the gentleman for his words of encouragement. I want the gentleman to know that I want to continue to work hard to remain in this body and to remain a force to change not only the conditions of this country, but the way we do business as Members of Congress.

I also want to expressly thank the gentleman from Arkansas [Mr. DICKEY] who has agreed to be a part of this colloquy tonight on an issue that is very important to me and an issue that is very important to people all across this Nation, and also the gentlewoman from Georgia [Ms. MCKINNEY] who is going to be joining in this colloquy tonight on the issue of minimum wage.

Mr. Speaker, I am here tonight to talk about the minimum wage, and why I feel that we should raise the minimum wage. There are people, Americans in this country who work hard every day. They wake up early in the morning, they go to work, they work a 40-hour work shift every week, and they go home. At the end of the day they are still poor. It is not because they are lazy, but it is because we must raise the minimum wage.

I am here tonight to offer a plea to this Congress and to you, Mr. Speaker, on behalf of the millions of Americans who cannot afford to buy the food at the restaurant that they work at on a day-to-day basis, they cannot afford to sit at the tables that they clean, they cannot afford to sleep in the beds that they make up in hotels, because they cannot afford to check in that very hotel.

They cannot even afford to go to colleges and universities and send their kids to colleges and universities that they work at as custodians and janitors. I am here tonight to offer a plea for those millions of Americans, who come in all shapes and all sizes and all colors.

Let us take this Congress. We as Members of Congress, we make about $550 a day. To have the audacity to come on the floor of this House and say that people who make $680 a month do not deserve an increase to me is wrong. Tonight I offer a plea for those millions of Americans, because I do think that they deserve a minimum wage increase.

I call upon Members from both sides of the aisle to look at this issue and give it some serious consideration, because in all frankness, Mr. Speaker, these people have not had an increase for 5 years. If we look at the history of the minimum wage when it was passed, the act when it was passed in 1938, when this Congress passed the Fair Labor Standards Act, the wage was set at 25 cents. Then this Congress came back and changed the minimum wage 17 times. Seventeen separate times this Congress voted to raise the minimum wage. Now it has been since 1991. The last time the minimum wage was raised in this country was in 1991, so this country has gone 5 years without a minimum wage increase. I think it is long overdue.

If we look at the history of the minimum wage, we will find that the minimum wage was increased on an average of about every 3½ years. We are now at 5 years, which means we are a year and a half late on raising the minimum wage. Why do we raise the minimum wage in the first place? Why did this Congress raise the minimum wage, or even start a minimum wage in 1938? It is because it is no more than fair to give people the opportunity to earn a decent wage.

No one would sit or stand before this podium or any podium tonight on this floor and suggest that inflation has not gone up in the past 5 years. It would be a bit crazy, for lack of a better word, for us to think that a person can buy a loaf of bread in 1996 at a 1991 price. It would not be fair for us to even assume that a person can buy a gallon of milk in 1996 for a 1991 price. If inflation is moving up on an average of 3 percent a year, then it just makes basic sense to give those working people the opportunity to earn a decent wage.

The other thing I want to talk about is welfare reform. People talk about it, that we need to put people on payrolls in this country and get them off of welfare rolls. I think they are right. There is not a Member of this Congress who does not want to get people off of welfare more quickly and sooner, in a compassionate way, than I do. But we are saying, "Get off the welfare rolls and go on the payrolls," but we do not want to pay people for the work they do. The best way to decrease the welfare rolls, in my estimation, is to pay people for the work they do.

People need to make a decent wage in this country. Think about it; 34 cents a day. We have decent Americans, good Americans, who wake up. They want to provide health care for their children. They want to send their kids to school. They work in restaurants. They bus tables, they make beds, they mop floors, they work at gas stations, and at 40-hour work shifts a week, because they want to be productive. They do not want to be on the welfare rolls. We criticize these people because we do not want to even give them an opportunity to be paid for the work they do.

I am happy that the gentleman from Arkansas [Mr. DICKEY] is here, who will talk about some of the reasons why we should not raise the minimum wage, and I am going to yield to the gentleman in a minute, but before we do, I am going to yield to the gentlewoman from Georgia [Ms. MCKINNEY] who has joined us to talk about the minimum wage increase as well.

I notice that the gentlewoman earlier tonight was on the floor talking about the need to raise the minimum wage. I want to thank her for her tenacity, and I want to thank her for her commitment to try to give people a decent wage in America, because in my opinion, that is just no more than fair. If we want people to get off of the welfare rolls and go to payrolls, then the very least we can do as a Congress is to make sure that they get paid for the work they do.

Mr. Speaker, I yield to the gentlewoman from Georgia [Ms. MCKINNEY].

Ms. MCKINNEY. First of all, Mr. Speaker, I thank the gentleman for securing this time so we could have this discussion about raising the minimum wage. I have a quote here: "A living wage for a fair day's work is a hallmark of the American economic philosophy." I do not know if the gentleman knows who said that. It was not some left-wing person, it was not a person who is out of left field. These words were spoken by BOB DOLE in 1974: "A living wage for a fair day's work is a hallmark of the American economic philosophy."

Yet, Mr. Speaker, in 1996, we have the House majority leader saying, "I will resist an increase in the minimum wage with every fiber in my being." We have the House Republican whip saying, "Working families trying to get by on $4.25 an hour don't really exist."

□ 2130

And then more recently we had the Republican Conference chairman say, "I will commit suicide before I vote on a clean minimum wage bill."

Now, we have had some folks who have come to us with an economic argument and they have said that this is bad for the economy. Well, we have 101 economists who have signed on to the call for a higher minimum wage. Among those 101 economists are 3 Nobel prize winners. Those economists range from Henry Aaron at the Brookings Institution to Kenneth Arrow at Stanford University to David Blanchflower at Dartmouth College; Lawrence Klein, University of Pennsylvania; James Tobin of Yale, John Kenneth Galbraith of Harvard. We have got people who have received the world's highest honor and they have said that the minimum wage increase is the right thing to do. At the same time that we were talking about not raising the minimum wage, not even allowing the vote to come on the floor, at one time there were even proposals to cut the earned income tax credit.

So I believe that this is the right thing to do and I am pleased to join with my colleague from Louisiana, and I am anxious to hear my colleague from Arkansas who is my good friend, and maybe I should not say that out loud, but this is the hour of civility, so I ask my colleague from Arkansas to join us.

Mr. FIELDS of Louisiana. I thank the gentlewoman for her presentation.

Before I recognize the gentleman from Arkansas, who is a distinguished gentleman for whom I have the utmost respect, as a matter of fact he and I have shared planes on a number of occasions. As a matter of fact, as recently as this last week, we took the same route here to Washington. I want to thank the gentleman because it is very honorable of the gentleman to stay as late as he is staying to talk about an issue that certainly I feel very strongly about and, of course, the gentleman feels very strongly about, as well.

I want to talk a little bit about, and then I want to yield to the gentleman from Arkansas, because I think he may be able to shed some light on this. Because I have heard those who are against raising the minimum wage assert the argument that it would in fact decrease jobs particularly among young people. That it would also have an adverse effect on the economy because people will in fact lose jobs.

My assertion and my belief is people did not lose jobs when we raised the minimum wage the 17 times that we did raise the minimum wage in the past, and young people were not thrown out of the work market, which, and I will be quite honest here, as one of the youngest members of Congress, I fight for and advocate for every time I walk on this floor. They did not lose their jobs then, and I suggest that they would not lose their jobs now.

If we look at the economy, and I am no economist. The gentleman has been around a lot longer than I have been around, and he has read many more books than I have read because he has been around a lot longer. But I can tell you, it just makes practical sense to me that if you give a person more buying power, then that person will probably buy more.

So to say that people will lose jobs as a result of raising the minimum wage to me does not make much sense because if you raise the minimum wage and give a person more buying power and give those producers the opportunity to come in and then take advantage of the products that we have to offer, the goods and services that we have to offer instead of at $4.25, at $5.15, then it just makes sense that that will in fact generate more money in the economy.

I have heard the argument, also, that you will also cause prices to go up. Well, I believe in the free enterprise system, and I think that our consumers are smart enough and wise enough to know where to shop and where not to shop. At hamburger stand X, if we have enough insight to raise the minimum wage, if this Congress raises the minimum wage, if hamburger shop X decides to send the price of a hamburger from 90 cents to a dollar, I just fail to understand the logic of hamburger X raising that price of a hamburger without assuming or making the assumption that every hamburger stand in that location or locality will raise the price of hamburgers as well.

As a former businessman it would just make sense to me to keep my hamburger at the same price provided that I can and if I have as good a burger as hamburger stand X, then I would suggest that people would come and buy my burger and if enough people buy my burger then hamburger stand X will reduce its burger to a reasonable price. We talk about how we let the free enterprise system grow and work and give consumers the opportunity to make decisions. I just cannot see how people are going to lose jobs if we raise the minimum wage.

Let us take it another step. Let us say the hamburgers go up, the price of goods and services go up. You are still going to have to have people who are going to produce these products, who are going to be in these service jobs, to cook the hamburgers, so forth and so on. So people are not going to lose jobs. And if you give a person $5.15 versus $4.25, and you raise the burger by a penny, then that money goes into the economy.

I am going to yield to the gentleman because I know the gentleman would like to shed some light on why this will cause an adverse effect on the economy. At this time I yield to my distinguished friend from the State of Arkansas.

Mr. DICKEY. Thank you, Mr. FIELDS.

On the question of congeniality, as you started your statement, I would like to go back to that a second.

The race you ran for Governor and the respectful way that you did not trash your opponent, you did not bring issues out that would demean the voting populace was a credit to our Nation and I want to thank you. I am your neighbor on the north. I heard about how you handled yourself in that race and I think it was just absolutely wonderful and it is an example of congeniality. You lived it, you did it in a race. And I think what the gentleman from Louisiana [Mr. TAUZIN] was talking about, you really contributed. I want to thank you for that. I also want to thank you both for letting me get in this discussion with you. I think you just kind of want to pick on me, though, particularly CYNTHIA, the gentlewoman from Georgia, Ms. MCKINNEY.

But let me try to bring a perspective, if I can, to this, and when I run out of time, you just tell me that, if you will.

This is really an issue, and let me tell you this. I am an employer. I have two restaurants, and most of the people I hire are first-time employees when they come to work for me. I have been in that business since 1962 really. I had an ice cream shop and I now own two Taco Bells. I do not sign the payrolls now, my son does, but I do know the issues. If you all could do this, please do not completely draw conclusions until you think about what it is like to sign a payroll, what it is like to sign the front part of a check. It is a difficult thing to do in this world today, in America, with all the regulations, with all the forces and everything else, and it does come down to where you have to make some decisions, and it is not a decision that is based on greed or trying to make so much money most of the time, even though we do have excesses.

What I am saying to you is what is happening is that we are not taking the view of that person who is the payroll signer, that person who is battling all the issues. The insurance can go up, taxes can go up, real estate taxes, regulations, and I know regulations about just taking grease out requires an enormous amount of paperwork. If you look at the perspective there, you are going to see what the problem is when the Federal Government comes in and says, "Though productivity is not an issue, we want you to give a raise. We want you, because we decide, we want you to give a raise to these people who are working for you now but we're not going to give you the money to do it. In fact, we're going to charge you more taxes than you had before because you're going to have to pay the payroll taxes on a higher amount for those people who are just coming into the work force."

Now, this may be a statement that you do not agree with, but there is not a person who I hire who has ever had a job at $4.25 who is worth $4.25, not one person. Either they have worked somewhere else and you have to untrain them from what they are doing and train them for your way or you have to start them on a pattern of training and you have to put somebody with them, you have to attach somebody with them. So they are not worth $4.25. Where they reach the point that they are worth $4.25 is up to them.

So what we are saying is if in fact they are entitled to a raise, it will happen, not by what the employer says, not by what the government says, not by what some politician says but what the consumer says.

Mr. FIELDS of Louisiana. Will the gentleman yield on that point?

Mr. DICKEY. Sure. It is your show.

Mr. FIELDS of Louisiana. If the gentleman would just answer a few questions for me so I can understand exactly what mode of operation the gentleman is in in terms of his philosophy on the minimum wage.

Does the gentleman believe that there should be in fact a minimum wage irrespective, and let us not get into whether or not we should raise it now or in the future. Does the gentleman believe that this country should have a standard in terms of what is the minimum wage for an individual when they enter the work force?

Mr. DICKEY. Are you asking me as an employer or as a politician?

Mr. FIELDS of Louisiana. I am asking you as a human being. As either. As a human being, do you think that this Congress should have a standard in terms of a wage when a person enters the work force?

Mr. DICKEY. If you want an answer from the politician's standpoint, we are past the point of debating that. It is behind us. We must have a minimum wage.

Mr. FIELDS of Louisiana. If the gentleman would agree to that, then let me just go to first base. The gentleman knows that this country, the American workers, have not received a minimum wage increase since 1991, and I am sure that the gentleman would agree with me that the cost of living between 1991 and 1996 did not go down but it went up. As a matter of fact, inflation is on the average 3 percent a year. So if that is the case, then the gentleman would have to agree with me, or it appears to me that the gentleman would have to agree with me that is just makes basic sense that those low-paid workers, those minimum wage workers deserve the opportunity to have their increase, not commensurate with inflation but in 5 years they are overdue for an increase. Would the gentleman not agree to that?

Mr. DICKEY. What I need to do is I need to keep going. Let me go through this whole thing if I can from the perspective. Let me say this. As a politician, the minimum wage exists and we have to have a minimum wage.

Now what I am saying to you as far as the economy is concerned, it is destructive of the economy's best interests. As an employer, I would say that I could take the case that employees are worse off with a minimum wage, whatever it is, than they would be if we did not have it at all.

Let me see if I can explain the whole thing before you gang up on me, okay? Can we do that? What I am saying to you is from the perspective of the employee, the problem with the minimum wage is that we are giving them an idea that that is the maximum wage. If an employee stays in the employ of an employer to a certain point and does not reach higher productivity than the minimum wage, they probably should be terminated.

Because what is going to happen is the consumer, and you all are not looking at it probably from the standpoint of the consumer, the consumer does not want somebody who is not trying to improve, who does not want to try to reach a higher level of achievement and does not want to please them. If someone is working for a minimum wage and waiting for politicians to come in and give them their raise, if they do, then you are going to have poorer service and you are going to have a lackluster type of performance.

What we are not doing is discussing the productivity of the employee. That is where the problem is. The minimum wage gives that employee some problems because it says, "You don't have

any more incentive than that." On this segment of this, there should not be one employee who says, "That's all I'm going to get." They should think about it as being, "This is the way I'm going to learn, I'm going to get a reputation, I'm going to move on to something else or I'm going to move up in this particular operation."

Let me go further. Let me tell you about the employer. The employer is the one who is taking the risk and he or she is the one who is paying the tab. After the consumer decides to buy from them, then the employer is paying the tab.

□ 2145

The employer for too long has been put aside in the wings and the employee is put at center stage. We have got to start considering the plight of the employer in this particular exercise or discussion, because they are looking at taxes, taxes, taxes; regulations and regulations and regulations. They are thinking about retiring sooner. They are thinking about getting out of this business about helping to meet a payroll.

What is going to happen is if we do not start paying attention to the employer, we are not going to have any employers, and the employer is looking at their taxes and what they are going to right now. The money is being taken from them, they are having troubles with trying to improve or to expand, the money is being taken and given to politicians and then given to people who will not work.

But the problem is that we are now putting the employer in competition with the Government. We have to go and say to somebody to come to work, will you come to work for us at whatever wage it is, and they say I can get paid more by staying at home.

I will be glad to step down and leave, but what I am saying to you is we need to bring the attention to the employer, he is competing against the Government, the Government is taking taxes from him to give to people, not to work, so that he cannot get them to compete with other employees. So what we have here, if we have a minimum wage increase and if you will agree it is going to cost jobs, we are going to have the workers who are working at that job with less fellow workers, their stress level is going to be higher, their fatigue is going to be higher, they are going to have the demands of the consumer and the employer at the same time, and we lose in the process. The employees lose.

So what I am hoping that you all will see is that the plight of the employer has to be taken into consideration because that middle class employer has been neglected for years and years and years, and he or she has been given promises of tax relief, of regulation relief, and been given promises for years and years and years, and all that really has happened from Government is you are making a profit and you should give that profit to somebody else. We are going to have people getting out of that business, not paying into the Government, but getting money from the Government if we continue to negate that person and not have compassion for that person.

Mr. FIELDS of Louisiana. I thank the gentleman. I certainly do not want the gentleman to leave. I just wanted a colloquy among all of us. But let me just make a couple of comments before I yield to the gentleman from Illinois.

The gentleman stated that he did not believe or feel that we should have a minimum wage at all. That being the case, you take some of these countries across the world that this Congress has passed legislation to even try to censure. You have countries that make Nike tennis shoes at the cost of paying employees 50 cents and shipping them to the United States of America and selling them for $80 to $110 a pair. Certainly the gentleman would not suggest we ought to have that type of slave labor right here in the United States of America.

First the gentleman said he was in favor of a minimum wage. Then the gentleman said we should not have a minimum wage at all. I would only suggest to the gentleman that I think a minimum wage is the right thing.

Now, lastly, finally, the gentleman stated that it gives employees some sense of knowing that the Government will reward you for an increase versus the increase being dealt with on merits. Let us be realistic. I do not think if we increase the minimum wage that employees for some reason or another are going to sit back and wait for the Government to pass another minimum wage in 6 months or 1 year after that in order to get an increase in salary. We know that all these jobs are on a competitive basis and merit. That is not going to take away the merit system from the private sector. Employers will give increases based on the productivity of that worker.

You are a businessman. You own several restaurants. You have had to operate under the minimum wage. It was the law when you had your business. You had to pay employees, you could not pay them below that minimum wage. You gave employees, I am sure, an increase, and it was not based on the Government saying you had to do it. You gave the employees an increase based on their self-worth, their ability to do the job. The Government had nothing to do with that. To suggest that is going to take away that now, it did not take it away then, to me is not a fair assumption.

Mr. DICKEY. Mr. Speaker, if the gentleman will yield, how much minimum wage do you think we ought to have? $5? $10? Why would you stop? If there is a profit in the business under your theory, why stop at $25 an hour? I am serious about this. Where do you say, OK, I am not going to take any more from the employer, even though I have compassion for the man working 40 hours a week, where, say between $5 and $25? Why would you stop going up to $25 if you really had compassion for the employee?

Mr. FIELDS of Louisiana. Realistically speaking, you have to do it based on inflation. You have to take inflation into account. I would never say that the minimum wage of this country should be $25 an hour now, henceforth and forevermore. That would not even make basic sense. The reason why is because a loaf of bread 20 years from now may cost $50. So that would not make economic sense nor would it make basic sense.

I want to thank the gentleman from Illinois who has been waiting so patiently. I want to yield to the gentleman.

Mr. JACKSON of Illinois. Mr. Speaker, let me thank the distinguished gentleman from Louisiana for being kind enough to allow me the opportunity to participate in this special order. I also want to thank and indeed indicate it is a privilege to have the opportunity to serve with the distinguished gentleman from Arkansas in this body. I can assure him as we engage in this colloquy on the minimum wage that we are not going to gang up on him.

Mr. Speaker, I heard the debate taking place from my office and I wanted to come down and try and put, at least as I see it, the minimum wage in a particular context, a context that all too often we do not discuss in this Congress.

Let me say the very first thing, I think it is important for the purposes of our colloquy that we need to be aware that half of all of the financial assets of our Nation are owned and held by the top 10 percent, and the richest 1 percent of that 10 percent owns almost 40 percent of the Nation's wealth.

Are we aware that nearly 80 percent of the assets of the top 1 percent are owned furthermore by the richest one-half of 1 percent, about 500,000 families? The distinguished gentleman from Michigan, Representative OBEY, not long ago indicated, and he certainly has the documentation, that the holdings of those 500,000 families was worth $2.5 trillion in 1983. By 1989, it had risen to $5 trillion. To put that into perspective, the holdings of those families grew by almost three times as much as the national debt grew during that same period.

You want to talk about reducing the deficit and the debt? Those 50,000 families could have paid off the entire national debt, not just its growth, and still have owned 10 percent more wealth than they did in 1983. Remember, that does not include the increase

in their wealth due to a doubling of the stock market since that time. Now we are talking about cutting even more from the poor so they can provide more tax breaks for the wealthy and do not want to give poor working people a raise in the minimum wage.

Let us put the minimum wage, Mr. DICKEY, in this particular context: The Federal minimum wage was signed into law by President Roosevelt in 1938. The Democrats' current proposal would increase the minimum wage from $4.25 to $5.15 over 2 years through two 45 cent increases. The last increase passed overwhelmingly by bipartisan vote in 1989 and was implemented in 1990 was also a 90-cent increase in two 45-cent stages.

Full-time, minimum wage workers earn $8,500 a year, and a 90 cent increase would raise their yearly income by only $1,800, as much as the average family spends on groceries in over 7 months, to $10,712.

Currently the purchasing power of those earning the minimum wage is at a 40-year low. In discussing the minimum wage, we are not talking primarily about high school and teenage workers. We are talking about 12 million people who will benefit from a 90-cent increase in the minimum wage, two-thirds of whom are adults over 20 who bring home half of their family's earnings, and the majority of the minimum wage workers are women.

For example, in the State of Michigan, 324,000 workers, representing 11.9 percent of all hourly workers in the State, will benefit from an increase in the minimum wage. Even Henry Ford understood that his workers had to earn a livable wage that would allow them to buy the cars that they built so they could even build more so that he could even make more money. Certainly the Henry Ford example is certainly indicative of how employers should certainly see an increase in the minimum wage.

Let me put this in one last context and then engage in the colloquy along with the gentleman from Arkansas and the gentleman from Louisiana. A 90-cent per hour raise to 12 million people will add $10.8 million an hour to the purchasing power of workers. It will add $432 million a week in consumer power to the economy. It will add $22.5 billion a year to the spending growth of our Nation's economy. And even though we contemplate this whole notion of raising the minimum wage so that more Americans can provide for their families, indeed take care of the kind of basic necessities that families indeed need, I am just taken aback when I think about the debate in this Congress, about raising the minimum wage to provide more security for American families.

And then I think about the auction last week. Imagine this, according to Time magazine, pearls, not even real pearls, estimated at $500 to $700, they sold for $211,500. A rocking horse, a little horse, estimated at $2,000 to $3,000, sold for $85,000. Even the Terminator purchased five McGregor golf clubs, just five of them, $772,500. Three pillows worth about $50 to $100, $25,300. Pearls estimated at $75,000 sold for $250,000.

So I think when we talk about the minimum wage, we also have to recognize that there is a group and a facet in our society that is enjoying tremendous luxury and tremendous wealth, and they are, quite frankly, not paying enough taxes. Any time we can pay golf clubs for $772,000 and there will only be five golf clubs, you cannot even get a good game out of 5 golf clubs, that certainly suggests the kind of inadequacies that this body must address by allowing working people who work in stores, who drive taxicabs, to be able to work their way out of their conditions.

Not all of us can afford a big movie. Not all of us can afford the opportunities that have been afforded Members of this body. The only way we can change that is to have some legislation that is sponsored in this body to change the conditions of working people. I thank the gentleman for yielding.

Mr. FIELDS of Louisiana. Mr. Speaker, I want to thank the gentleman for his comments. As the gentleman pointed out, many of these minimum wage workers are women. I mean, almost 60 percent, about 57 percent of the people who earn minimum wage, are female. These are the people who wake up every morning and go to work.

I think we also, whenever we talk about the minimum wage debate, if you are for getting people off of welfare, then I just cannot understand how one cannot be in the same breath for raising the minimum wage. One of the best ways to get people off of welfare is to pay the people for the work they do.

We have been joined by the distinguished gentleman from New York, the gentleman who has advocated the raising of the minimum wage long before I was elected to this Congress, a gentleman who is a strong advocate of not only the working people of this country, but of educators, who was an educator himself. I would like to yield to the gentleman from New York [Mr. OWENS] for as much time as he may consume.

Mr. OWENS. Mr. Speaker, I thank the gentleman for taking this special order. I serve on the Committee on Economic and Educational Opportunities as the ranking Democrat on the Subcommittee on Workplace Protections, which is directly responsible for the minimum wage, so I have quite a file on the minimum wage and have been living with it for some time.

The bill that is presently out, sponsored by Minority Leader GEPHARDT and the ranking Democrat on the Committee on Economic and Educational Opportunities, Mr. CLAY. That bill calls for an increase of 90 cents over a 2-year period, and I must say that I am awfully sorry that at its last count we only had about 125 people who are cosponsors of the bill. I hope we will have more cosponsors, not only from the Democratic side, a complete cosponsorship, but also some of the Republicans who have decided that this is the humane and sensible thing to do will also join us and will get on with the business of giving the lowest paid workers in America a 90-cent increase over the next two years.

It is a very conservative approach. We have an economy right now that is booming. From Brownsville and Brooklyn in my district, to Mapleton, GA, from California to New York, we have an economy that is booming. Most of the workers in this economy are not paid minimum wage. They are paid above minimum wage. Yet the businesses that these workers work for are thriving. Everybody wants to get into the American business climate.

□ 2200

We appreciate that our entrepreneurs and small businesses make up a tremendously large segment of the economy. Small businesses employ more workers than anybody else, but they are doing quite well from coast to coast.

And restaurant businesses in the parts of the country where the labor supply is less, it is a matter of supply and demand. Where you have more labor, they can afford, the businesses can afford to get away, or they can get away with paying lower wages. That is what happens. They have a lot of people who want jobs, so they pay the lowest wages.

Yet the restaurant businesses in the areas where they are paying the lowest wages, they are able to survive. And they cry, if we talk about increasing the minimum wage, that they will have problems, they may go out of business. And yet the same kind of restaurant business in another part of the country, where they are paying higher wages, is thriving also.

When the wages go up in another part of the country because the supply of labor is not plentiful and they have to pay more, they continue to profit. Businesses do not stay around if they do not profit. Nobody stays in business if they are not making a profit.

The size of the profit and whether or not a business stays viable or not is not dependent on just the wages paid. McDonald's and Burger King and a number of fast food restaurants are able to supply fast foods at tremendously low prices. In fact, there is a lady in my district that says she finds it cheaper to feed her kids at McDonald's. She cannot buy beef at the prices they pay for their beef, and she cannot feed her kid hamburgers at that price.

Mr. DICKEY. Will the gentleman yield, just for a question?

Mr. OWENS. No, I will not yield now.

There are some other factors that are involved that drive the prices down so low, as there is in many businesses. There are many other factors involved than the wages paid. We have a thriving economy, and we owe it to our workers to try to get a fair wage for them in those areas where the supply of labor is so great until the entrepreneurs, the business owners, are able to exploit that. They can get labor cheap, so they get it cheap.

Most people in the country are in areas where the labor supply is not so cheap and they have to work for a minimum wage. There are about 13 million people who still work for minimum wage, unfortunately, because they are in situations where they have to compete in a labor supply pool where they cannot get higher wages; or, in some cases, they may have a situation where if they were organized, they might be able to demand high wages because the supply of labor is not so much greater than the demand.

But the organization of workers has been thwarted in this country by our poor labor laws. Of all the industrialized nations, we have the worst labor laws. We make it more difficult for people to organize and for people to bargain than any other industrialized nation in the world. So we keep down the wages. And by having a minimum wage, a floor, we are only protecting ourselves as a Nation.

The Constitution talks about promoting the general welfare. Well, promoting the general welfare means the welfare for everybody, not just the entrepreneurs or businesses, or people who make a lot of money, who keep crying crocodile tears about taxes and about regulations. They are quite well off. And there are whole cadres of business people from all over the world who want to get into this economy and into this business environment, who think they can make a lot of money. I do not know why we have so many crocodile tears being cried by entrepreneurs in this business environment which is so favorable toward entrepreneurs. It is not favorable toward workers.

And one way you help workers on the very bottom is by having this much needed increase in the minimum wage which, when you look at inflation, we are still at an all time low in terms of the wage level of people on the bottom.

Mr. FIELDS of Louisiana. Since each of the gentlemen and the gentlewoman have made their opening statements, at this time I am going to allow Members to enter into a colloquy, and I notice the gentleman from Arkansas had a question of the gentleman from New York.

Mr. OWENS. I have been listening to the gentleman bemoan the fact, as a businessman, he is persecuted in America by taxes, by paperwork; he has to make out paychecks, and that is a painful experience. You should live the experience of the people that do not have any money to make out checks for. There are large numbers of people who would love to have your pain and your grief in terms of the difficulty of making out checks for payroll.

Mr. FIELDS of Louisiana. I yield to the gentleman from Arkansas.

Mr. DICKEY. Let me ask the question now. Let me ask the question, if in fact we are going to accuse people who have been successful, of what you just accused.

Mr. OWENS. I am not accusing anybody of anything. We need entrepreneurs and people to be successful.

Mr. DICKEY. I am just trying to ask a question, that is all.

Mr. OWENS. You are a good lawyer. You said I accused. Who did I accuse?

Mr. FIELDS of Louisiana. I yield to the gentleman from Arkansas.

Mr. DICKEY. I am asking a question, and any of you all can ask it. I won't ask the gentleman from New York; I will ask any of you: If we are to set up a role model for people to work toward in a capitalistic society, and if we are trying to get that message down to the lowest of the people in the economy and say, if you will work hard, this is what will happen, how can we encourage those people to get to where they can get in America? If they work hard, and that is the promise, you can do whatever you want to do in America and you can make it. How can we do that if we take the people at the top rung and say we are going to regulate you to death, and we want these people down here to know that you are the reason why no prosperity gets to you?

You see what we are doing? We are doing just exactly the opposite. We should be saying to people at the lower rungs, you can get there at the top. Look at what got them there. Use that as a role model and let the government stay out of the process of drawing attention.

Mr. JACKSON of Illinois. Mr. Speaker, let me thank the gentleman from Arkansas for that question, and at any point in time, my distinguished colleagues are more than welcome to try to answer that question.

Let us take a case study. Let us say a college student, who is working at McDonald's or Burger King, or at any particular minimum wage paying job, earning $8,500 a year, assuming they are working full time, from 9 to 5. And, obviously, they are not because they are a college student. $8,500 a year is not enough money to even pay off one's student loan to go to a 4-year, 1 year on a full academic scholarship costs more than $8,500 at a State-run institution.

So no matter how hard that student is working, and that we are promoting them because of their education, and that they have a serious work ethic, the reality is no matter how serious their work ethic is or their educational advancements or the opportunity that we provide for them, they are not able to work their way even to meet their current obligations, which include their loans.

Let me say to the gentleman from Arkansas, I think that it probably makes sense, and I would like the gentleman from New York to possibly respond to this, why not look at the minimum wage and index it to inflation so that we do not have to engage in this debate every year and a half.

Mr. OWENS. We would have to go up to $6.25 an hour. If we put it on an index inflation now it should be at $6.25 instead of $4.25.

Mr. DICKEY. It is $7.18, I believe, is that it is.

Mr. JACKSON of Illinois. I would make the argument that we can avoid this debate and we can avoid rehashing this every 3, 4, or 5 years, since we are 1½ years past due on increasing the minimum wage, by attaching the minimum wage and indexing it to inflation so that the cost-of-living for working people, and we are not talking about people who are lazy and not working, we are talking about people who are working but at the end of a hard day's work they cannot change their economic situation.

Mr. FIELDS of Louisiana. Reclaiming my time, Mr. Speaker, I will yield to the gentlewoman from Georgia.

Ms. MCKINNEY. I just want to make a few points in closing, and I will yield to the gentleman here who want to dominate the debate.

The gentleman from Arkansas made some reference to productivity gains, and there have, indeed, been productivity gains experienced by our economy, except that in the past those productivity gains accrued to the community at large. Now those productivity gains are not accruing to the community, perhaps to stockholders and CEO's, but certainly not to the low-wage workers. And that is one argument in favor of protecting the interests of our low-wage workers.

I think we have also seen that the gentleman from Arkansas shares the opinion of his colleagues in the Republican leadership that he also fights the increase in the minimum wage or the concept of the minimum wage with every fiber in his being as well.

Mr. DICKEY. I did not say that.

Ms. MCKINNEY. The gentleman has said that we need to take care of the employers. I would posit that Congress is doing just that. When McDonald's can get $200,000 to advertise chicken nuggets, then I think we are taking care of employers. When AT&T can get $34 million, we are taking care of employers.

We have not begun to talk about corporate welfare yet. This Congress

wants to repeal the alternative minimum tax, build more stealth bombers, defend Americans who renounce their citizenship in order to avoid paying taxes, and yet they want to deny poor folks, working folks a 90 cent increase in the minimum wage. Now, you know, you have to be a little bit less heartless than that.

Mr. DICKEY. Is that a question?

Ms. MCKINNEY. Well, it is a statement.

Mr. DICKEY. I understand you are saying I am heartless, and you know better than that. What I am trying to say, what I want the question to be answered is, why not encourage these people to improve rather than to say this minimum is the maximum? Why not do that? Why not give them a role model that means achievement and improvement?

Mr. OWENS. We are encouraging them to improve by saying we are going to pay you what you should be paid in this economy. In this economy you cannot live on $8,400 a year. You need more than that. You cannot live off $4.25 an hour.

So we are going to pay you for your work. We are not going to have you work at the level of a peasant or just above slavery just because the supply and demand is such that your employer can pay you that because he can always get more people. We want to have enlightened employers.

Mr. DICKEY. But where is the role model?

Mr. OWENS. We need employers who understand that it is better for them, like Henry Ford understood at a certain point that he had to pay his workers a decent hourly wage so they could buy the cars.

Mr. DICKEY. Would you please yield a second, the gentleman from New York, for a question?

Mr. OWENS. No, I will not yield. I will yield in a minute.

The SPEAKER pro tempore (Mr. MICA). The gentleman from Louisiana has the time.

Mr. FIELDS of Louisiana. I yield to the gentleman from New York and I will then yield to the gentleman from Arkansas for a response.

Mr. OWENS. An enlightened employer would know that paying the minimum wage helps the economy as a whole. These are very poor people and every dollar they make they are going to spend in this economy. They are not like the CEO's, who make millions of dollars and travel around the world spending their money somewhere else.

An enlightened employer would know that the effort we made in the last Congress to pass health care legislation would greatly help them in their woes. They would not have to moan so much if we had a health care plan which took care of everybody's health care.

We did not ask for a minimum wage 2 years ago because we were concentrating on a universal health care plan, which meant that the poorest person would also be able to have a health care plan and maybe he would not need an increase in the minimum wage.

Here is an opportunity where you might have helped yourself and helped the Government and helped the people who work for you if you had supported a health care plan. But most employees are not enlightened. they can only see tunnel vision, and we need to give them some help in understanding how the economy really works in the rest of the world. The economy works for everybody. The workers at the lowest level——

Mr. FIELDS of Louisiana. Reclaiming my time.

Mr. DICKEY. Teacher, can I ask a question?

Mr. FIELDS of Louisiana. Mr. Speaker, may I inquire how much time I have left?

The SPEAKER pro tempore. The gentleman from Louisiana has 8 minutes remaining.

Mr. FIELDS of Louisiana. If the distinguished gentlemen from Arkansas, New York, and Illinois, and the distinguished gentlewoman from Georgia would allow me to now operate on a controlled time basis, at this time I yield 1 minute to the gentleman from Arkansas.

Mr. DICKEY. All right, this is the question I want to say in 1 minute, and thank you, teacher, for letting me.

If this plan that you have for raising the minimum wage, if, just give me that, if it, because of the increased costs of the wages and on the payroll and the taxes that comes, if this causes a taco to go from 89 to 90 cents, 1 penny, proportionately who suffers the most?

What I am saying to you all is that we have increased costs and inflation because of this, because all of the elements come into an operation, the delivery costs, the costs of the goods that come in are increased, everything is increased. It is an incremental thing. It comes up.

The harshest thing you all are doing when you do this is penalizing disproportionately the lower people on the rung of the economic scale because they have to go. If that is the case, how do you answer the question that inflation is going to hurt those people? When you say you are going to help them and you use them, in my opinion, to try to increase taxes and try to balloon the size of Government, you use that argument, they, in fact, will be suffering the most by inflation. What do you say about that?

Mr. FIELDS of Louisiana. Reclaiming the time, I yield to the gentlewoman from Georgia for 1 minute.

Ms. MCKINNEY. The bottom line on what I say about that, we all know that crime doesn't pay, but if you happen to work for Congressman DICKEY your work doesn't pay either.

□ 2215

Mr. FIELDS of Louisiana. Reclaiming my time, let me try to respond to the gentleman's question.

Ms. MCKINNEY. I am just playing.

Mr. FIELDS of Louisiana. The gentleman has a very legitimate question and my response is very simple. I know that the gentleman would agree with me that most countries across the world try to pattern themselves, all of them, most of them, admire the work that we do in the area of business. Would the gentleman not agree with that?

The gentleman does agree. He is shaking his head.

Mr. DICKEY. That is correct.

Mr. FIELDS of Louisiana. That is a yes. They in fact look at us as role models for the most part. Is that not correct?

Mr. DICKEY. That is correct.

Mr. FIELDS of Louisiana. The gentleman would agree. We do not have companies and workers across the world looking at America saying we do not do our business correctly. For the most part, think we do a pretty good job at it.

Let me take the gentleman through the history of minimum wage for a second. It did not hurt then, and I would suggest to the gentleman it is not going to hurt now because, first of all, it is not going to take away the competitive angle of the work force. Individuals must still be competitive. They will be rewarded based upon their merits.

Public Law 75–718 was the first minimum wage law, 25 cents. Then in 1939 it moved from 25 to 30 cents. In 1945 it moved from 30 to 40, 40 cents. Then in 1950 it moved to 75 cents. It was still competitive then. Employees were still working and getting their just due in the merit system, and it did not have a devastating effect on the economy and certainly did not have a devastating effect on the American workers.

Let me ask the Speaker, inquire in terms of how much time the gentleman has remaining.

The SPEAKER pro tempore (Mr. MICA). The gentleman from Louisiana has 4 minutes remaining.

Mr. FIELDS of Louisiana. Because I would like to yield 1 minute to each of the gentlemen and gentlewoman before I leave, before we close.

It moved from, I will put it in the RECORD, up to 1991, it moved from 25 cents in 1938 to $4.25 in 1991. And certainly the gentleman is not suggesting that employees are coming to work waiting for the Government to raise their wage and not working hard, not trying to be promoted on jobs and waiting for this Congress to raise their wage. The gentleman is not suggesting that.

Mr. DICKEY. I am.

Mr. FIELDS of Louisiana. If the gentleman is suggesting that, I would suggest that the gentleman is wrong.

I am going to yield 30 seconds to each of the gentleman and the gentlewoman for closing. I first yield to the gentleman from New York.

Mr. OWENS. It is an insult to workers who make the minimum wage to say that they are there because they are no good, they cannot improve themselves. My father is one of the smartest men I ever knew. He worked in the Memphis furniture factory all his life, never paid more than the minimum wage. He went to school to the sixth grade. He was the smartest man. When the machines broke down, he made them operate. He understood the mechanics. They had to come get him when they laid him off because of the fact the machines could no be run by anybody else, yet they still never paid him more than the minimum wage because the supply and demand was such that they could get people who would work for the minimum wage.

Mr. FIELDS of Louisiana. Mr. Speaker, I yield to the gentleman from Arkansas.

Mr. DICKEY. Mr. Speaker, I would yield my time.

Mr. FIELDS of Louisiana. Mr. Speaker, I yield to the gentleman from Illinois.

Mr. JACKSON of Illinois. Let me thank the gentleman from Louisiana for this opportunity. I want to make sure that we are focusing and keep the minimum wage debate in a particular context. The context is, once again, the top 500,000 families, their net worth in 1983 in this Nation was $2.5 trillion. By 1989 it had risen to $5 trillion.

Those families, those business people, they witnessed an increase in their standard of living. They have witnessed an increase in their earnings and in their wage earnings. That is a crowd that paid $700,000 for golf clubs, $300,000 for fake pearls. They need to pay more taxes, which is good. It is American because they are benefiting from America.

At the same time, we need to raise the minimum wage of people who do not have the same opportunity that those 500,000 families do.

Before I yield back the balance of my time, I just want to show this.

Mr. FIELDS of Louisiana. The gentleman has no time.

Mr. JACKSON of Illinois. The distinguished majority leader has indicated he will resist a minimum wage increase with every fiber of his body. In light of the fact there are working people in our country that we upset about this, we ought to change that.

Mr. FIELDS of Louisiana. Mr. Speaker, I thank the distinguished gentleman from Illinois, and I yield to the gentlewoman from Georgia.

Ms. McKINNEY. Mr. Speaker, I thank the gentleman for yielding.

I say we need to increase the minimum wage to a livable wage. We need to protect workers' rights and jobs. We need to decrease taxes on middle and low income families, and we need to encourage not just personal responsibility but corporate responsibility, too.

Mr. FIELDS of Louisiana. Mr. Speaker, I thank the gentlewoman from Georgia. I thank all the gentlemen and the gentlewoman for being here, and I want to especially thank the gentleman from Arkansas for being here tonight to participate in this colloquy. The gentleman certainly showed a lot of statesmanship and character in being part of this debate tonight, and I thank the gentleman.

In closing, Mr. Speaker, I simply say that Members of this Congress, all who I serve with and all who I have a great deal of respect for, when we go home each day we take in $550. Each day we work we get $550. A person on minimum wage only makes $680 a month. I just cannot see why we cannot give them a small 40-cent increase 1 year and another 40 cents the next year, so that they can buy bread and milk for the same price that we buy bread and milk.

I want to thank the Speaker and I want to thank the gentleman and the gentlewoman.

THE REPUBLICAN VISION FOR AMERICA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. RADANOVICH] is recognized for 60 minutes.

Mr. RADANOVICH. Mr. Speaker, I appreciate the opportunity to come speak to the American people regarding the important issues of the day, and I would like to start off by commenting on how important words are, I think in conveying messages. In my short term here in Congress, I am a freshman, I have been here a little over a year, I have learned a couple of vital things, and that is that we have to be very, very careful about the words that we say to make sure that they are communicating exactly what we mean to the American people, because words are very important.

It is in that spirit that I offer the following vision, in an attempt to determine a way to communicate to the American people the role and the mission of the Republicans here in Congress. If we can say things and put them down into easily understandable terms, using very symbolic figures, it can go a long way to explaining to the American people how we would like to go and where we would like to take this country. It is in that spirit that I offer this following vision.

Let me use the simple symbol of a chair to illustrate where we are in America and I think where the Republican Congress would like to take this country. In starting with something such as this, I think it kind of illustrates where America is right now. I believe that before we can entrust or get the American people's trust in following us, we have to accurately describe where America is right now, and this portrait of this chair is a good illustration of American society. So welcome to America.

Basically we have an unstable chair, something that does not provide very much freedom, something that does not provide very much security. This is really the condition of our country right now, I believe. You will notice the chair has four legs, but the problem is that none of the legs are the same size as the other legs on the chair.

Look at the government leg, way too long. Look at the family leg. It would be very easy to sell the argument to the American people that the family unit has basically been decimated over the last 30, 40 years with the notions of the Great Society and the Great Society mentality that this Congress has been operating under over the last 40 years. Business institutions and religious and civic institutions in this country are not operating up to their fullest capacity because of the large leg that knocks everything out of proportion and creates much instability and insecurity in the society.

Take the next chart to further illustrate this in a different way, and that is by saying I think that it is safe to state that in America today our institutions are disproportionate to one another, and that is the basis or the cause of a lot of our civil and financial problems in this country.

You will notice in the government institution, of all dollars spent on government, 70 percent of those dollars are spent at the Federal level, 30 percent of those dollars are spent at the State and local level.

Religious institutions and business institutions, as I mentioned, are not operating at full capacity due to overtaxation and regulation and problems with civic institutions that do not really fill their proper role in society, that basically have been taken over by the government institution.

The family institution has been decimated over the last 30 years.

There are two ways that we can solve this problem, because we believe that the American people sent us to Congress in this wave of the 1994 election to solve the problem of the reality that I just described. There are two ways that we can solve the problem.

This is not the way to do it. This somewhat illustrates the current efforts that we have been going through during the last year with our great deal and our determination to downsize Federal Government. What we failed to do, though, in chopping off certain responsibilities and lopping them out of

the government sector, is to take into consideration how the downsizing of Federal Government would have an effect on the other institutions in the American society.

Now, I will say that Lyndon Johnson said it right. When he began to campaign for the Great Society in the early 1960's, he said "Great Society." He did not say "great government," even though that is what he did. He tried to solve all of society's problems through a great government, and it ended up getting us $5.5 trillion worth of debt and expanded the ranks of the poor and needy.

Everything that government got into basically in many of the areas of our lives has made the problems worse, not better. So I think what the Republicans need to learn is that in addition to our concept of downsizing, we have to think in terms of relationships, of how to build these other institutions in this country so that they can begin to fulfill some of the obligations that we feel government should no longer be in.

If Members would like to do it like this, we have a helter-skelter approach. It is not good for this country. Basically this is the result of a negative message, and anti-Great Society message, an antigovernment message.

I think what we would like to do, the Republicans would like to do, is to paint an accurate picture of what America would look like after using the balanced budget process as a blueprint to get to a better America. That can be accomplished, I believe, in two ways. One is through the legislation that we would be accomplishing on the House floor and in the Senate and through the White House, and the other would be to illustrate how the issue of personal responsibility ties into the reestablishing of the family institutions and the downsizing of Federal Government.

If we are to downsize Federal Government and take into consideration its effect on the other institutions in this country, and also build these other institutions up so that they are able to receive these responsibilities that we therefore determine are no longer the responsibility of the Federal Government, then it should occur in some of the following examples such as this:

There are many who believe that once government entered into the social programs, that they actually made them worse. The war on poverty is not over. There is more poverty since war was declared on poverty by the Federal Government in the early 1960's. Many of the concepts of the Good Samaritan I think people agree are found in scripture, not in the Constitution. They are better met by civic and religious institutions in this country.

We should begin designing tax overhaul problems in relationship to, with the objective, I should say, of shifting that responsibility from the institution of government over to civic and religious institutions. By that I mean providing generous deductions for contributions made to not only church groups but civic groups, nonprofit groups, private charities, anybody, any group that takes care of the poor and needy, so that as this fulfillment of that need to care for the poor and needy expands in this civic and religious institution, the social programs of the government are correspondingly reduced so that we can have a phaseout of government's participation, but the need is met and even met more effectively in this institution that begins to rebuild this one.

Deregulation and tax relief, a mantra of the Republican Party, and justifiably so, will reduce the amount of overhead of the Federal Government. Regulation costs money, and they have to raise taxes in order to make the money in order to pay for the increased regulation of government. That is, as it is shifted down, it begins to rebuild the business institution because business can expand when they get tax and regulation relief, so we have a downsizing of that institution and a beginning of the rebuilding of the business institution.

Third, an example of education and how much it can rebuild the family institutions is by making the point that the education system in this country must be answerable to the family unit, because parents are ultimately responsible for the education of their children, and not the government. I do not mean that everybody in this country should be home schoolers. What I do mean is that through local control of education, not Federal control, by the abolishment of the Department of Education, returning responsibility back to the community level, local control or a voucher system puts that responsibility back onto the family unit, so our parents can have more after choice in their child's education. It, too, reduces the amount of government.

□ 2230

On the issue of localizing, you have today 70 percent of all total dollars spent on the Federal Government, you have like laws that are current State level, and also local level. So it is to the benefit if you take all these programs and push them back down to the State level by block granting. Or if you push them down at the local level by further block granting to counties, you begin to reduce the amount of government by reducing the Federal Government's role in these problems, but still having government obligations met at the State and local level.

Mr. Speaker, these are indications of how we start downsizing in such a way that we begin to rebuild these institutions.

I want to make one point, and that is that we have begun to get some rebuilding of these institutions. But they are not operating at the full capacity that they could, and this will never occur at their full capacity without the issue of personal responsibility, which is the next slide, if you would like to go ahead and put that up there.

The issue of raising the conscience of the American people is really a very important key in bringing stability and actually recreating a free society in America, and that is not a role of the government institution. It is the role of religious institutions.

Now, civic organizations can take care of poor and needy, but it is the responsibility of the churches across the land to begin to raise the conscience of the American people so that they, the American people, can begin to operate effectively in these other institutions. By raising the conscience of the American people, it allows their capacity through religious and civic institutions to take over the social programs in this country. By raising the conscience of the American people in the family institution, it encourages personal responsibility so that parents are better parents, kids are better kids, marriages are not conducted frivolously, divorces are not conducted frivolously, people actually take serious responsibility within the family institution.

Raising the conscience of the American people allows the business institution to expand through two things, by encouraging less lawsuits and by the establishment of peer review. By peer review I mean that doctors police doctors, lawyers police lawyers, like-minded business policies like-minded business so that peer review, those of us judging each other, acts as a buffer between direct government control and no government control at all. It provides a cost-effective way by decreasing the cost of regulation, therefore decreasing taxes on business, to allow that business institution to expand to its fullest capacity.

So while you have downsized Federal Government, and the other issue is through raising the conscience of the American people, it allows us to flip this awkward percentage of large Federal, 70 percent being spent by Federal Government, and 30 percent at State and local governments, to be switched back down. Not only would we reduce the size of government, but that which we do spend is returned, 70 percent spent at the local level, 30 percent spent at the Federal level.

I cannot tell you how many times I heard on the House floor, especially when we were talking about block granting crime money at the local level, various Members standing up here, and we were arguing for no strings attached, let the local people decide how best to take care of crime in their various districts and people arguing that you simply cannot trust those local elected officials because

they will go spend it on something else. My statement is, by raising the conscience of the American people, we can give more responsibility to elected officials in this country so that we can begin to attack the arrogant assumption that the only elected officials that you can trust are the 536 that are in Washington right now.

Through this idea I think what we begin to get is a proper vision of where we would like to take this country through a balanced budget process. And it is pretty much described in this one, which I call a free society, and that is where a Federal Government's role in this country is in equal proportion to the other institutions that form American society so that government is equal to religion, is equal to family, is equal to business. Not only that, but in a government institution the Federal Government's role in total spending is back to 30 percent, State and local control is the larger share of 70 percent.

Throughout history we have faced times of disproportionate institutions. Our country was developed because of the overly repressive monarchy in England, and that is what caused this disproportionate system for the Pilgrims to come to this new land. During the Industrial Revolution the business institution was disproportionate in its influence to other institutions in this country. During the inquisitions, an early church period, the religious institutions were far too disproportionate to the other institutions in this country. And in the last hundred years, through socialism, Communism, fascism we have experienced disproportionate government over the other institutions in this country. And in America we felt the ancillary effects of that through the Great Deal and also the Great Society.

So this is the vision of America: this is a free society. It provides the maximum amount of freedom and security for Americans so that they can go on to begin to pursue life, liberty and happiness with the surest amount and the greatest of success. What you end up with in relationship to my first slide was the result of that, and you can go ahead and change those, and that is a chair that works, a chair much like society in that both of them provide freedom and security so that you may sit in a chair, discuss, read, go about your business, and government is constructed in such a way that people can pursue life, liberty and happiness and not worry about insecurities or lack of freedoms.

Mr. Speaker, this is the vision of the Republican Party. This is a free society. This is when government is no longer any bigger than the religious institutions and civics institutions in this country, no longer bigger than the family institutions who have been restored to their full effectiveness, and no longer disproportionate to the business institutions providing a firm foundation for us to live on and experience the maximum amount of life, liberty and happiness in this country.

So I submit that to the American people and appreciate the time.

I do have time and want to yield to my friend and colleague from Maryland, Mr. BOB EHRLICH, who wants to begin a second portion of his presentation. I also welcome my friend and colleague, the gentlewoman from California, ANDREA SEASTRAND. So, BOB, I want to switch over to you and give you the magic wand, and I will be back up on that seat there.

Mr. EHRLICH. I thank my colleague from California. I also officially congratulate him upon his election to the presidency of the freshman class, and I welcome our colleague from California. Very well put, GEORGE, very well put.

Mr. Speaker, I would like to take the next half hour to engage my two colleagues in a discussion of what we see happening in America today, which is big labor bosses trying to buy themselves a Congress. I know the gentlewoman from California has some very, very strong views on this. I have taken the liberty actually of bringing my AFL–CIO report card, and blowing it up, and bringing it to the floor of this House because I know my two colleagues and I want to talk about exactly where big labor bosses are coming from the distinction of big labor bosses and how they have grown apart from the working folks in this country.

Mr. Speaker, what I would like to do, with the permission of my colleagues, is go over, one by one, the major issues on this report card. I am going to start with a favorite, and I know the president of the freshman class, my friend, the gentleman from California [Mr. RADANOVICH], is a businessman voting against an increase in the minimum wage. We have just heard an hour of discussion concerning the merits of raising the minimum wage. During that discussion I did not hear one sentence uttered about the ultimate irony of raising the minimum wage which is putting at risk marginal workers in this country out of work.

Every economic study I have ever seen, and, I submit, any economic study folks on the other side of the aisle have seen, holds the same result. When you raise the minimum wage, you automatically put x amount of marginal workers, unskilled, untrained, disabled workers, out of the work force, and that is compassion. That equals compassion. That is the traditional assumption that this majority challenges on this floor every day.

I know the gentlewoman from California would like to make a comment about that.

Mrs. SEASTRAND. Well, I would also say that we came here to do away with unfunded Federal mandates, and if there was anything that was a mandate, it is to increase the minimum wage, and it is just artificial.

I say, why not raise it to $10 or $25? Why stop?

Mr. EHRLICH. We could really be compassionate, let us get real compassionate. Why not $20? Why not? We could put a lot more money in a few workers' pockets, and we would cause an awful lot of unemployment.

Mrs. SEASTRAND. Well, I think statistics have proven over the years that a minimum wage will not create one job. Statistics prove that we lose jobs for those very people that we are trying to help. And you know none of us want to people to stay in a minimum wage job.

Mr. Speaker, I would just say my children, Curt and Heidi, worked their way through high school and college with different jobs. They depended on those minimum wages. You know, there are very few folks that really wanted to give them more. They were training, they were learning about getting to a job on time, learning what it meant to be there and to follow some of the rules and some of the basics.

Many of these minimum wage jobs apply to students across this Nation, both in high school and in college, and many of those students and young people are the very people, the minority students and such, that we are trying to help.

Mr. EHRLICH. Another irony at work here, and of course we have the President of the United States acting in a very compassionate way in this election year, trying to sell the American people on the notion that he supports an increase in the minimum wage. Yet it is words, it is these words that keep rebounding against the President.

February 6, 1995, Bill Clinton: It, raising the minimum wage, is the wrong way to raise the incomes of low-wage earners. In 1995, a nonelection year; 1996, we see quite different words coming from this White House.

The gentleman from California?

Mr. RADANOVICH. Mr. Speaker, my comment would be that the timing of this issue, at least in my view, and I have to let you know where I am coming from, and that is that basically I think that the establishment of a minimum wage really is a violation of the separation of government and business. I do not think that the Federal Government should be involved in the establishment of a minimum wage, No. 1.

No. 2, this issue was raised, and the comment about the President illustrates this point as a diversionary tactic, to divert the Nation's attention away from the real business at hand in Washington. That is balancing the Federal budget, getting our Federal act in order, learning how we can privatize certain things that government does, learning how we can localize.

This is a perfect example of things that probably should not be discussed on this floor of this House, is better left at the State level or even the local level for the establishment of minimum wages in States.

Mrs. SEASTRAND. If the gentleman will yield, we are going to be having an initiative on the ballot come November regarding the minimum wage. If there was someplace to discuss it, it would be at the State level.

Mr. Speaker, I would like to point out, I think the two gentleman would agree with me, that the irony is the President was in control 2 years. He had a House, he had a Senate. They could have increased the minimum wage, and instead we see comments such as on the board there, and they failed to do it, and you are right, he did do it for just getting us away from balancing the budget.

Mr. RADANOVICH. It is a political issue to divert attention away from the more urgent business at hand, and that is balancing the budget.

Mr. EHRLICH. Mr. Speaker, I think there is a far larger point here that I know many of us have discussed on the floor of this House. Should not words have meanings, even in this town, even on Capitol Hill, even in election years? It seems the institutional memory of this administration is quite limited. If you listen to the State of the Union, or you listen to this President, words simply have no meaning. An eloquent speaker, a wonderful speaker, charismatic, great on TV, yet the words are empty. The words have no meaning.

I think the American people want a little bit more out of their elected officials, both in the executive branch and the legislative branch. I know as I go door to door in the 2nd Congressional District of Maryland, people tell me they want their Representative to actually believe something.

It has become a traditional view of politics. You go get elected to anything, the State legislature or the county council, the Congress of the United States, President of the United States, because you actually have principles, because you are carried forward to public service on the philosophical foundation of things that you believe in and the vision you have for the country.

Mr. Speaker, words should have meanings.

Mrs. SEASTRAND. If the gentleman would yield, you mentioned principles. I know that, as we are discussing the minimum wage, we see polls where we see across America that perhaps Americans would like to see an increase in the minimum wage. But we came here as new Members to this Congress trying to change the policy, and I do not know about you, but I really cannot look at myself in the mirror to know that I hop on something that is popular instead of standing here and trying to share with the American people why this is not good policy and it is not going to be helpful to those people that we all say that we want to help.

□ 2245

It is not the compassionate thing to do. In fact, it is going to have the reverse. Here is an example where we might look at polls, but I think all of us came here to do what is right and not just what is correct for the next election.

Mr. EHRLICH. Which is a radical thought in this town. It is a radical thought in this town that politicians would act on the basis of what individually he or she believes is best for the country, and not on the basis of what the latest poll would dictate.

Unfortunately, Mr. Speaker, that is a radical thought in American politics. As I campaigned in my district, and I know you both find the same thing, people find that refreshing. They are stunned. Even people that believe in this opportunity agenda in the Congress of the United States still have a hard time believing that folks can go to Washington with ideas, with a philosophy, debate that philosophy, pass that philosophy, defend that philosophy, and actually believe in something, and not what the latest poll should dictate.

Mrs. SEASTRAND. Mr. Speaker, if the gentleman will yield, you have your congressional report card there by the AFL–CIO. I just want to share with the two gentleman here today that I have the AFL–CIO news for April 22, and I will tell you, I made the front page, because I also have a picture here of my congressional report card with ANDREA SEASTRAND. It is the same report card. I guess, as I said, I made the front page. It says, "Lawmakers don't make grade. Extremists feel the sting," that is you and me, you know, and "Ready Smear Campaign."

I would like to share with you the fact that that is not what I am hearing from the fellows and gals that belong to the unions in California on the central coast of California. I would just like to share the fact that I have a letter here from a gentleman from Santa Maria. I had also received one from Templeton, and a lady who is a firefighter from the northern end of the District, Atascadero, went on television and was upset with the way she is seeing her dues being spent.

This gentleman says: "I see that the freshman congressional class is a breath of fresh air. I praise you and your fellow congressional Republicans for tackling head on many of the important issues of today." He said:

I am a blue collar union member. Many in our union feel the same as I do on national issues. I am a registered Republican, but our leadership is rabid Democrat. They seem blind to the destruction that liberalism is causing our Nation. They use our dues without regard to if the membership wishes to attack our party. Many of us wish we could stop our leadership from attacking your platform, but are powerless in a very undemocratic organization. I understand these attacks on you must frustrate and anger you, but I plead with you not to look on all blue collar workers as mindless robots. We still vote our conscience. Our contracts with management are the way we ensure a decent standard of living and protection from abuse. Please keep going.

I would just say, I am sure that is what you heard. They had an 800 number to call us, the ads on television from the AFL–CIO. I am sure my colleagues from California and Maryland heard what I did. They used that 800 number and said, "Please, do not give up. We believe in what the freshman class is doing. We believe in what this Congress is doing, and do not believe that all union workers feel the way that bureaucratic leadership in Washington, D.C. feels."

Mr. EHRLICH. Mr. Speaker, I know the gentleman from California wants to add a point, but I have to add just a quick observation. The only thing left out of that letter, and that was very well written, was the fact that also many Democrat members of unions who are blue collar, who are conservatives, share that gentleman's views.

How ironic that the big labor bosses who want to buy this Congress, who are lying to the American people every day, many of them live out in nice valleys with big houses and make lots of money. I will bet you they are the rich. I will bet you they are rich people, and we hear a lot of demagoguery about class warfare and the rich on this floor.

I do not think, and I submit to the gentleman from California this observation, I will bet you a lot of those big labor bosses who are trying to buy this Congress make an awful lot of money, a heck of a lot more than that gentleman who wrote the gentlewoman from California.

Mr. RADANOVICH. I believe that is the case, Mr. Speaker. I think, too, what the American people need to know when they are confronted with what I call fearmongering like this, all the F's that were on the report cards, and how you are against so many good things, reminds me of a scene in a jungle somewhere where a group of people, say 10 people, get stuck in a murky old swamp and they are up to their armpits in swamp water, and they are stuck in the mud and cannot get out. They have been in there so long, and by the way, the Great Society is the name of the swamp, and they are stuck in there and they cannot leave. They have been there so long that they cannot think that there is anything better than that swamp.

So finally a couple of people out of those 10 get the inspiration. They see a hill, a shining hill, and want to begin to stir the efforts of those to begin to get themselves out of the swamp, and you have people full of fear, so used to

being stuck in the swamp that they cannot imagine anything different and do not want to take what even might be a perceived risk to get out of the swamp and change to a better country, which I call what the Republicans are trying to do.

That is a sad state of affairs when you have to defend the order that we are in this country right now, because many people feel, and many people believe that we indeed are stuck in a swamp. But many people believe that they would love to be inspired by that shining hill and make the journey out of the swamp and onto the hill. The people that attack you the people that give you F's, are the same people saying let us stay in the mud because we fear change. That is really what the big sin is.

One more point that I want to make, too, on the issue of minimum wage, standing up for families and seniors, and, you bad person who got the F, educational opportunities. All of those things are good things, but if we are going to change this country for the better, we have to start answering the question: If those are things of value to me, to ANDREA, to BOB, to everybody in this country, if they are so valuable to you, why on earth would you trust those things to a Washington bureaucrat?

Mr. EHRLICH. Mr. Speaker, I would ask the gentleman, is that a question?

Mr. RADANOVICH. Yes; answer me.

Mr. EHRLICH. The gentleman just used the term "fear" twice in the last minute. That is a great lead-in to category 2, issue 2, standing up for families and seniors. "Ehrlich voted to slash Medicare and Medicaid," my personal favorite whopper from the big labor bosses.

How many times have you heard the word "extremist" out there in these ads? How many times have you heard the word "slash," have you seen the word "slash" from the big labor bosses?

Mrs. SEASTRAND. Or "gut"?

Mr. EHRLICH. The last time I checked, under the Republican budget reconciliation proposal, the Balanced Budget Act, Medicare spending per beneficiary was to increase from $4,800 a year to $7,200 a year. Yet they used the term "slash and burn," and the fear and demagoguery. But do you know what, I do not think it is going to work, because the philosophical foundation of this tactic is that seniors are dumb. They have to think that the seniors of this country are dumb; that they cannot read; that the seniors will ignore the fact that the trustees just last week, and we have a quote coming up, I know, from my trusty assistant, reported just last week in the Washington Post, April 29, 1996: "The Medicare trust fund that pays hospital bills for 39 million elderly and disabled people will go bankrupt sooner and accumulate far deeper deficits over the next decade than previously projected by the trustees."

Now, short-term political calculations, which have ruled this town for 40 years, would dictate that the three of us ignore this language, because you know what, that will get you reelected. The folks on that side of the aisle know that. It kept one party in control of this town for 40 years on the basis of fear and class warfare. But I do not think that the seniors in the Second Congressional District of Maryland sent me here to be a politician.

Mr. RADANOVICH. Mr. Speaker, I have a question. I hope I will get some answers here. Was I not mistaken? Did you not say that the current amount that a beneficiary gets from Medicare is about $4,800 a year?

Mr. EHRLICH. That is correct.

Mr. RADANOVICH. If I am to believe that you are slashing and burning Medicare, my assumption then would be that we must be cutting that, then, from $4,800 a year to, what, $2,300 or $2,200.

Mr. EHRLICH. Again, what was the budget figure that the Republicans propose for the next 7 years? Was it an increase of $7,200 in the year 2002, which was very close to the President's number, by the way?

Mr. RADANOVICH. I am confused. Is that an increase?

Mrs. SEASTRAND. Mr. Speaker, apparently the gentleman from California was brought up on new math. I would just say, we know there is a big difference, and the big difference has had a big plus sign on it, so we are actually increasing Medicare spending per beneficiary. We are also going to take in more people into the system.

Mr. RADANOVICH. Excuse me, you two, but that is very extreme, I want to tell you.

Mr. EHRLICH. There is that word again.

Mrs. SEASTRAND. Mr. Speaker, if the gentleman would yield, I think, too, we talk about the seniors, but also our union members back home understand what we are trying to do. They are going to see through this.

I have a copy here of one of our local Capitol newspapers, the Hill. It says, "Local unions take back in labor blitz." So the people back home are taking a seat, going in the back seat, while the union bosses here on Capitol Hill, big special interests that make those high-priced salaries and such, they are the ones calling the shots on this congressional report card. Our union people at home did not give this. This came all from a PR firm here in Washington, DC. That is what we are up against.

Mr. EHRLICH. Mr. Speaker, if the gentlewoman would yield, I know the gentlewoman and the gentleman are both familiar with the poll that was recently conducted, a nationwide poll of union members, workers, people that built this country: horrible results for the big labor bosses. I know the results, and I know my two colleagues are familiar with the results, but I would like to share the results with the American people tonight.

We are talking about union folks, working folks. Eighty-seven percent support welfare that requires work and is of limited duration. They also support a balanced budget amendment by a huge margin, with 82 percent of union folks in favor of a constitutional requirement that Washington keep its fiscal house in order.

More than three-quarters of union families in this country voiced their support for tax cuts for working families. Think about those numbers. Demagogues hate facts. That is why the big union bosses who love big government, who want to buy this Congress, issue "report cards" such as this one. They cannot stand facts. They cannot stand the light of day. They cannot stand the fact that people that work for a living, people that built this country, are not bought and paid for by the left wing of the Democratic party, as they are. That is why we have these report cards. They just cannot stand it.

When we see poll results like this, it makes us feel pretty good, does it not?

Mrs. SEASTRAND. What I found amazing about that survey is when informed about those Washington union bosses here on the Hill, when they found out, the union members back home found out that those bosses took their union dues to more or less come up with this demagoguery, the report card and the ads that are attacking us on television and radio, 59 percent said they want to ask for a refund for their dues.

Mr. Speaker, the folks that picketed me on this one particular day, it was interesting, because I found out that one came from Los Angeles, one came from San Francisco, another was from San Jose. One was the executive director, who is the paid bureaucrat. The regular union members who are making a living were out working.

Mr. RADANOVICH. Is the gentlewoman telling me those folks were paid to picket you?

Mrs. SEASTRAND. I would certainly say they must be on a payroll. They came from San Francisco.

Mr. EHRLICH. Paid protesters? It is good work if you can get it.

Mrs. SEASTRAND. A paid protester. We call them rent-a-protester. This is an interesting thing; that when union Members found out that their dues were even increased, and that they were used to attack the new ideas that we are trying to push through here and work through in Congress, 59 percent said they would ask for a refund of their dues.

The letter I read and the lady that appeared on a local television who is a firefighter, she says she is tired of her

hard-earned money being used in such a way when she agrees with what we are trying to do in this different Congress; as I say, the Congress with a new attitude.

They want to see that balanced budget, they want to see a $500 tax credit per child, they want to see a line-item veto. They want to see a change in Washington, DC. It is those Washington union bosses that, you know, they are gasping. They are on their last legs. They know if they do not get control of this House once more, it is kind of gone for a long, long time. Their special perks, their large salaries—here is the president, $192,500 a year. A chauffeur is getting $53,143 for the union boss. These are people that are living off my folks, your folks in Maryland, and the gentleman from the central coast of California, they are living off of our blue-collar workers.

□ 2300

I think the moment many of these members find out more about this we are going to see a change.

Mr. RADANOVICH. I think you need to get back to the fact that when the gentlewoman from California, ANDREA SEASTRAND, was mentioning that the rank and file member, even the rank and file members of the unions, they want a balanced budget. They want welfare reform. They want these changes to the American society. Not because they want to give tax breaks to the rich, not because they want to promote class warfare to keep things the way they are, simply because they see that as the road to a better country, to a better America, not for certain people but for everybody so that everybody, depending on how they were born into this world and what their lot in life is, has the opportunity to better themselves.

That is what is so scary, I think, because after 40 years of operating things the way that they have been used to operating in this House, they love it in the mud and they do not want to change. It has become very comfortable. Change is scary, and you have got to learn a new way to count. That is not all that easy. Those are the things that we come up here—by the way, we are all freshmen and proud of it, and I think that those are the changes that scare the living daylights, not out of the American people, because they know what they want, they tell us what they want. They want a balanced budget. They want welfare reform. They want a better country as a result of that for them and everybody else. It is not that they are scared. It is those that have been hanging on to power and having been so used to having power for the last 40 years.

They cannot begin to grapple with the idea that maybe their philosophy was wrong to begin with and they have to begin to accept new realities. That is what the freshmen have done here in the new Congress. That is the beachhead that we have established. That is the change that is beginning to operate in this town finally.

Mr. EHRLICH. I would add this point, I want to get back to education and I want to get back to the TEAM Act. I want to go right to the balanced budget, because it includes my favorite whopper: the rich, tax cuts for the rich.

How many times do we see class warfare strategy utilized on the floor of this House? The bad news for the folks that we are talking about, the working people who built this country, what they do not know and what the bosses failed to tell them is that they are rich. They make $25,000, $35,000, $45,000 a year. They are rich. Do you know how you can prove it? How many times have you heard on the floor of this House, the Republicans are slashing Medicare to make tax cuts for their rich buddies? Do we hear that every day?

Mrs. SEASTRAND. We hear it day in an day out.

Mr. EHRLICH. Do we hear it on radio and TV? Depending on whose study you believe, every study I have been concludes that under the Republican sponsored bill, which is part of the Contract with America, between 60 and 70 percent of the families or the tax cut that we were talking about would go to families making between $30,000 and $75,000 a year, between 60 and 70 percent of that tax cut would get to families making between $30,000 and $75,000 a year. So these are facts.

If you place that fact next to what we hear on the floor of this House every day, one could only conclude, in a logical way, that folks who make between $30,000 and $75,000 a year are rich. And I am here to tell the big union bosses in this country that if they think the folks who sent me here who make $25,000, $35,000, $45,000 a year think they are rich, I would suggest those big union bosses leave their big houses out in the country and go talk to people who are still working for a living who must balance their budget, who believe the Federal Government is out of control, who understand our tort system is out of control, who understand the need for regulatory reform, and who understand the nature of government which will grow and grow and grow and grow unless the budget is brought back into balance.

Mr. RADANOVICH. I want to propose something here. Say for example person A paid $20 in income taxes to the United States Government and person B paid $10 in income taxes, and we in the Congress decide to give a 50 percent tax rebate. So the person paying $20 in taxes gets a $10 rebate. The person who pays $10 worth of taxes gets a $5 rebate. Now, that is basically because one person paid more and the other paid less. They get the equal amount in percentage backs.

My question is, if you believe that, do you really think that you want the Federal Government getting involved in income redistribution, which would mean that the person that paid in 20 does not get 10 back, he gets 5 back, and the person who paid in 10 does not get 5 back, they get 10 back? Do you really trust the Federal Government to start getting involved that closely in that detail in your life, and do you really believe in income redistribution? Is that what we are here to do? It is a simple fact that the person who paid 20 gets 50 percent back. The person who paid 10 also gets 40 percent back. That is not unfair. That is fair. You cannot call that tax cuts for the rich.

Mr. EHRLICH. You can call it that.

Mr. RADANOVICH. It is equal in its percentage of return. Only a bumblehead would buy the argument that that is tax breaks for the rich.

Mrs. SEASTRAND. I would just say, I guess he would be an extremist.

Mr. EHRLICH. My favorite term in this debate.

Mrs. SEASTRAND. I would like to say that it is interesting, because when we talk about these things, we see, we talk about being the freshmen here trying to change the way Washington has done business for all these years. I am in possession here of a Washington Post article where the headline states, "GOP Freshmen Top House Democrats Hit List." It goes on about the AFL-CIO hit list. And I think that people should understand that when they see those ads on the central coast of California in Santa Barbara and San Luis Obispo Counties on their local television sets, they should realize that my colleague in Las Vegas, JOHN ENSIGN, is hit with that same ad. That gentleman saying our congresswoman voted to cut Medicare and to gut education spending and so on should realize again high-priced PR firms from Washington, DC, ordered by those union bosses, they are after JOHN ENSIGN, they are after me. They are after—those union bosses are after RICK WHITE and RANDY TATE in Washington and JIM BUNN. the gentlemen might be amused to know that JIM BUNN from Oregon's ad was on my local television station in Santa Barbara. They sent the wrong video to the wrong place. I do not know where I was floating and where I appeared in this country, but it is very orchestrated and it is paid by those union bosses to a high-priced public relations firm.

I just think the people should know how their, especially our union members that are in our districts, how their dollars are being utilized to fight what we are trying to do on this House floor.

Mr. EHRLICH. Of course, this whole debate is chock full of irony. You have big union bosses asking the working people in this country to take their hard-earned money to pay big time media consultants to run ads to defeat

folks in this Congress who have an opportunity agenda which will benefit working people.

Mrs. SEASTRAND. Not only advertising in the form of radio, television, but direct mail, phone banks, door-to-door campaigns. I have been under siege, as I call it, since last April, a whole year. Here is a local article from one of my local newspapers, Seastrand Under Siege. Not only do they do it in advertising and direct mail, but they are bodily sending people to protest at my office. But also there is a gentleman here whose picture, Tim Allison, who is my Project '96 coordinator. He is somebody who is coming from outside the district in my district to organize against me.

I say all is fair in love and war and politics. If folks at home want to organize against ANDREA SEASTRAND and say she is not doing it, that is the way it does go. But I think be you Democrat, independent, Republican, Libertarian, whatever your philosophy, I think we should all be outraged to think that that special interest money from Washington, DC is bringing in a gentleman such as this one, I do not know where he lives. They have done that in JIM LONGLEY's district in Maine. They have done it in many of our districts. In fact, some of our Members are trying to find out who their Project '96 coordinator is. Not only are they doing it in advertising, they are actually sending an organizer into the district.

Mr. RANDOVICH. I think you need to ask the question, why are they doing that? That is simply because they have had influence, a special influence on the Congress for the last 40 years. And they are going to do anything they can to get that special interest influence back. It is plain and simple. It is power and the loss of it.

We came here to undo things in Washington because of too much government and too much government control. And we are here to localize; we are here to privatize government. They do not like it because they like it when they had influence. And under the old administration that was here for 40 years, they ran this country into the ground to the tune of $5.5 trillion worth of debt. They want to get the reins back so that the can run us deeper into debt.

Mrs. SEASTRAND. I would just ask for the gentleman to continue to yield to finish my comments. It is just interesting, because I have list upon list here of union expenditures, whether it is the salaries, the chauffeurs or the big perks, the free rent, the big ticket perks, whether it is condos or purchasing videos or purchasing artwork or whether it is gifts, on and on, luncheons, meals, convention conferences, page after page where my folks at home are trying to do it with their blue collar job, they are trying to make a living, in many instances both spouses are working in the family, here the big union bosses living off more or less the fat of the land are upset because we are trying to bring some tax relief and some common sense for our folks at home.

So with that, I just enjoyed being with my colleagues today, and I thank you for letting me participate.

Mr. EHRLICH. We thank the gentlewoman.

I would just like to add one further observation. I hope we will be able to do this again in the near future, because this is fun. This is the fun part of the job. We can talk to the American people without anybody filtering our words, directly to the folks that sent us here.

I just need to, because it is one of my favorites from the report card, talk about the TEAM Act. We all received the same report card.

Protecting your rights as workers. Congressman Ehrlich voted for the so-called TEAM Act, which allows employers to, listen to the words, I would ask the American people to listen to the words here, which allows employers to control who represents employees in discussions about wages, hours and other working conditions, H.R. 743, September 27, 1995.

Now, we have made this point time and time again tonight. Demagogs hate facts. They hate facts. Because facts kill demagogs. The Protecting Your Right as Workers Act, H.R. 743, specifies the following: Organizations, these new organizations will not have the authority to serve as the exclusive bargaining representative of employees. Second, they will not be able to enter into collective bargaining agreements. Third, workplaces that already unionized are specifically exempted under the bill.

Now, we are going to, hopefully, I know we are running out of time, we will hopefully have time to go over the two categories that we missed. But the fact needs to be made to the American people, the facts are so dangerous even in this town.

One thing, just a suggestion I throw out this evening to my colleagues in front of me and to the conservative Democrats who supported us so much in these debates and to my Republican colleagues and to the American people is that facts always kill demagogs. One thing that we do in our office, when people call me up and they say, EHRLICH, you say X and GEPHARDT said Y, or GINGRICH said X and FAZIO said Y or HOYER said Y, I do not know what to believe. In our office, and I will throw this open to the folks in the second district of Maryland, all across the country tonight, do not believe us if you choose not to. If you are so cynical about politics, if you are so cynical about Members of Congress regardless of party, do not believe any word you have heard from the three of us tonight, nor should you believe what you hear from that podium day after day. Just get the facts. Call our office. I will send you the bill. I will send you the budget numbers. I am sure my two colleagues would agree with me. We will send you the raw numbers. We will send you the actual bills. You figure it out.

Because I will not run a campaign on the foundation that the American people are dumb, that seniors cannot read the newspaper, that seniors do not expect this Congress to save Medicare. I will not run a campaign on the basis of class warfare or generational warfare, where you turn grandparents against grandchildren, where the guy making $20,000 a year is encouraged to be jealous of the woman making $28,000. That is not the way you run an economy. That is not the way you run a House. That is not the way I am going to run my campaign.

Let the word go out to the big union bosses, class warfare, generational warfare, this phony stuff will not work because the people, the American people can read and they can write and they can learn and they know better. I thank the gentleman.

□ 2315

Mr. RADANOVICH. Thank you very much, Mr. EHRLICH from Maryland and Mrs. SEASTRAND from California. In closing I would like to say that our case to the American people, and you are right, this is the opportunity for us to come unedited to the American people and let them know our opinions and let them judge for themselves, because through the ballot box, the American people are the ultimate judge of who should sit in this Congress and whose philosophy should prevail.

But I would say that we are here to do a job, and the job is not to promote class warfare, not to make the rich more richer at the expense of the poor, or the poor more rich at the expense of the rich. It is simply to build a better country. And we believe that by our efforts of balancing the budget, using the balanced budget as a blueprint to change this country, that we are changing America for the better, for the betterment of everybody, for equal opportunity for everybody. We are changing America for the better.

We are not playing silly games, and we are determined to do that, and that is our job. And I hope people will realize that the changes that we want to make through a balanced budget process, by localizing government, by privatizing government, will make America a better place, will make America a better place not only for you and I, but for every American in this country.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. MYERS of Indiana (at the request of Mr. ARMEY) after 12:30 p.m. today, on account of illness in the family.

(Mr. GOSS (at the request of Mr. ARMEY) from 1 p.m. today, on account of personal reasons.

Ms. KAPTUR (at the request of Mr. GEPHARDT) for April 30 and the balance of the week, on account of illness.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. DOGGETT) to revise and extend their remarks and include extraneous material:)

Mr. LIPINSKI, for 5 minutes, today.
Mr. MEEHAN, for 5 minutes, today.
Mr. PALLONE, for 5 minutes, today.
Ms. MCKINNEY, for 5 minutes, today.
Mrs. CLAYTON, for 5 minutes, today.
Mr. BENTSEN, for 5 minutes, today.
Mr. MONTGOMERY, for 5 minutes, today.

(The following Members (at the request of Ms. PRYCE) to revise and extend their remarks and include extraneous material:)

Mr. DICKEY, for 5 minutes, today.
Mr. WALKER, for 5 minutes, today.
Mr. FOX of Pennsylvania, for 5 minutes, today.
Mr. METCALF, for 5 minutes, today.
Mr. NEUMANN, for 5 minutes, today.
Mr. MCINTOSH, for 5 minutes, today.
Mr. GUTKNECHT, for 5 minutes, on May 2.
Ms. PRYCE, for 5 minutes, on May 2.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. DOGGETT) and to include extraneous material:)

Mr. KLINK.
Mr. GEJDENSON.
Mr. DURBIN.
Mr. PASTOR.
Mr. HAMILTON in three instances.
Mr. VENTO.
Ms. LOFGREN.
Mr. BARCIA in three instances.
Mr. CARDIN.
Mr. ACKERMAN in two instances.
Mr. CONDIT.
Mr. HILLIARD.
Mr. VISCLOSKY in two instances.
Mr. RANGEL.
Mr. FILNER.
Mr. DELLUMS.
Mr. LANTOS.
Mr. WILSON.
Ms. MCCARTHY.
Mr. BENTSEN.

(The following Members (at the request of Ms. PRYCE) and to include extraneous material:)

Mr. MARTINI.
Mr. KNOLLENBERG.
Mr. GINGRICH.
Mr. SHUSTER.
Mr. PACKARD in two instances.
Mr. PARKER.
Mr. BOEHLERT.
Mr. YOUNG of Alaska.
Mr. DELAY.
Mr. DAVIS.
Ms. MOLINARI.
Mr. MCCOLLUM.
Ms. ROS-LEHTINEN.
Mr. BALLENGER.
Mr. BILBRAY.
Mr. COOLEY of Oregon.

(The following Members (at the request of Mr. RADANOVICH) and to include extraneous matter:)

Mr. RAHALL.
Mr. FRANKS of New Jersey.
Mr. DELAY.
Mr. RANGEL.
Mr. LATOURETTE.
Mr. COSTELLO.
Mr. SMITH of Michigan.
Ms. FURSE.
Mr. LANTOS.
Mr. FAZIO of California.
Ms. JACKSON-LEE of Texas.
Mr. ROMERO-BARCELÓ.
Mr. FRELINGHUYSEN.

ENROLLED BILL SIGNED

Mr. THOMAS, from the Committee on House Oversight, reported that that committee had examined and found truly enrolled a bill of the House of the following title, which was thereupon signed by the Speaker:

H.R. 2024. An act 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.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S.J. 53. A joint resolution making corrections to Public Law 104–134.

ADJOURNMENT

Mr. RADANOVICH. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 11 o'clock and 16 minutes p.m.), the House adjourned until tomorrow, Thursday, May 2, 1996, at 10 a.m.

OATH OF OFFICE, MEMBERS, RESIDENT COMMISSIONER, AND DELEGATES

The oath of office required by the sixth article of the Constitution of the United States, and as provided by section 2 of the act of May 13, 1884 (23 Stat. 22), to be administered to Members, Resident Commissioner, and Delegates of the House of Representatives, the text of which is carried in 5 U.S.C. 3331:

> "I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely; without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."

Has been subscribed to in person and filed in duplicate with the Clerk of the House of Representatives by the following Members of the 104th Congress, pursuant to the provisions of 2 U.S.C. 2b:

JUANITA MILLENDER-MCDONALD, 37th District, California.

ELIJAH E. CUMMINGS, Seventh District, Maryland.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2691. A letter from the Acting Executive Director, Commodity Futures Trading Commission, transmitting the Commission's final rule—Early Warning Reporting Requirements, Minimum Financial Requirements, Prepayment of Subordinated Debt, Gross Collection of Exchange—Set Margin for Omnibus Accounts and Capital Charge on Receivables from Foreign Brokers (RIN: 3038–AB011 and 3038–AB12) received May 1, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

2692. A letter from the Acting Executive Director, Commodity Futures Trading Commission, transmitting the Commission's final rule—Ethics Training for Registrants (RIN: 3038–AB09) received May 1, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

2693. A letter from the Director, Defense Procurement, Department of Defense, transmitting the Department's final rule—Defense Federal Acquisition Regulation Supplement; Small Disadvantaged Business Concerns (DFARS Case 95–D039) received April 30, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on National Security.

2694. A letter from the Assistant Secretary for Legislative Affairs and Public Liaison, Department of the Treasury, transmitting a copy of the 12th monthly report as required by the Mexican Debt Disclosure Act of 1995, pursuant to Public Law 104–6, section 404(a) (109 Stat. 90); to the Committee on Banking and Financial Services.

2695. A letter from the Director, Office of Management and Budget, transmitting OMB's estimate of the amount of change in outlays or receipts, as the case may be, in each fiscal year through fiscal year 2002 resulting from passage of S. 735, pursuant to Public Law 101–508, section 13101(a) (104 Stat. 1388–582); to the Committee on the Budget.

2696. A letter from the Assistant General Counsel for Regulations, Department of Education, transmitting the Department's report on the notice of final funding priorities for the Special Studies Program received May 1, 1996, pursuant to 5 U.S.C. 801(a)91)(B); to the Committee on Economic and Educational Opportunities.

2697. A letter from the Director, Regulations Policy Management Staff, Office of Policy Food and Drug Administration, Department of Health and Human Services, transmitting the Department's final rule—Cholorflourocarbon Propellants in Self-Pressurized Containers; Addition to List of Essential Uses (Docket No. 92P-0403) received April 30, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

2698. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Federal Motor Vehicle Safety Standards; Seat Belt Assembly Anchorages (RIN: 2127-AF68) received April 30, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

2699. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Replacement Light Source Information; Federal Motor Vehicle Safety Standards Lamps, Reflective Devices, and Associated Equipment (RIN: 2127-AF65) received April 30, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

2700. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Tebuthiuro; Pesticide Tolerances (FRL-4995-8) received May 1, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

2701. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Pesticide Tolerance for Iprodine (FRL-5360-3) received May 1, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

2702. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Lactofin; Pesticide Tolerance (FRL-5362-9) received May 1, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

2703. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Tolerance Processing Fees (FRL-5365-2) received May 1, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

2704. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Tefluthrin; Renewal of Time-Limited Tolerances (FRL-5358-5) received May 1, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

2705. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Xanthan Gum-Modified, Produced by the Reaction of Xanthan gum and Glyoxal; Tolerance Exemption (FRL-5359-5) received May 1, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

2706. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Clean Air Act Interim Approval of Operating Permits Program; State of Rhode Island (FRL-5465-9) received May 1, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

2707. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio (FRL-5458-8) received May 1, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

2708. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List (FRL-5465-5) received May 1, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

2709. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Imidacloprid; Pesticide Tolerance (FRL-5364-5) received May 1, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

2710. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Cyromazine; Pesticide Tolerance (FRL-5365-6) received May 1, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Commerce.

2711. A letter from the Acting Assistant Secretary for Legislative Affairs, Department of State, transmitting notification of a proposed license for the export of defense articles or defense services sold commercially to Italy (Transmittal No. DTC-21-96), pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

2712. A letter from the Acting Assistant Secretary for Legislative Affairs, Department of State, transmitting notification of a proposed license for the export of defense articles or defense services sold commercially to the Ministry of Defense of Brunei (Transmittal No. DTC-23-96), pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

2713. A letter from the Acting Assistant Secretary for Legislative Affairs, Department of State, transmitting notification of a proposed manufacturing license agreement for production of major military equipment with Japan (Transmittal No. DTC-18-96), pursuant to 22 U.S.C. 2776(d); to the Committee on International Relations.

2714. A communication from the President of the United States, transmitting the bimonthly report on progress toward a negotiated settlement of the Cyprus question, including any relevant reports from the Secretary General of the United Nations, pursuant to 22 U.S.C. 2373(c); to the Committee on International Relations.

2715. A letter from the Acting Assistant Secretary for Legislative Affairs, Department of State, transmitting the Department's final rule—Amendment to the List of Proscribed Destinations (22 CFR Part 126 received April 30, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on International Relations.

2716. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 11-254, "Sports Commission Conflict of Interest Temporary Amendment Act of 1996," pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

2717. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 11-258, "Banking and Branching Act of 1996," pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

2718. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 11-260, "Tax Revision Commission Establishment Act of 1996," pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

2719. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 11-261, "Contribution Limitation Initiative Amendment Act of 1996," pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

2720. A letter from the Executive Director, District of Columbia Retirement Board, transmitting the financial disclosure statements of board members, pursuant to D.C. Code, section 1-732 and 1-734(a)(1)(A); to the Committee on Government Reform and Oversight.

2721. A letter from the Human Resources Manager, CoBank, transmitting the annual report to the Congress and the Comptroller General of the United States for CoBank—National Bank for Cooperatives Retirement Plan for the year ending December 31, 1994, pursuant to 31 U.S.C. 9503(a)(1)(B); to the Committee on Government Reform and Oversight.

2722. A letter from the General Counsel, Department of Housing and Urban Development, transmitting the Department's final rule—Equal Employment Opportunity; Policies and Procedures (FR-3323) received April 30, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Government Reform and Oversight.

2723. A letter from the Agency Freedom of Information Officer (1105), Environmental Protection Agency, transmitting a report of activities under the Freedom of Information Act for the calendar year 1995, pursuant to 5 U.S.C. 552; to the Committee on Government Reform and Oversight.

2724. A letter from the Chairman, Federal Trade Commission, transmitting a copy of the annual report in compliance with the Government in the Sunshine Act during the calendar year 1995, pursuant to 5 U.S.C. 552b(j); to the Committee on Government Reform and Oversight.

2725. A letter from the Director, Office of Personnel Management, transmitting the Office's final rules—(1) Federal Employees Health Benefits Programs: Filing Claims; Disputed Claims Procedures and Court Actions (RIN: 3206-AH36) and (2) Federal Employees Health Benefits Acquisition Regulation Filing Health Benefits Claims; Addition of Contract Clause (RIN: 3206-AG30) received May 1, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Government Reform and Oversight.

2726. A letter from the Secretary of Health and Human Services, transmitting a report of activities under the Freedom of Information Act for the calendar year 1995; pursuant to 5 U.S.C. 552(e); to the Committee on Government Reform and Oversight.

2727. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Drawbridge Operation Regulations; Manchester Harbor, MA (RIN: 2115-AE47) received April 30, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2728. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Federal Motor

Vehicle Safety Standards; Compressed Natural Gas Fuel Containers (RIN: 2127-AF79) received April 30, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2729. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Pipeline Safety Program Procedures; Updates and Corrections (RIN: 2137-AC79) received April 30, 1996, pursuant to 5 U.S.C. 801)(1)(A); to the Committee on Transportation and Infrastructure.

2730. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Federal Motor Vehicle Safety Standards; Fuel System Integrity (RIN: 2127-AG30) received April 30, 1996, pursuant to 5 U.S.C. 801)(1)(A); to the Committee on Transportation and Infrastructure.

2731. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Federal Motor Safety Standards; Hydraulic Brake Systems (RIN: 2127-AG28) received April 30, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2732. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; Airbus Model A310 and A300-600 Series Airplanes (RIN: 2120-AA64) received April 30, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2733. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Elimination of Unnecessary and Duplicate Hazardous Materials Regulations (RIN: 2137-AC69) received April 30, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2734. A letter from the Director, Office of Regulatory Management and Information, Environmental Protection Agency, transmitting the Agency's final rule—Water Quality Standards for Surface Waters in Arizona (FRL-5467-9) received May 1, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2735. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rules—Treatment of Underwriters in Section 351 and Section 721 Transactions (RIN: 1545-AT55) received May 1, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Way and Means.

2736. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule—Environmental Settlement Funds—Classification (RIN: 1545-AT02) received May 1, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

2737. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule—Transfers to Investment Companies (RIN: 1545-AT43) received May 1, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

2738. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule—Diversification of Common Trust Funds (RIN: 1545-AQ64) received May 1, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

2739. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule—Debt Instruments Subject to Both Section 475 and the Principal-Reduction Method of Accounting (Notice 96-23, 1996-16 I.R.B. 23) received May 1, 1996, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

2740. A letter from the Assistant Attorney General of the United States, transmitting a draft of proposed legislation entitled the "Methamphetamine Control Act of 1996"; jointly, to the Committees on the Judiciary, Commerce, and Ways and Means.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. HYDE: Committee on the Judiciary. H.R. 2974. A bill to amend the Violent Crime Control and Law Enforcement Act of 1994 to provide enhanced penalties for crimes against elderly and child victims; with an amendment (Rept. 104-548). Referred to the Committee of the Whole House on the State of the Union.

Mr. McCOLLUM: Committee on the Judiciary. H.R. 3120. A bill to amend title 18, United States Code, with respect to witness retaliation, witness tampering and jury tampering; with an amendment (Rept. 104-549). Referred to the Committee of the Whole House on the State of the Union.

Mr. WALKER: Committee on Science. H.R. 3322. A bill to authorize appropriations for fiscal year 1997 for civilian science activities of the Federal Government, and for other purposes (Rept. 104-550 Pt. 1). Ordered to be printed.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. SMITH of Texas: Committee on the Judiciary. H.R. 1009. A bill for the relief of Lloyd B. Gamble (Rept. 104-546). Referred to the Committee of the Whole House.

Mr. SMITH of Texas: Committee on the Judiciary. H.R. 2765. A bill for the relief of Rocco A. Trecosta (Rept. 104-547). Referred to the Committee of the Whole House.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and respolutions were introduced and severaly referred as follow:

By Mr. RAHALL (for himself, Mr. OBERSTAR, and Mr. GIBBONS):

H.R. 3372. A bill to provide for the recoupment to the highway trust fund of that portion of Federal motor fuel taxes being deposited into the general fund; to the Committee on Ways and Means.

By Mr. EVERETT (for himself, Mr. EVANS, Mr. STUMP, and Mr. MONTGOMERY):

H.R. 3373. A bill to amend title 38, United States Code, to improve certain veterans' benefits programs, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. BENTSEN:

H.R. 3374. A bill to amend title XVIII of the Social Security Act to provide annual and other opportunities for individuals enrolled under a Medicare-select policy to change to a medigap policy without prejudice; to the Committee on Commerce.

By Mr. ROYCE:

H.R. 3375. A bill to amend the Internal Revenue Code of 1986 to repeal the 1993 increase in motor fuels tax, and for other purposes; to the Committee on Ways and Means, and in addition to the Committees on Commerce, National Security, Government Reform and Oversight, Rules, and Science, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. STUMP (for himself, Mr. MONTGOMERY, Mr. HUTCHINSON, and Mr. EDWARDS):

H.R. 3376. A bill to authorize major medical facility projects and major medical facility leases for the Department of Veterans Affairs for fiscal year 1997, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. COOLEY (for himself and Mr. DEFAZIO):

H.R. 3377. A bill to amend the Federal Land Policy and Management Act of 1976 to provide for determining tort liability of holders of rights-of-way over Federal lands under the ordinary rules of negligence and to clarify the exemption from right-of-way rental fees for certain rural electric and telephone facilities; to the Committee on Resources.

By Mr. YOUNG of Alaska:

H.R. 3378. A bill to amend the Indian Health Care Improvement Act to extend the demonstration program for direct billing of Medicare, Medicaid, and other third party payors; to the Committee on Resources, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. CONDIT:

H.R. 3379. A bill to amend chapter 11 of title 31, United States Code, to require that each President's budget submission to Congress include a detailed plan to achieve a balanced Federal budget, and for other purposes; to the Committee on Government Reform and Oversight, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. DEAL of Georgia:

H.R. 3380. A bill to authorize substitution for drawback purposes of certain types of fibers and yarns for use in the manufacture of carpets and rugs; to the Committee on Ways and Means.

By Mr. DURBIN:

H.R. 3381. A bill to amend the Internal Revenue Code of 1986 and the Social Security Act to provide tax incentives for the purchase of long-term care insurance and to establish consumer protection standards for such insurance; to the Committee on Ways and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. FRISA:

H.R. 3382. A bill to promote safe streets by preventing the further sale of illegal assault weapons and large capacity ammunition feeding devices, and to provide for mandatory prison terms for possessing, brandishing, or discharging a firearm during the commission of a Federal crime; to the Committee on the Judiciary.

By Mr. HOUGHTON (for himself and Mr. ROBERTS):

H.R. 3383. A bill to amend the Fair Labor Standards Act of 1938 to increase the minimum wage rate under that act and to implement a new work opportunity tax credit, and for other purposes; to the Committee on Economic and Educational Opportunities, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. LATOURETTE:

H.R. 3384. A bill to amend the Internal Revenue Code of 1986 to provide for the deposit of the general revenue portion of the motor fuel excise taxes into the highway trust fund and airport and airway trust fund, and for other purposes; to the Committee on Ways and Means.

By Mr. McCOLLUM (for himself, Mr. LAZIO of New York, Mrs. ROUKEMA, Mr. BEREUTER, Mr. BAKER of Louisiana, Mr. BENTSEN, Mr. HAYWORTH, Mr. STOCKMAN, Mr. BLILEY, Mr. FRELINGHUYSEN, Mr. GOODLATTE, Mr. GREEN of Texas, Mr. LIVINGSTON, Mr. MORAN, Mrs. MYRICK, Mr. PICKETT, Ms. PRYCE, and Mr. SHADEGG):

H.R. 3385. A bill to affirm the role of the States in setting reasonable occupancy standards, and for other purposes; to the Committee on Banking and Financial Services.

By Mr. McDADE:

H.R. 3386. A bill to amend title 28, United States Code, to require prosecutors in the Department of Justice to be ethical; to the Committee on the Judiciary.

By Mr. NORWOOD (for himself and Mr. LINDER):

H.R. 3387. A bill to designate the Southern Piedmont Conservation Research Center located at 1420 Experimental Station Road in Watkinsville, GA, as the "J. Phil Campbell, Senior Natural Resource Conservation Center"; to the Committee on Resources.

By Mr. FRANKS of New Jersey:

H.J. Res. 178. Joint resolution disapproving Orders Nos. 888 and 889 of the Federal Energy Regulatory Commission; to the Committee on Commerce.

By Mr. SHAYS (for himself, Mr. McCRERY, Mr. HAYES, Mr. UPTON, Mr. HERGER, Mr. DOOLITTLE, Mr. GUTKNECHT, Mr. NEUMANN, Mr. SMITH of Michigan, Mr. BLUTE, Mrs. MYRICK, Mr. HOKE, Mr. BACHUS, Mr. STOCKMAN, Mr. MICA, Mr. McINTOSH, Mr. THORNBERRY, Mr. HOUGHTON, Mrs. KELLY, Ms. DUNN of Washington, Mr. CANADY, Mr. SAM JOHNSON, Mr. PARKER, Mr. KOLBE, Mr. RIGGS, Mr. WOLF, Mr. HOBSON, Mr. FOX, Mr. LAZIO of New York, Mr. KLUG, Mr. WALKER, Mr. DICKEY, Mr. SOUDER, Mr. TATE, Mr. DAVIS, Mr. NUSSLE, Mrs. MORELLA, Mr. FORBES, Mr. FRISA, Mr. BROWNBACK, Mr. TAYLOR of North Carolina, Mr. LINDER, Mrs. CUBIN, Mr. COBLE, Mr. STEARNS, Mrs. ROUKEMA, Mr. BOEHLERT, Mr. SMITH of New Jersey, Mr. FLANAGAN, Mr. HASTINGS of Washington, Mr. LoBIONDO, Mr. HORN, Mr. MARTINI, Mr. QUINN, Mr. ENGLISH of Pennsylvania, Mrs. JOHNSON of Connecticut, Mr. GOODLING, Mr. PORTER, Mr. GRAHAM, Mr. GILCHREST, Mr. CAMP, Mr. CUNNINGHAM, Mr. SAXTON, Mr. LEWIS of Kentucky, Mr. GANSKE, Mr. GOODLATTE, Mr. DIAZ-BALART, Ms. GREENE of Utah, Mr. LUCAS, Mr. SHADEGG, Mr. LONGLEY, Mr. BARTLETT of Maryland, Mr. ZELIFF, Mr. GILMAN, and Mr. NEY):

H. Con. Res. 169. Concurrent resolution expressing the sense of the Congress that the 1996 annual report of the Board of Trustees of the Federal hospital insurance trust fund be submitted without further delay; to the Committee on Ways and Means.

By Mr. JACOBS (for himself and Mr. CONYERS):

H. Res. 420. Resolution recognizing and commending Viola Liuzzo for her extraordinary courage and for her contribution to the Nation; to the Committee on the Judiciary.

MEMORIALS

Under clause 4 of rule XXII,

218. The SPEAKER presented a memorial of the Senate of the State of Louisiana, relative to the transfer of certain portions of the lands of the Kisatchie National Forest to the Fort Polk military base; jointly, to the Committees on Agriculture and National Security.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. GEJDENSON introduced a bill (H.R. 3388) to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Hoptoad;* which was referred to the Committee on Transportation and Infrastructure.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 835: Mr. FIELDS of Louisiana, Mr. JACKSON, and Miss COLLINS of Michigan.

H.R. 1325: Mr. PAYNE of Virginia and Mr. FRAZER.

H.R. 1462: Mr. MASCARA, Mrs. KELLY, Mr. CONDIT, Mr. CHAPMAN, and Ms. RIVERS.

H.R. 1483: Mr. MONTGOMERY.

H.R. 1540: Mr. SOUDER.

H.R. 1541: Mr. FRISA.

H.R. 1708: Mr. MANZULLO, Mr. FRANKS of Connecticut, Mr. COOLEY, Mr. STEARNS, and Mr. LAHOOD.

H.R. 1713: Mr. GREEN of Texas.

H.R. 1889: Mr. LINDER.

H.R. 1892: Mr. CALVERT and Mr. ROHRABACHER.

H.R. 2200: Mr. ALLARD and Mr. CLEMENT.

H.R. 2244: Mrs. VUCANOVICH.

H.R. 2338: Mr. FRAZER.

H.R. 2400: Mr. GILMAN, Mr. TRAFICANT, and Mr. KENNEDY of Rhode Island.

H.R. 2508: Mr. BACHUS and Ms. DUNN of Washington.

H.R. 2579: Mr. SCHAEFER and Mr. BLUTE.

H.R. 2748: Mr. NADLER.

H.R. 2807: Mr. McNULTY, Mrs. MYRICK, Mr. CLEMENT, Mrs. LOWEY, and Mr. MANZULLO.

H.R. 2891: Mr. OBERSTAR and Mr. SABO.

H.R. 2925: Mr. HOLDEN, Mr. TATE, Mr. BALDACCI, Mrs. KELLY, and Mr. HAYWORTH.

H.R. 2974: Mr. HASTERT and Mr. SOLOMON.

H.R. 3059: Mr. POSHARD, Mr. TORRES, Mrs. LOWEY, Mr. BALDACCI, and Mr. SANDERS.

H.R. 3067: Ms. WOOLSEY, Mr. MATSUI, Mr. FILNER, and Mr. CUNNINGHAM.

H.R. 3077: Mr. FROST, Mr. HAMILTON, Mrs. KELLY, Mr. HASTINGS of Florida, Mr. PAYNE of Virginia, Mr. MATSUI, Mr. PETRI, and Ms. LOFGREN.

H.R. 3083: Mr. EHLERS.

H.R. 3107: Mr. LANTOS, Mr. TORRICELLI, Mr. ROYCE, Mr. ENGLISH of Pennsylvania, Mr. ZIMMER, Mr. FILNER, Mr. FOX, Mr. BUNN of Oregon, Mr. BARCIA of Michigan, Mr. DIAZ-BALART, Mr. MEEHAN, Mr. EHRLICH, Mr. CUNNINGHAM, Miss COLLINS of Michigan, Mr. LIPINSKI, Mr. ENGEL, Mr. FRANK of Massachusetts, Mr. SANFORD, Mr. FUNDERBURK, Ms. PRYCE, Mr. KASICH, Mrs. MEEK of Florida, Mr. McCOLLUM, Mr. TRAFICANT, Mr. KNOLLENBERG, Mr. STARK, Mr. PORTER, Mr. PAXON, Mr. DEUTSCH, Mr. SMITH of New Jersey, Mr. FRAZER, Mr. METCALF, Mr. EVANS, Mr. BRYANT of Texas, Mr. SAXTON, Mr. HOUGHTON, Mr. DURBIN, Ms. KAPTUR, Mr. SOUDER, Mr. McHUGH, Ms. ROYBAL-ALLARD, Mr. MARKEY, Mr. OBERSTAR, Mrs. THURMAN, Mr. SISISKY, Ms. LOFGREN, Mr. LoBIONDO, Mrs. LOWEY, Mr. SHAYS, Mr. LATOURETTE, Mr. CARDIN, Mr. KLECZKA, Mr. FOLEY, Mr. YATES, Mr. ACKERMAN, Mr. TORRES, Mr. COYNE, Mr. TOWNS, Mr. COOLEY, Ms. PELOSI, Mr. DEFAZIO, Mr. MATSUI, Mr. KENNEDY of Rhode Island, Mr. KLUG, Mr. CALVERT, Mr. BLUTE, Mr. RADANOVICH, Mr. ENSIGN, Mr. HORN, Mr. ROEMER, Mr. HALL of Ohio, Mrs. CUBIN, Ms. ROS-LEHTINEN, and Mr. WHITE.

H.R. 3149: Mr. NEAL of Massachusetts.

H.R. 3161: Ms. EDDIE BERNICE JOHNSON of Texas.

H.R. 3167: Mr. KLINK.

H.R. 3170: Mr. SAXTON and Mr. FLAKE.

H.R. 3173: Mr. HYDE and Mr. BORSKI.

H.R. 3178: Mr. SANDERS, Mr. SERRANO, Mr. DELLUMS, Mr. FOX, Mr. DEFAZIO and Mr. HASTINGS of Florida.

H.R. 3180: Mr. BRYANT of Texas, Mr. MONTGOMERY, and Mr. PETE GEREN of Texas.

H.R. 3200: Mr. PETE GEREN of Texas, Mr. THORNTON, Mr. PETERSON of Minnesota, Mrs. KELLY, Mr. MOORHEAD, Mr. MYERS of Indiana, Mr. ROHRABACHER, Mr. LARGENT, Mr. COBLE, Mr. JONES, Mr. TAYLOR of North Carolina, Mr. BALLENGER, Mr. KOLBE, Mr. THORNBERRY, Mr. BLILEY, Mr. CRAPO, Mr. BOEHNER, Mr. FRANKS of Connecticut, Mr. WHITE, Mr. WATTS of Oklahoma, Mr. GILLMOR, Mr. TORKILDSEN, Mr. ZIMMER, Mr. ROSE, Mr. DELAY, Mr. SOLOMON, Mrs. VUCANOVICH, Mr. COMBEST, Mr. KINGSTON, Mr. GUTKNECHT, Mr. WICKER, Mr. INGLIS of South Carolina, Mr. HOSTETTLER, Mr. CHAMBLISS, Mr. STENHOLM, Mr. GALLEGLY, Mr. WELDON of Pennsylvania, Mr. WALKER, Mr. GEKAS, Mr. GOODLING, Mr. DEAL of Georgia, Mr. CHRYSLER, Mr. MILLER of Florida, Mr. STUMP, Mrs. MYRICK, Mr. HASTINGS of Washington, Mr. HOEKSTRA, Mrs. SEASTRAND, and Mr. CANADY.

H.R. 3246: Mr. LUTHER.

H.R. 3247: Mr. ENGEL, Mrs. KENNELLY, Ms. RIVERS, Mr. WATT of North Carolina, Mr. OWENS, Mr. SPRATT, Mr. DELLUMS, Mrs. SCHROEDER, Ms. BROWN of Florida, Mr. BISHOP, Mrs. COLLINS of Illinois, Miss. COLLINS of Michigan, Mr. FIELDS of Louisiana, Mr. HASTINGS of Florida, Mr. JACKSON, Mr. LEWIS of Georgia, Ms. MILLENDER-McDONALD, Mr. PAYNE of New Jersey, Mr. RANGEL, Mr. RUSH, Mr. SCOTT, Ms. WATERS, and Mr. WYNN.

H.R. 3265: Mr. BARRETT of Wisconsin and Mr. KLINK.

H.R. 3267: Ms. WOOLSEY, Mr. CRAMER, and Mr. LAHOOD.

H.R. 3286: Mr. TRAFICANT, Mr. SMITH of New Jersey, Mr. McCOLLUM, Mr. KLINK, and Mr. FAWELL.

H.R. 3300: Mr. EMERSON, Mr. COOLEY, Mr. PARKER, Mr. COBURN, Mr. LEWIS of Kentucky, Mr. CANADY, and Mr. STOCKMAN.

H.R. 3346: Mr. GIBBONS.

H. Con. Res. 10: Mr. STEARNS, Mr. FROST, Mr. POMEROY, Mr. SHUSTER, Ms. HARMAN, and Mr. KNOLLENBERG.

H. Con. Res. 51: Mr. SHADEGG.

H. Con. Res. 165: Mr. CLINGER, Mr. FRANK of Massachusetts, Mr. CUNNINGHAM, Mr. NEAL of Massachusetts, Mr. LANTOS, and Mr. ANDREWS.

H. Res. 381: Mr. LANTOS and Mr. WOLF.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.R. 2796: Mr. GORDON.

EXTENSIONS OF REMARKS

TRIBUTE TO EDGAR BRONFMAN, PRESIDENT, WORLD JEWISH CONGRESS

HON. SAM GEJDENSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. GEJDENSON. Mr. Speaker, on April 24, 1996 the Senate Committee on Banking held a hearing to return the missing Jewish money, deposited by many Jews before the Holocaust, to their survivors. I would like to commend Mr. Edgar Bronfman, president of the World Jewish Congress for his tireless efforts and his dedication to obtain a full and independent accounting of Jewish and Nazi assets in Swiss banks. Mr. Speaker, I ask for you to have the testimony given by Mr. Bronfman at this hearing inserted into the RECORD, and I hope all my colleagues will take the time to read these important words.

TESTIMONY OF EDGAR M. BRONFMAN, PRESIDENT, WORLD JEWISH CONGRESS, WORLD JEWISH RESTITUTION ORGANIZATION

Mr. Chairman, I want to commend you for holding these hearings and for the outstanding job your staff has been doing in ferreting out information long lost or concealed. That which you are doing is of great historic significance. Our collective mission here is nothing short of bringing about justice. We are here to help write the last chapter of the bitter legacy of the Second World War and the Holocaust.

Today, Mr. Chairman, I am acting in my capacities as President of the World Jewish Congress and as President of the World Jewish Restitution Organization. I am also testifying on behalf of my Co-chairman, Mr. Avrum Burg, the Chairman of the Jewish Agency.

The WJRO was created in 1992 by the leading international Jewish organizations and the survivor's groups to coordinate claims for the return of Jewish community property and the transfer to the Jewish people of heirless holdings. We also work to secure for individual Jews no longer resident in the countries in question the same rights that would obtain for local Jews who remain. With your permission, Mr. Chairman, I would like to submit as part of my formal testimony, the list of the international organizations that make up the WJRO. [List to be appended]

The WJRO has also been designated by two successive Prime Ministers to represent the State of Israel in these matters. It has also concluded agreements with Jewish Communities in several countries in order to coordinate restitution efforts.

I hope it will not sound presumptuous, Mr. Chairman, but I speak to you today on behalf of the Jewish people. With reverence, I also speak on behalf of the six million, those who cannot speak for themselves.

The issue before us today, the one I want to talk to you about, can be summed up in a single word: Justice.

Fifty years after the Holocaust, as Germany and the collaborationist countries have sought to face their responsibilities and make restitution, there remains the glaring void in the behavior of the banks of Switzerland.

Just a year ago today, the bipartisan leaders of the United States Congress declared in a letter to the Secretary of State, and I quote:

"It should be made clear to the countries involved that their response on this [restitution] matter will be seen as a test of their respect for basic human rights and the rule of law, and could have practical consequences on their relations with our country. It is the clear policy of the United States that each should expeditiously enact appropriate legislation for the prompt restitution and/or compensation for property and assets seized by the former Nazi and/or Communist regimes. We believe it is a matter of both law and justice."

President Clinton has declared:

"We must confront and, as best we can, right the terrible injustices of the past. I thus support the efforts of the World Jewish Restitution Organization and the World Jewish Congress to help resolve the question of Jewish properties confiscated during and after the Second World War."

Mr. Chairman, I wish to personally commend Ambassador Stuart Eizenstat for his contribution to this effort. President Clinton assigned him a special mission to assist in this task while he was the United States Representative to the European Union, and although he returned to Washington earlier this month to become Undersecretary of Commerce for International Trade, he will continue his efforts as Special Envoy on Property Claims in Central Europe. He has been doing an outstanding job serving the interests of all Americans, not only Jews.

I would also like to take this opportunity of adding that the European Parliament unanimously added its voice to that of the United States, expressing the same view and declaring that restitution is a matter of justice which must be fulfilled.

Mr. Chairman, as the Congressional letter made clear, what today's hearing is about is "respect for basic human rights and the rule of law." Nothing less.

I am not here to talk about whether there is only $32 million remaining in Swiss banks belonging to Holocaust victims and survivors or, as may be closer to the truth, several billion. Nor am I ready to endorse those who say the records were purposely destroyed and the money confiscated.

When I met with the Swiss Bankers Association on September 12, 1995 in Bern, I was struck by one comment they made to me. "Mr. Bronfman," they said, "we do not wish to hold on to one Swiss franc that is not ours."

I told them that I certainly agreed with that sentiment. I explained to them that the World Jewish Congress initiated activity aimed at the recovery of Jewish property even before the war in Europe ended. In November 1944, Dr. Nahum Goldmann, the cofounder of the World Jewish Congress raised the issue at the War Emergency Conference in Atlantic City. He declared then:

"The principle that Jewish assets must be given back to their legitimate holders wherever possible must be regarded as inviolable."

Now that the Swiss Bankers have told me they accept this universal principle, Mr. Chairman, I ask that you, your Committee, this Congress and our Government help the Swiss Bankers fulfill their own wish not to hold on to a single Swiss franc that is not their own.

A word of concern, Mr. Chairman: time is running out for those who will be the primary recipients of this restitution. Knowing you as I do, I am confident that your investigation will be thorough and will result in the full exposure of the facts.

At the aforesaid meeting in Bern September last, I did not discuss dollar amounts. What I sought was an impartial audit. I came away thinking that we had agreed on that, but in February, the Swiss Bankers Association unilaterally announced they had done their own survey and had found only $32 million—an amount that defies credibility.

"Trust us," they told the victims of the Holocaust, "we looked into our records and our own vaults and that's all we could find."

One of the documents already uncovered and released by your own investigators, Mr. Chairman, suggest that at a single Swiss financial institution, the present values of deposits may be nearly that much alone.

Mr. Chairman, as you may know, heading these two organizations is not my only job. I am also a businessman.

As a businessman, I often deal with bankers. I know that the most important asset any banker can have is his reputation, the trust of his customers. If we cannot have faith in the integrity and trustworthiness, in the honor of the banker to protect our deposits, to give a faithful and accurate accounting, then we must go elsewhere.

Dealing with the Jewish people must be for the Swiss bankers and issue of trust.

What is urgently needed, Mr. Chairman, is a transparent mechanism to conduct a verifiable audit of all Nazi-era assets, those deposited by Jews and those assets stolen from the Jews by the Nazis and also deposited in Switzerland and their disposition so that all the parties involved can be satisfied justice has been served.

The Swiss bankers cannot be permitted to come back and say, once again, that they will create such a process, but that they want to be the ones who appoint the auditors. Their repeated failure of integrity over 50 years has forfeited for them such a privilege. There must be an arm's-length process that is credible to the entire world.

There is already much to learn from the very beginning of the documents uncovered by your Committee and by others working elsewhere. They demonstrate that during the Nazi era the Swiss were far from neutral. Their assistance to the Nazi war machine, through the clandestine conversion of looted gold into Swiss francs, enable the Germans to buy fuel and other raw materials they needed to prolong the war. Some estimates in testimony before the U.S. Senate hearings following the War suggest the cost may have been staggering in the lives of American soldiers, Allied soldiers, Jews and other civilians across that continent.

The Germans were looting synagogues, schools, museums and the bodies they were about to toss into the ovens. They snatched works of art. They took wedding rings and gold teeth and melted them down. They cast ingots that were falsely marked to appear as if they were pre-war gold and, as records are showing, they took it to bankers who were only too willing to look the other way.

Mr. Chairman, many Jews in Central Europe, and many others in those countries, saw the Nazis coming and made the trip to Switzerland because they thought their assets could be held safely there. They put their faith in Swiss neutrality and the integrity of that nation's banking system. It appears they were betrayed.

Only through a full, fair and impartial audit can we uncover the truth. I would hope the Swiss bankers will cooperate fully in this endeavor as it appears to be the only way to deal with this crisis in confidence they have created and has been called into question by so many.

Mr. Chairman. I do not propose here a discussion of specific amounts of money. Yet, I believe that each dollar recovered represents a little piece of dignity, not just for the survivors who will benefit, but for all mankind who will have demonstrated that it remains morally unacceptable for anyone to profit from the ashes of man's greatest inhumanity to man.

MEDICARE

HON. RON PACKARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. PACKARD. Mr. Speaker, the Congressional Budget Office has recently reported that Medicare is in far worse shape than the Clinton administration originally led the American people to believe. Left unchecked, Medicare beneficiaries face losing coverage and in the process our children will be robbed of the benefits of a balanced budget.

Last April, the Clinton administration predicted the trust fund would take in $45 million more this fiscal year than it would spend. Instead, it is $44.2 billion in the hole in just the first half of this fiscal year.

According to a new CBO study, the trust fund will be in the red $443 billion by the year 2005. That $443 billion figure represents the extra money the Government would have to add to the trust fund over the next decade to pay for benefits through the end of 2006. Even with the honest numbers of the CBO, the President and his advisers refuse to recognize the grave situation facing Medicare. My Republican colleagues and I have faced the challenge head on.

We have proposed measures that will not only save, but improve Medicare. The President has consistently refused to come to the table. He would rather make this an election-year issue, demagoging Medicare and scaring our seniors.

Medicare's problems are much more serious than President Clinton and his Medicare trustees will admit. It is now apparent that more is needed than the same old smoke-and-mirror gimmicks this administration relies on.

THE TERRORISM PREVENTION ACT

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. HAMILTON. Mr. Speaker, it has come to my attention that the Senate Concurrent Resolution 55, making corrections to the Terrorism Prevention Act and adopted on April 24, 1996, under a unanimous-consent agreement, made a number of substantive changes to sections in the jurisdiction of the International Relations Committee. I am very supportive of the goals of the Terrorism Prevention Act and am concerned that several of these changes may actually undermine U.S. efforts to address the terrorism threat.

I am astounded that these changes were made at the last hour, without even a single call to the minority members of the International Relations Committee. The issues involved are troubling and far-reaching—not technical. They require a full airing by the committee of jurisdiction to understand all the ramifications for U.S. security and foreign policy concerns. Had I had warning, I would have objected to the inclusion of these provisions in a bill to be considered in the House under a unanimous-consent agreement.

First is the change to Section 801, Overseas Law Enforcement Training Activities. In the conference report, this section authorized the Departments of Justice and Treasury to conduct overseas law enforcement training activities "subject to the concurrence of the Secretary of State." This language, requested by the administration, was necessary to ensure coordinated, targeted, and cost-effective overseas law enforcement assistance. The new language permits the Departments of Justice and Treasury to go overseas "in consultation with the Secretary of State." This undermines the Secretary's statutory authority to conduct U.S. foreign policy and raises the likelihood of an explosion of uncoordinated training programs.

I support the Justice and Treasury Departments' law enforcement activities, including their overseas efforts to reinforce the protection of law enforcement in the United States. But we need coordination of overseas training if those programs are to be effective. The State Department, which has the global perspective on U.S. foreign policy, is the only agency with the ability and authority to coordinate U.S. civilian activities abroad.

Next are the changes to sections 325 and 326, which amend the Foreign Assistance Act of 1961. The conference report's section 325 stated the President may withhold foreign assistance from any country, whose government aids the government of a terrorist State. The report's section 326 provided that the President may do the same with regard to governments providing lethal military equipment to terrorist states. The concurrent resolution turned "may" into a "shall," tying the President's hands. The provisions retain a national interest waiver. But, they will complicate and obstruct the President's ability to conduct foreign policy.

We should press other countries to oppose terrorist governments. But we must find creative ways to fight terrorism, not tie the President's hands in making case-by-case judgments in this very important, but highly fluid, area. What does it mean that a third country provides assistance to a terrorist state? Is the President now required to cut assistance to our allies participating in the KEDO program? That program ensures that North Korea does not engage in a nuclear weapons program, and it may be undermined by this new prohibition. Does section 326 now prohibit our assistance to Russia and other emerging democracies in Europe, or our assistance to some of our most important allies? These are the questions we should have fully examined in open and closed sessions before the prohibitions on the President's authority became law.

I conclude by repeating my distress at the process in which these important statutory and policy changes were made. The changes have far reaching troubling ramifications, and should not have been done under unanimous consent without consultation of the appropriate committees of the House.

A SPECIAL TRIBUTE TO DORIS PARKER

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. RANGEL. Mr. Speaker and my colleagues of the House,

I would like to take this opportunity to bring to your attention a very special person in my 15th Congressional District who always seems to go beyond the point of commitment.

The woman of whom I speak is Doris Parker, this year's recipient of the Ted Weiss Community Service Award which will be presented to her by the Three Parks Independent Democrats on Sunday, May 5, 1996.

Ms. Parker, who is the widow of the late great musician Charlie "Bird" Parker, is certainly deserving of this award, for her commitment to the community and her tireless efforts, are well known by many.

She serves as treasurer of the 24th Precinct Community Council; recording secretary for the North West Central Park Multiblock Association, Inc.; member of the board of directors for Veritas Therapeutic Community Foundation; member of the board of directors for the Westside Crime Prevention Program; and is first vice president of the Federation of West Side Neighborhood and Block Associations.

These are just a few of the many community outreach efforts that Doris Parker gives her time and talents to.

New York is blessed to have this hard working and faithful community activist, and I am proud and fortunate to be able to call her my friend.

Doris, this is for you.

GAS TAX RESTITUTION ACT OF 1996

HON. NICK J. RAHALL II

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. RAHALL. Mr. Speaker, today I am introducing legislation to transfer to the highway trust fund revenues received from the 4.3 cents of the Federal motor fuel tax that is currently going to the general fund.

Many of us concerned with our surface transportation infrastructure were troubled when in 1993 this tax of 4.3 cents per gallon of motor fuel was imposed not for the purposes of bolstering receipts into the highway trust fund, but for the purpose of deficit reduction. I would note, however, that this was not the first time this occurred. As part of the Omnibus Budget Reconciliation Act of 1990, the Federal motor fuel tax was increased by 5 cents, with one-half of this amount dedicated to the general fund. This 2.5 cents was later restored to the highway trust fund effective September 30, 1995.

As we all know, the basic premise of the Federal motor fuel tax is that it is a user fee collected for the express purpose of making improvements to our road and highway infrastructure. It is one of the few taxes where Americans can see an immediate and direct result for having to pay it as they drive on the Nation's highways.

Today, the debate is centered on repealing the 4.3-cents-per-gallon tax. I offer an alternative. Restore it to the highway trust fund.

Few, if anyone in this body, can say that the areas they represent do not require road and highway improvements. The legislation I am introducing today will not only restore faith with the American people on the uses of the Federal motor fuel taxes, but will certainly assist in making needed surface transportation enhancements.

THE COMMON SENSE PRODUCT LIABILITY REFORM ACT

HON. NEWT GINGRICH

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. GINGRICH. Mr. Speaker, I would like to bring to the attention of my colleagues the following statements, made during a press conference on April 30, 1996, marking the transmission to the president of the Common Sense Product Liability Reform Act.

First, a statement of former Attorney General Dick Thornburgh; second, statement of Lewis Fuller, president of Fuller Medical Company; third, Tara Ransom, 9-year-old girl who uses a silicone shunt; and fourth, Linda Ranson, mother of 9-year-old Tara.

SENATE MAJORITY LEADER DOLE AND HOUSE SPEAKER GINGRICH BRIEFING ON PRODUCT LIABILITY LEGISLATION

Speaker GINGRICH: Let me thank all of you for coming today. We are transmitting to the president today our product liability reform bill. We believe that product liability reform will lower prices to consumers, lead to the faster development of better products, and as you'll hear today, in some cases literally save lives, because of some products which are being priced out of existence and threatened out of existence by lawsuits and by the problems of unnecessary litigation.

We believe that the product liability reform bill is an important reform of the legal system. I would just point out that Dr. Edwards Deming, the founder of the quality movement and the man who taught the Japanese the concept, said consistently for his entire lifetime that the American litigation system was a major blockage point to us being able to compete in the world market, that it caused unnecessary lawsuits and led to unnecessary expenses and did unnecessary harm. We hope that the president will decide in the interest of lower consumer prices and better products and greater American competition in the world market, that we need a product liability reform bill, and I hope—we hope that he will sign this bill. And I think when you've listened to today's statements, and particularly listened to Linda and Tara Ransom (sp), you'll see why it is vitally important to have a product liability reform bill to help Americans in a variety of ways.

And let me now turn this over to former Attorney General Dick Thornburgh.

Mr. THORNBURGH. Thank you, Mr. Speaker. Good morning. As a former governor of the state of Pennsylvania and attorney general of the United States, I've been a long-time advocate of civil justice reform. The damage lawsuit abuse does to our economy and to the rule of law in this country has reached the stage where reform is absolutely necessary. As you will hear, today's distorted system inflicts injury on thousands of small businesses like Louis Fuller's (sp), and it can do real harm to shunt-dependent children like Tar Ransom and my son Peter.

Congress has finally wrapped up its long and productive debate over civil justice reform. And I want to commend Majority Leader Dole and Speaker Gingrich, in signing the letter of transmittal for this measure today, and sending it to the president. And we must acknowledge something else, something remarkable that happened in this session of Congress to make this day possible. This was a bipartisan effort.

Senators Rockefeller and Lieberman joined Senators Dole and Gorton in spearheading the passage of this legislation to curb lawsuit abuse through its voyage through the Senate—a truly non-partisan effort against some truly non-productive practices.

As Senator Lieberman said, "This is a moderate, thoughtful bill reflecting years of effort and many compromises." He observes, "Opponents of this bill have tried to paint the bill as pro-business and anti-consumer, but the status quo is terrible for consumers. The current system is inefficient, unpredictable, costly, slow and inequitable."

He continues: "Injured people wait years for judgments. Some of those with the worst injuries are under-compensated, while those with smaller injuries are over-compensated. Businesses act defensively, avoid innovation as too risky, and devote enormous numbers of personnel and resources to litigation. The length between fault and judgments and settlements is more and more attenuated. Consumers pay higher prices in order to cover product-related costs." "And," Senator Lieberman acidly concludes, "lawyers prosper."

Reform has been too long coming. This is a modest measure. It corrects the worst abuses of our current system while fully respecting the plaintiff's need for justice. Yet defying his own personal history of support for this legislation, and after offering signals that he would sign this bill, President Clinton has promised so far to veto it. So this looks to be the message from the White House: No matter how desperately the Louis Fullers (sp) and the Tara Ransoms (sp) of America may need lawsuit reform, we're going to have to wait for a change of heart by the president, or a change of presidents to get it. I don't like to draw invidious conclusions; it's not my style. But it doesn't take this former law enforcement official long to make a link between the promise of a veto and the motive for the president's threatened action. Where's the smoking gun? I'm compelled to respond: Follow the money.

Trial lawyers give a great deal money in political campaign contributions, more than the top 10 oil companies and the big three auto companies combined. And the doors of the Clinton White House appear to have swung wide open for this lobby of greed, while closing the door on average Americans who seek justice.

The top 50 big-giver trial lawyers contributed a total of $2.6 million to Mr. Clinton's 1992 campaign. In just the first nine months of 1995, lawyers and law firms pumped another 2½ million into the president's reelection campaign coffers.

Listen to Senator Jay Rockefeller. He said, "The president needs trial lawyers and their money more than he needs good public policy." Now the president obviously does not want to appear to be buckling to this special interest, so he says he opposes reform because he's concerned that the measure will be unwarranted intrusion on state authority. This argument was dismissed years ago, when the National Governors' Association, true defenders of state authority, called for a uniform national product liability standard. Among them at the time was then-Governor Bill Clinton of Arkansas. He was in fact part of the very committee that persuaded his fellow governors to call for national lawsuit reform to greatly enhance the effectiveness of interstate commerce.

Now President Bill Clinton espouses a kind of phoney federalism to resist reform. Now he chooses to put the interests of the trial lawyers ahead of those of thousands whose lives depend on medical innovation. Now this president is banking his campaign on the forces of greed and putting the rewards of a small, powerful elite before the national interest.

And unless he has change of heart, President Clinton will be putting the interests of those trial lawyers before the lives of those like this little girl that you will hear from later, Tara Ransom (sp).

We should call and we do call on President Clinton to take a second look at his promise to veto this bill. It's not too late to change one's mind, and it's certainly not too late to change one's heart.

Mr. LOUIS FULLER (sp): Thank you, General Thornburgh.

My name is Lewis Fuller. I live in Gadsden, Alabama, where I am the president of a small medical supply company.

Every now and then, I hear Alabamans debate whether or not we need a state lottery. I remind them that we already have one—it's called the civil justice system.

I'm sure most of you have heard about the lawsuit in Alabama where a wealthy doctor won a $2 million judgment because the paint job on his car was partially refinished. It was a paint job that lead to a snow job on American justice. That decision was so bad—the

judicial system that arrived at that decision is so corrupted by trial lawyer money—that this case is now before the Supreme Court of the United States.

The Alabama trial lawyers are capable of generating that kind of national publicity makes me mad. It makes me mad because Alabama is a great state, a great place to live and—all things considered—a great place to do business.

We don't deserve to live under the kind of system that we have. The cost of that system goes far beyond car companies. Lawsuit abuse hurts us all—as consumers, workers, taxpayers.

Yet our state is dominated, top to bottom, by the trial lawyers and the judges whose campaigns they bankroll. In a state where you can get $2 million for a car paint job, the danger of a reckless, ruinous punitive award is taken very seriously, a threat to one's very livelihood. That's why we have 10 times the punitive damage settlements as our four neighboring states combined.

This is the constant threat I live under as a small businessman. This is the liability threat that forced me to stop supplying my community with products that can mean the difference between life and death.

I am sad to report that because of the possibility of a ruinous lawsuit, Fuller Medical had to stop offering baby monitors designed to warn parents of the possible onset of Sudden Infant Death Syndrome.

We have no choice. We cannot afford the insurance premiums that would allow us to continue offering these in-home-life-support devices.

We were forced to shut down this part of our operation in 1993 and no company in our immediate area has filled the gap. Thanks to the greed of trial lawyers, a potential life-saving device has been strangled in the crib.

Another casualty of lawsuit abuse is our van conversion business.

I'm not talking about making vans prettier. I am talking about making them more accessible to handicapped citizens. We did these conversions for several years, which made the vans hand-controlled, giving a handicapped driver greater mobility. But under our system of joint-and-several liability, we could be sued for any problem with a van, even if we were not actually at fault.

I have no trouble with reasonable damages for genuine fault. But I cannot pay an unlimited damage for any mistake someone else might make.

In these two ways, you see how the threat of limitless punitive damages and joint-and-several liability forced us out of these two ventures. Both of these measures would be addressed by the reforms Congress is sending to the President.

I cannot understand why Mr. Clinton has threatened to veto this bill. I cannot understand why an Administration that gives so much lip service to small business would defend a system like this one.

I cannot understand why Bill Clinton would take this stand, when any former governor must surely know that the ultimate victims are not the large corporations, or small businesses like mine. It is not even the consumers who must pay higher prices.

It is the handicapped, who need a way to drive themselves to work.

It is the parents, who don't want to lose another child to Sudden Infant Death Syndrome.

And it is tens of thousands of people like this sweet little girl, Tara Ransom, who depend on medical innovation and technology just to stay alive.

Mr. President, if you hear my words, please change your mind. Not simply for my small business, but for this little girl. Mr. President, it is not too late to do the right thing.

PHOENIX, AZ,
March 29, 1996.

DEAR MR. CLINTON: My name is Jara Ransom. I am 8 years old. I'm in 3rd grade at Magnet Traditional School.

I have a silicone shunt for hydrocephalus. I get the hydrocephalus when I was a baby. I have had 5 operations.

I need the shunt to live. I have talked to Congress about it when I testified last summer. Mom says we need a liability bill. I only know a little bit about it, but I know it will help me live. Please sign it.

I know Mrs. Clinton likes kids. Can she help me too?

Sincerely,

JARA RANSOM.

My name is Linda Ransom. I'm not a lawyer. I'm not a lobbyist. I'm just a desperate mother.

My daughter, Tara, and I have flown here from our home in Phoenix, Arizona to give President Clinton this message: President Clinton, it's not to late to change your mind. It's not too late to help Tara. Please don't veto this bill.

You see, Tara has a medical condition called hydrocephalus, and the only treatment for it is a surgically-implanted shunt in her brain which is made out of silicone. The shunt takes the excess cerebral fluid away from her brain in a silicone tube and carries the fluid down through her chest into her abdomen, with the help of a small pump under her scalp. Kids outgrow shunts, and Tara has already had 5 surgeries. She will have to have more—that is, if the shunts are still available.

They may not be, under our current legal system. Already, three of the major suppliers of raw materials have decided to restrict or stop supplying manufacturers of medical implants. One of them, Dow Corning, is the sole supplier of the raw silicone used to make Tara's shunt. While the shunt is still available for the 50,000 hydrocephalics who depend on it to stay alive, the situation is looking worse and worse for the medical device industry.

Outrageous punitive damages awards are not really the problem, although the risk is always there. The medical implant industry is more threatened by the day-to-day cost of defending itself from thousands of lawsuits, only to be found not liable again and again. Many times, the cost of the raw materials in a medical device—the Teflon in a pacemaker, or the polyester yarn in a suture—amounts to just pennies. But these suppliers are forced to spend millions of dollars defending themselves in court, from lawsuits that they shouldn't have been dragged into in the first place.

This bill would change that. Caps on punitive damages will help, but more importantly, ending joint and several liability will mean that only those who are responsible for damages will be brought to court. This will free up millions of dollars in legal costs that could be better spent on research.

Tara's long-term future lies in the hands of medical researchers—the ones who might invent a better device that won't need surgery, or maybe a drug to control the excess fluid in the brain. Today, not enough bright young people are going into research, and I think a lot of it has to do with the frustration of not getting devices off the drawing board because of the liability.

Tara may be the person to find the cure for AIDS or become the first woman President. She is a very bright girl, who is at the top of her class and has skills is beyond her current 3rd grade level at the Magnet Traditional School. Whatever her future is, she has a future because of a tiny piece of silicone plastic.

Tara is the perfect example of hope—hope in the surgeon's skills, hope in medical technology, hope in the shunt itself. She is also the perfect example of faith—faith in the belief that God's miracles are the hands of the surgeons and the minds of the scientists who make the discoveries and create the devices. Senator Dole and Speaker Gingrich have done their job in getting the bill passed. President Clinton, it's up to you. Don't take our hope away. Sign this bill.

CONGRATULATIONS ON 55 SUCCESSFUL YEARS

HON. JOE KNOLLENBERG

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. KNOLLENBERG. Mr. Speaker, I rise today to honor my friends Frances and Bartlett Smith, of Milford, who are celebrating their 55th year of marriage this year.

In 1937, they came to Detroit to seek their fortune and found each other. Frances, with her sister Ann, came from Milford to work at Detroit Bank & Trust. Bartlett B. Smith came from Kalamazoo to attend the Detroit College of Law and work at the National Bank of Detroit. Bart and Fran met, courted and were married May 17, 1941, at the Jefferson Avenue Presbyterian Church in the Indian Village area of Detroit.

Following Bart's graduation from law school, they moved back to the family farm in Cooper Township near Kalamazoo where Bart's family had been original settlers. Not only did he work the farm, he worked 12-hour days welding tanks for the war effort as he awaited the results of his bar exam. When Bart joined the U.S. Army, 3d Armored Division in Fort Knox, KY, Frances and their two young children, John and Sarah, moved back to Milford, MI, to be near her family.

At the end of the war, Bart joined the Oakland County prosecutors office and served for 2 years. He opened his own firm in Milford, practiced for 46 years and retired in 1993. He was admitted to practice before the U.S. Supreme Court having been sponsored by U.S. Senator Philip A. Hart and Oakland County Circuit Judge William John Beer. Frances joined the practice as secretary in the late 1950's and son Christopher joined him as partner following his graduation from law school.

Civil duty has long been a family tradition. Frances has served on the Milford Township Library Board for 47 years, the last 30 as president of the board. She continues to serve today.

Bart served as Milford Village president, councilman, member of the township board, and justice of the peace. He is a member of various civic organizations including the American Legion, Rotary, Chamber of Commerce, and Masons. His service began in the 1940's,

when as "Sam McCall's son-in-law" he was grand marshal and led the V–J Day parade down Main Street on horseback.

Oldest son John is a veterinarian practicing in Ypsilanti, MI. Daughter Sarah Redmond is a financial advisor for American Express Financial Advisers. Son Steve lives in Johnson City, TN. Youngest son David lives in Howell, MI. Bart and Fran have nine grandchildren, Karen, Jeff, Brian, Kristen, Angela, Kevin, Courtney, Michael, and Paul; and two great-grandchildren, Justin and Cassandra.

Growing up on stories of the Civil War and early pioneers to standing on the edge of the 21st century, they have seen much, shared greatly, and anticipate the new century. Congratulations and best wishes.

THE FIRST STEP TOWARD A BALANCED BUDGET

HON. RON PACKARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. PACKARD. Mr. Speaker, last week my Republican colleagues and I passed an historic bill which will save the American people $43 billion. It eliminates over 200 wasteful programs—more than 100 in the Labor, Health and Human Services bill alone. And it puts us on target for a balanced budget in 7 years.

In his attempt to put his best spin on this bill, President Clinton demanded we present him with a balanced budget. Apparently, he forgot—we did. He vetoed it. The President has shown little sign that he is truly committed to balancing the budget. He refuses to make tough decisions that count—like real welfare reform and saving Medicare from bankruptcy.

My Republican colleagues and I are now looking toward next year's budget. We are committed to real budget reform that balances the budget, creates real jobs and ensures a bright future for our children. We remain committed to the five keys to a balanced budget—genuine welfare reform, real reductions in spending, tax relief for families and job creation, moving power out of Washington, and saving Medicare from Bankruptcy.

Mr. Speaker, my Republican colleagues and I have proven our resolve for a balanced budget. When, the President presents us with a budget that really balances and tackles the tough issues, we will know he too is serious about saving our children's future.

EARTH DAY

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington Report for Wednesday, May 1, 1996 into the CONGRESSIONAL RECORD.

EARTH DAY 1996: PROTECTING OUR ENVIRONMENT

On this, the 26th anniversary of Earth Day, we can take great pride in the advances that have been made in environmental protection. We have succeeded in reducing the levels of lead and other dangerous pollutants from the air. Lakes and rivers, once so contaminated they could catch on fire, now support large fish populations. Forests are rebounding. Endangered species, like the eagle and the buffalo, have been saved from extinction and are now thriving.

Hoosiers strongly support cleaning up our air, water, and land, and they want to leave the environment safe and clean for the next generation. They do not want to cut back on our environmental investment. Hoosiers do not say to me that we have too many parks, or that the air and water are too clean. They overwhelmingly support sensible, targeted and moderate laws necessary to keep the environment clean. They also support the view that states and localities have a greater role to play in the environment, and that environmental laws should be based on sound science and a careful balancing of costs, benefits and risks. I agree with their common sense beliefs.

Several federal laws provide the foundation for environmental protection in this country. As we celebrate the 26th Earth Day, it is helpful to understand how these laws work, how they have contributed to a cleaner environment in Indiana and around the country, and how we can improve them as we meet new challenges.

IMPROVING AIR QUALITY

The Clean Air Act, originally passed in 1970, seeks to protect human health and the environment from outdoor air pollution, such as car exhaust and factory emissions. The Act has dramatically reduced air pollutant levels. From 1984 to 1993, emissions of lead declined by 89%, particulates by 20%, sulfur dioxides by 26%, and carbon monoxide by 37%.

Congress substantially revised this law in 1990 to strengthen the ability of the Environmental Protection Agency (EPA), states and the private sector to work cooperatively to improve air quality, particularly in cities with significant pollution problems. The new law also aims to reduce pollutants which cause acid rain and contribute to global environmental problems, including ozone depletion and global warming.

The new law also expanded efforts to develop cost-effective ways to reduce emissions for coal-fired power plants. Such utilities are common in southern Indiana and throughout the Midwest, providing relatively inexpensive electricity to residents in the region. The burning of coal, however, does contribute to air quality problems. The Clean Coal Technology Program, which funds six projects in Indiana, provides assistance to help defray the costs of pollution control.

CLEANING OUR WATER

The Clean Water Act, passed in 1972, is the main law protecting our streams, lakes, estuaries, and coastal waters. It aims to limit the amount of waste flowing into surface waters. It also provides local communities with low-interest loans to assist in the construction or upgrade of municipal wastewater treatment facilities.

Wastewater treatment has dramatically reduced pollution in our rivers, lakes and streams. These efforts have improved the quality of drinking water and preserved fish and other aquatic life. Since 1972 the number of people served by modern sewage treatment facilities has almost doubled and the level of pollution discharged by municipal treatment plants has declined by 36%.

The other important federal law protecting water resources is the Safe Drinking Water Act, passed in 1974. The Act requires EPA to determine which contaminants threaten public health and set standards for safe pollutant levels in drinking water. These standards generally apply to public water systems. The Act has made tap water safer from harmful contaminants, including bacteria, viruses, and certain chemicals.

I appreciate that improving water quality costs money. I am sensitive to the concerns of local leaders who want the flexibility to achieve cleaner water in more cost-effective ways. Consequently, I have supported measures to make federal rules more flexible, less costly and less complex to assist them in pollution control efforts.

CONSERVING THE LAND

The federal government has worked cooperatively with farmers since the Dust Bowl of the 1930s to control soil erosion. The Natural Resource Conservation Service, formerly the Soil Conservation Service, has national responsibility for helping farmers and ranchers develop and carry out voluntary efforts to conserve and protect our natural resources. This effort has helped improve farm productivity while preserving water and soil quality.

Considerable debate has focussed in recent years on wetlands conservation. Wetlands include swamps, bogs marshes, and prairie potholes, and are considered crucial to water quality protection and flood control. The problem is that wetlands have been disappearing at a significant rate. Indiana lost well over 80% of its wetlands between the late 1700s and the mid-1980s. Nationwide, wetlands are declining, primarily because of growth and development, at a rate of 290,000 acres a year.

The key to wetlands conservation is finding a way to protect these valuable resources without imposing significant economic costs on farmers and other landowners. The 1996 farm act approved earlier this year takes some steps toward striking an appropriate balance between environmental and economic interests. The new law streamlines current rules and makes them more understandable to farmers and other land users.

CONCLUSION

Indiana and our country have been blessed with a bountiful environment. This blessing cannot be taken for granted. We all have a stake in the preservation of our environment. Earth Day reminds us of our successes over the last 26 years—cleaner water, cleaner air, cleaner land—while committing us to preserve our natural heritage for future generations.

The challenge facing the U.S. is finding an appropriate balance between preserving our environment and promoting economic growth. Cleaning the environment has become more complicated. We must search for more effective ways to protect the environment with less cost and less regulation. My view is that we do not have to sacrifice environmental protection to get economic growth. We can have both. Growth creates jobs and increases our standard of living; environmental protection improves public health, conserves valuable resources upon which growth depends, and preserves the natural beauty of this country.

LEGISLATION TO ENCOURAGE LONG-TERM-CARE INSURANCE

HON. RICHARD J. DURBIN

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. DURBIN. Mr. Speaker, today I am introducing legislation to encourage Americans to purchase long-term insurance and address the growing cost to the Medicaid program of long-term care services.

The Long-Term Care Insurance Incentives and Consumer Protection Act of 1996 provides incentives to buy long-term care insurance and assistance in paying for long-term care.

This measure helps families afford the cost of long-term care services by treating payments for long-term care services as medical expenditures eligible for the same tax deduction as other health care services—deductible to the extent total medical expenditures exceed 7.5 percent of adjusted gross income.

The measure encourages families to buy long-term care insurance to cover future long-term care costs by providing a direct tax deduction for long-term care insurance premiums, without respect to the 7.5 percent of AGI floor that applies to other medical expenditures.

It revises the tax treatment of employer-provided long-term care insurance to encourage employers to make this coverage available to their employees.

It provides this new coverage beginning January 1, 1997.

The legislation helps protect consumers from unfair or abusive policies and marketing practices by providing this favorable tax treatment only for long-term care insurance plans that meet consumer protection standards.

The standards require the use of standardized benefits and terminology and a standard outline of coverage to make comparison shopping possible. They prohibit plans from requiring a hospital stay before coverage of long-term care services or imposing other unnecessary limits on when or from whom a patient can receive services; and prohibit a plan from discriminating against patients by providing a lesser standard of coverage for specific illnesses such as Alzheimer's disease, mental illness, or HIV.

The standards also require that consumers be offered the option of purchasing inflation protection so that the value of their benefits does not erode and become inadequate over time; provide a right to cancel a new policy within 30 days and receive a full refund of any premiums paid; and provide a partial return of premiums if a policy lapses before the death of the insured person.

In addition, the standards prohibit cancellation of coverage except for failure to pay premiums, fraud, or misrepresentations by the insured; and provide group policyholders an option to continue or convert coverage that would otherwise terminate because the person is no longer a member of the group.

This legislation will reduce Medicaid's future outlays by encouraging Americans to buy long-term care insurance rather than looking to Medicaid for this coverage. Long-term care takes up one-third of the Medicaid budget. More than half of all nursing home care is paid by Medicaid, along with a significant amount of home and community-based long-term care. As more people purchase insurance to cover their long-term care needs, fewer people will need to rely on Medicaid for that coverage.

Mr. Speaker, this measure provides stronger consumer protection standards than the similar legislation previously considered on the House floor, including stronger nonforfeiture benefits so that people do not lose everything they paid in if they must stop making payments before they obtain any benefits. This will increase consumers' willingness to buy a product that they may not need for 20 years or more.

In addition, this measure provides a stronger incentive to purchase long-term care insurance by allowing taxpayers to take the tax deduction for premiums without having to first exclude medical payments equal to the 7.5 percent of AGI. For many taxpayers, the 7.5 percent exclusion that must be met before expenses become deductible under the GOP bill virtually eliminates the value of the tax deduction. My legislation allows premiums to be deducted directly, without a 7.5 percent exclusion, which increases the incentive to obtain long-term care insurance.

Mr. Speaker, the number of senior citizens in our Nation will grow substantially in the first part of the 21st century as the baby boom generation retires. Between 1980 and 1990, the 65-and-older population grew by one-fifth. During that time, while the entire U.S. population of all ages was growing by one-tenth, the over-80 population grew by one-third. The Bureau of the Census estimates that there will be 31 million people over age 80 in 2050, around the same number as the total number of people over age 65 today.

These are the people most likely to need long-term care. An expansion in long-term care insurance coverage now can ease the burden on government to provide the care that will be needed later.

I urge my colleagues to join me as a cosponsor of this bill to encourage Americans to purchase long-term care insurance and help reduce our future Medicaid long-term care costs.

TRIBUTE TO PASSAIC SEMI-PRO BASEBALL

HON. WILLIAM J. MARTINI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. MARTINI. Mr. Speaker, I rise today to honor five members of the Passaic Semi-Pro Baseball League. Baseball is as American a tradition as Mom and apple pie. Since the middle of the last century, children and adults alike have played this wondrous game. Since the Great Depression, baseball has provided Americans with an outlet to step back from the world for a while. Although baseball at the highest level has been through ups and downs over the years, the game itself has remained pure for the millions of people, adults and children alike, who are players or fans. There is no question that baseball is truly America's pastime.

We in the Eighth Congressional District of New Jersey have indeed been fortunate to have enjoyed a rich baseball tradition for decades, one that has been carried forth by a high level of competition which has come to characterize the Passaic County Semi-Pro League. On Friday, May 3, 1996, that tradition will again be celebrated with the 11th annual Passaic semi-pro baseball reunion dinner, at the Knights of Columbus Regina Mundi Hall No. 3969 in Clifton, NJ. Hosted by the organizing committee of Ted Lublanecki Sr., Ted Lublanecki Jr., Ben Lublanecki, Jean Lublanecki, and Mike Ivanish, I am sure this celebration will be a tremendous success befitting the honorees' accomplishments.

This year's event is highlighted by the extraordinary careers of men who brought distinction not only to themselves but also to their teams and the Passaic Semi-Pro League. This year's honored group includes Jack Brady, Edward Janusz, Andy Romanko, Bob Varettoni, and Richard Zurichin. For the benefit of our colleagues, I would like to allude to some of the accomplishments of these remarkable gentlemen:

Jack Brady began his baseball career by playing 4 years of varsity ball at Pope Pius High School. While still in high school, Jack also displayed his considerable skills playing for the Clifton American Legion Team Post 8 for 1 year and then playing on Pete Reno's Passaic Memorial Post 200 Legion Team for 2 years. Following high school, Jack played for a number of semi-pro teams. Possessing great all-around skills, Jack played both infield and outfield on such local teams as the All Passaics, the Drazins, the Red Socks, and the Wallington Hillsides. Jack's love for baseball eventually gave way to his educational needs, as he graduated from the Newark School of Fine and Industrial Art. He is currently operating his own industrial advertising agency.

Edward Janusz learned to play this great game on the sandlots of Wallington. From there, Edward went on to play in the outfield for Lodi High School, where he became the leading home run hitter in Bergen County. For this accomplishment and his overall play, Edward was chosen for the first team All-State in Group III. He then moved on to Rutgers University, where he played 4 years of varsity ball and led the team in batting and most hits in 1951. Edward actually began his semi-pro career in 1944, playing for the Wallington Tigers, Wallington Coopers, and, like Jack Brady, the Wallington Hillsides. He signed on with the Passaic DeMuro Comets, one of the best teams in the area, in 1951 and led his team to the Passaic City League championship the following year.

Unfortunately, a knee injury forced Edward to retire in 1955, but not before some memorable moments. In 1951, he hit a triple batting against New York Yankee Hall-of-Famer Whitey Ford while playing in Fort Monmouth, NJ. He also hit a grand slam home run during a college game in 1952. His love and knowledge of the game, as well as his generosity toward and love for children, led him to coach Little League teams in Wallington for 22 years, leading two of his teams to State championships in 1968 and 1971. He also became an

umpire in 1947 and, displaying his dedication to the game of baseball and the larger community in Passaic County, worked fast pitch softball, Little League, Babe Ruth League, and semi-pro games for 46 years. He still lives with his wife Margaret in the house where he was born.

Andy Romanko's passion for the game of baseball was lit the moment he was introduced to the game. Andy initially played for a variety of semi-pro teams in the area, where he developed into an outstanding pitcher. These teams included the Passaic Comets J.V., the Passaic Highlanders, and the Garfield Benignos. For the majority of his career, Andy played for the Passaic Demuro Comets, arguably the best team in the area. One of the best moments of Andy's career came while pitching for the powerful Comets when Andy pitched both games of a doubleheader and won them both. His proudest accomplishment as a baseball player is completing one year with 22 wins and only 2 losses. During this phenomenal year, in which his winning percentage was an astounding .909, Andy pitched a no-hitter while striking out 17 batters. Andy's love of the game led him to coach Little League for a number of years. Andy's passion for the game has never diminished, as he anxiously anticipates the Passaic semi-pro Baseball Reunion Dinners each year.

Bob "Chick" Varettoni had already developed a nasty sinker ball by the time he hurled his first semi-pro game as a 13-year-old for the Wallington Panthers. For the next 4 years, Chick played varsity ball for Pope Pius XII High School. While still in school, Chick also starred in American Legion, first pitching for Memorial Post 200 and later for Rosol-Dul Post, pitching the former to the State semi-finals in 1948. Like Jack Brady, Chick's semi-pro career began with the Passaic Drazins in 1948 and continued with the Passaic Red Sox in 1949. Chick's career culminated with many stellar performances for the Passaic DeMuro Comets, one of the finest teams in the metro area.

While pitching for this championship team, Chick twice faced New York Yankee Hall-of-Famer Whitey Ford of the Fort Monmouth Army team. His excellent performances in these high-profile games earned Chick an offer to join the Boston Braves farm system. He declined this offer, however, in favor of completing his studies at Seton Hall University. He was attending Seton Hall on a scholastic scholarship, from which he graduated magna cum laude. Following graduation, Chick entered the U.S. Navy, where he served as a communications officer aboard the USS *Midway*. After his release from the Navy, Chick entered upon a 34-year executive career with the New York Telephone Co. At the same time, he remained active in the Naval Reserve Intelligence Program, eventually rising to the rank of captain. He retired in 1990 and continues to live with his wife, Frances, in Totowa.

Richard Zurichin was an exceptional all-around athlete, excelling in basketball, football, and baseball. Yet, his first love was baseball. Although he received the Most Valuable Player Award from the Passaic Time Out Club for his efforts as a quarterback, Dick went to Seton Hall University and starred for the baseball team. His 1.80 earned run average earned him the honor of being named to the Collegiate Baseball All Star Team. Playing the mighty Passaic DeMuro Comets, Dick's biggest thrill was playing the U.S. Army East District Champions at Fort Dix, NJ, where Dick pitched the DeMuro Comets to the upset victory. His lifetime record for the Comets was an impressive 27 wins and 3 losses.

Mr. Speaker, each of these outstanding individuals, through their countless contributions not only to the game of baseball but also to the communities of Passaic County, have touched and enriched the lives of thousands of people in this area. For this, I ask that you and my colleagues join me in honoring these gentlemen during the 11th annual Passaic semi-pro baseball reunion.

CHILDREN'S MENTAL HEALTH WEEK, MAY 5–11, 1996

HON. JAMES A. BARCIA

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. BARCIA. Mr. Speaker, raising a child is one of the most difficult and challenging jobs, and the difficulties are augmented when a child has an emotional, behavioral or mental disorder. Not only are parents challenged to prepare their child for an increasingly technical job market, but also must help their child understand, cope with and overcome their disorder.

A group of dedicated parents, mental health professionals and mental health agencies all over the country work tireless hours to inform the public about disorders in children and provide information on services available. Because of their efforts, this year Children's Mental Health Week will be celebrated on a national level for the first time. During the week of May 5–11 the group's goal is to disseminate information to communities about the needs of these special children and their families. I urge my colleagues to become involved with Children's Mental Health Week.

Little is known about mental disorders. Even less is known about the mental disorders in children. Diagnosing disorders in children is more complex than diagnosing adults and is very difficult to understand. While treatment is focused on the children, support and guidance is also important for families who suffer from stress. Comprehensive effective services on a local level are essential to aid communities. Continued research on the effectiveness of programs should be supported.

Mental disorders do not discriminate on the basis of income, education, race, ethnic or religious groups. Disorders are found in children of single parents, two-parent families, adoptive and foster families. Some children are born with the disorder while biological, environmental, social and psychological factors cause disorders in other children. A mental disorder, which can strike anyone at any time, range from serious to minor and include attention deficit hyperactivity disorder, autism, clinical depression, panic disorder and learning disabilities.

Public Law 102–321, the Alcohol, Drug Abuse and Mental Health Administration [ADAMHA] Reorganization Act, provides block grants to States to provide community mental health services for children. The 22 5-year grants are being used to implement community-based programs. Although data on the effectiveness and outcome of such support is not yet available, I urge my colleagues to continue to support the grant programs. I also urge my colleagues to recognize and commend these dedicated parents for their continued efforts to educate the public on emotional, behavioral, and mental disorders in children.

THE 75TH ANNIVERSARY OF CROATIAN CATHOLIC UNION OF THE UNITED STATES

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. VISCLOSKY. Mr. Speaker, I would like to congratulate the Croatian Catholic Union of the United States of America and Canada [CCU] as it celebrates its 75th anniversary and legacy of accomplishment for Croatian-Americans. The celebration will begin this Saturday, May 4, during a luncheon at the Croatian Catholic Union home office in Hobart, IN. The celebration will continue on Sunday in Chicago, with a mass at the Sacred Heart of Jesus Parish. The CCU is honored to have His Eminence Cardinal Franjo Kuharic, the archbishop of Zagerb, Croatia, and Msgr. Valdimir Stankovic, the director of pastoral care for Croatians aboard and director of Croatian Caritas, preside over the anniversary celebration. In addition, Melchior Masina, the national president of the CCU, and Myrna Jurcev, the national secretary treasurer of the CCU, will be speaking. Both the residents of Indiana's First Congressional District.

The CCU is a fraternal benefit society incorporated in 1921 under the laws of the State of Indiana as a nonprofit organization. This organization provides life insurance and other benefits to its members and promotes religious, civic, charitable, educational, social, and cultural programs for the enrichment of its members. Furthermore, the CCU promotes the values of its members' Croatian Catholic heritage.

In 1970, through its religious programs, the CCU erected two Marian Chapels, which make up the Croatian Marian Shrine in the Basilica of the Immaculate Conception in Washington, DC. This Croatian Marian Shrine offers a place to worship and it serves as a symbol of Croatian-American contributions to the New World. Moreover, it unites all visiting Croatian-Americans in a strong bind of mutual solidarity and identity. Each year, the CCU organizes a national pilgrimage to the shrine.

While the CCU's programs are civic in nature, the CCU participates in all events sponsored by the National Fraternal Congress. For example, the CCU raised significant funds to restore the Statue of Liberty, and it also made donations to Habitat for Humanity. In fact, many charitable donations have been made throughout the CCU's history, especially at times of great disasters. The CCU has raised millions of dollars in cash donations, medical

supplies, food, and clothing for the refugees and orphans in the Balkans.

According to the CCU, the purpose of the organization is service to God. The center of the CCU's mission is service to Croatian-American people. The core of their vision is service, solidarity and love for one another.

Mr. Speaker, I ask you and my other distinguished colleagues to join me in honoring the Croatian Catholic Union of the United States and Canada during its 75th anniversary celebration. All the CCU's members should be commended for their dedication to preserving their culture, as well as assisting Croatian-Americans and others in times of need.

THE NATIONAL DAY OF PRAYER

HON. MIKE PARKER

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. PARKER. Mr. Speaker. In just a few hours, Americans across this great Nation will recognize one of the most important annual events for the future of our Nation—the National Day of Prayer.

Tomorrow, May 2, people of all ages, races and denominations will bow down to give thanks for the many blessings this Nation has received. And tomorrow, hundreds of thousands will offer up prayers for the healing of our Nation and for divine guidance for its elected leaders. As Members of Congress, no matter what our religious affiliation, we should be appreciative of the intercessory prayer being offered on our behalf.

I hope that each of my colleagues, in your own personal way, will observe the National Day of Prayer—a tradition since Congress passed a resolution in 1952—and will welcome the many visitors to our Nation's Capital who come to pray for you.

As always, I commend Wanda K. Wigley for making the Mississippi National Day of Prayer a priority in our State. God bless America, guard us and guide us, and give our Nation peace.

INJURED FEDERAL WORKERS

HON. BRIAN P. BILBRAY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. BILBRAY. Mr. Speaker, I have recently introduced three bills, along with my colleague from Washington, Representative JENNIFER DUNN. These bills, H.R. 3203, H.R. 3204, and H.R. 3205, would, if enacted, make only minor changes to our labor law, yet will provide major changes in the quality of the lives of many who serve this Nation as employees of the Federal Government. These bills not only continue this Congress' effort to force the Federal Government to conform to the laws that apply to all other citizens in this great country, but also bring additional accountability to one of our Government's largest Federal bureaucracies, the Department of Labor.

Mr. Speaker, of all the worker's compensation programs nationwide, only the Federal Government's does not allow for judicial review of cases to insure fair and equitable access and redress. Although proposals have been introduced in the past to address this question, the opportunity for success in this endeavor has never been greater. The culture of Congress has changed, and with this change, there is a newfound persistence in finding innovative solutions to vexing problems which previously were more easily buried or ignored.

H.R. 3205 not only provides a more equitable review process, but also provides reasonable time limitations in their deliberation. This bill expedites the initial decision process, eliminates the practice of redundant second opinions without legitimate legal or medical provocation, and provides the opportunity for claimants to have their own physician or representative present during the examinations. These provisions will significantly reduce the size of the quiet second opinions cottage industry that has developed in the wake of cases lasting up to 10 years, ruining the lives of the injured employees, and costing the Federal Government hundreds of millions of dollar.

Additionally, H.R. 3205 requires the Secretary of Labor to fix physician fees at a level comparable to the limits placed on fees charged by the claimants own physicians. By equalizing compensation levels and structures, Federal workers can be assured that they are getting a fair hearing with honorable medical representation.

Finally, H.R. 3205 requires the Secretary of Labor to provide reemployment and vocational skill training to injured workers to quickly return the injured employee to the workplace. Federal employees are valuable assets to the Federal Government, with millions of dollars spent every year in training. It makes little sense to waste the capabilities of these workers developed over years of experiences in the Federal workplace by forcing them to sit on the sideline, and in many cases, extract millions more from the Federal Government through disability and other compensation.

H.R. 3203 and H.R. 3204 are bills with similar purposes, to streamline and expedite the workers compensation policies of the Federal Government to provide fair and equitable access for all workers. Specifically, H.R. 3203 would require that in cases requiring a second opinion, that physician will be selected on an impartial basis. H.R. 3204 would require that physicians selected to provide medical opinions be board certified in the medical specialty which is being called into question. Mr. Speaker, you would be surprised to learn that despite repeated attempts by my office to have the agency in question voluntarily modify this practice, my constituents continue to be diagnosed by physicians with no certification to diagnose injuries of the nature in dispute.

In conclusion, Mr. Speaker, these bills are commonsense solutions to very specific problems. They are not legitimately controversial, and will truly make a legitimate difference in the lives of the hard-working Federal employees who provide valuable and necessary Government services. Besides the relatively mundane Federal workers that staff our bureaucracies, these unsung heroes also include the valiant members of Border Patrol agents, Federal Firefighters, U.S. Marshals, Drug Enforcement Agents, and the Secret Service who put their lives and bodies in harm's way every day.

Representative DUNN and I are committed to expediting the journey of these bills to the floor of the House of Representatives, and I urge the committee of jurisdiction to examine these issues in the context of this year's hearings, and move forward as quickly as possible.

HOOSIER BUSINESS GROWTH

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington Report for Wednesday, April 24, 1996, into the CONGRESSIONAL RECORD:

HOOSIER BUSINESS GROWTH

When politicians and the media talk about the economy, they tend to focus on the big, negative stories. Everyone has heard about how major corporations like IBM and AT&T are laying off workers in an attempt to downsize and become more competitive. Hoosiers have not been immune to such news. Recently Colgate in Clarksville and Randall Textron in Switzerland County, among others, have announced layoff plans. News like that causes all workers to feel anxious about their job security and the future. Hoosiers, however, should take some comfort that the Indiana economy has improved and is generating thousands of new jobs.

CURRENT ECONOMIC CONDITIONS

In recent years the unemployment rate in Indiana has been consistently lower than the national average, and the earnings of Hoosier workers have grown faster than in the rest of the country. At the end of 1995, the unemployment rate in the state was 4.6%, compared to 5.6% nationally. Economists tell us that the Indiana economy is operating at near full capacity, inflation is in check, and interest rates are low. In 1995, more than 50,000 net jobs were created in Indiana, and Hoosiers' real earnings grew by 3.4%, well ahead of the national average of 2.1%. Leading the way in job and earnings growth was the manufacturing sector, with a 7% increase in employment and a 6.6% increase in earnings.

The performance of the economy in the 96th District mirrors that of the state as a whole. The manufacturing sector is the single largest employer in our part of the state, and other important sectors are retail trade, services, construction, and agriculture. The I-65 corridor from Columbus to the Ohio River is one of the fastest growing areas in the state. Small businesses, in particular, are playing a major role in the expansion and diversification of southern Indiana's economy. Indeed, small businesses are the backbone of the U.S. economy as a whole, responsible for generating the majority of all new jobs. There are almost 6 million small businesses in the U.S. today, employing more than 92 million workers. In Indiana alone, 129,000 small businesses employ more than 2.1 million Hoosiers.

EXPANDING BUSINESSES

Helping the economy of the 9th District has been one of my priorities, and I want to share with you a few of the stories I have

heard recently about companies that are doing well, expanding, and creating jobs in the region.

Companies involved in the auto industry have been particularly successful in creating jobs. In Perry County a company that makes castings for auto and machine parts, as well as engine supports, recently invested $60 million in a 200,000 sq. ft. facility, creating 220 new jobs. In Switzerland County a company is expanding its manufacturing facility to make a brake system component for General Motors, creating up to 100 new jobs. In Jefferson County a company that makes die castings for the auto industry recently invested $14 million to expand its operation, creating 100 new jobs. In Clark County a Houston-based company announced plans to build a $12.5 million plant at the Clark Maritime Centre that will produce thermal plastic resins for the auto and appliance manufacturing industries, creating 72 new jobs. At the Northern Industrial Park in Scottsburg a new company will produce plastic-injection components for the auto, appliance, and electronics industries and will create 60 new jobs over 3 years.

Manufacturing companies other than those involved in the auto industry are also doing well. In Jeffersonville the country's largest inland shipbuilder recently received its biggest order since World War II. The ships are to be built between now and 1999, and at least 250 new jobs will be created to fill the order. In Perry County a furniture manufacturer recently increased its plant capacity, creating 60 new jobs. In Ripley County another furniture maker specializing in entertainment centers plans to expand production and create 45 new jobs by June.

It is not just manufacturing companies that are succeeding in the 9th District. In Jeffersonville a trucking company is investing $17.5 million to enlarge its truck fleet and real estate holding and to update its terminal. It will purchase 285 new trucks and add 200–300 new jobs. In Jennings County a Texas-based company is constructing a $35 million indoor shrimp-breeding facility, creating 40 new jobs once it is fully operational. In Floyd County an operator of consumer merchandise rent-to-own stores reported record results in 1995, with revenues up 35% over 1994.

Some large corporations are also playing a positive role in the region. For example, Toyota recently announced its plans to build a new $700 million truck assembly plant in Gibson County, which will create hundreds of well-paying jobs throughout southern Indiana. Hyatt is building a 118,000 sq. ft. entertainment pavilion and 200 room hotel along the river in Ohio County. That project should create about 3,000 new jobs. Similar entertainment projects are underway in other counties.

HELPING BUSINESS GROWTH

Local business and community leaders certainly take the lead in boosting job growth, but there are several ways the federal government can help.

Because small businesses are the engine of growth, we have to find ways to help make them be more competitive. One step is to make sure that affordable financing is available to them, through the private sector and the Small Business Administration. In addition, we must continue to reduce the federal budget deficit. We have cut the deficit in half in the last four years, and bringing it down further will help keep interest rates low and make it less expensive for businesses to borrow. We also have to continue reducing unnecessary, burdensome regulations that impose unreasonable costs on small businesses, and we should reform the tax code so it encourages greater investment and savings.

At the same time, we need to increase the quality of the workforce by investing in the education and skills training necessary to make Hoosiers competitive in today's economy. Finally, we should invest in affordable housing and in improving the local infrastructure, particularly roads, bridges, local airports, and water systems. A strong infrastructure helps to attract and maintain jobs in Hoosier communities.

CONCLUSION

There is no higher priority for me than helping to expand job growth and opportunity in southern Indiana. I am immensely pleased with the progress recently made. Working together, there is a lot we can do to ensure that the local economy remains healthy for years to come.

DAWNING OF A NEW ERA

HON. JAMES A. BARCIA

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. BARCIA. Mr. Speaker, there is a great appreciation in our country for hard work and diligence. Those who exhibit those characteristics are usually held in the highest regard. Not everyone achieves the recognition of hard work and diligence on their own. Rather, they earn it through a combination of their own efforts with the willingness of others to provide meaningful opportunities.

The Opportunities Industrialization Center of Metropolitan Saginaw has for the past 26 years scrupulously followed its philosophy of "helping people to help themselves." Thanks to the hard work of Rev. Roosevelt Austin, S., and Martin H. Stark, in cooperation with local businesses like General Motors, Dow Chemical, and Dow Corning, more than 10,000 young men and women have been given a renewed opportunity to show that they can be successful members of society, an inspiration to their communities, and find a new sense of self-worth.

This weekend, OIC of Metropolitan Saginaw will be celebrating the grand opening of its new facility, boasting 14 classrooms including a science lab, a day care center, dining facilities, a 250 seat auditorium, a library, and other impressive resources. It is a true tribute to Frederick D. Ford, who took over as executive director of OIC of Metropolitan Saginaw, 22 years ago, and created the vision of a state of the art building that would provide the combination of resources needed for a successful job training and development program.

This building and OIC shows what can happen when visionary individuals have the opportunity to combine public support, garnered by building fund campaign chairman Henry G. Marsh, with that of State and Federal Government assistance to create the kind of program for which we have even a greater need. Money from the Job Training Partnership Act and the Department of Housing and Urban Development leveraged private donations to create this magnificant facility. People are eagerly looking forward to this new building which will continue the impressive record of accomplishment earned by OIC of Metropolitan Saginaw.

People of all ages will benefit from this facility that will be able to provide them with the best possible training using the most modern techniques and equipment. The high national rankings earned by OIC of Metropolitan Saginaw will continue to pour in, I am sure, as those who support OIC set their sights on even newer challenges.

Mr. Speaker, I urge you and my colleagues to join me and OIC national founder Rev. Leon Sullivan in wishing the OIC of Metropolitan Saginaw every success for its future, and congratulations on its most recent accomplishment.

19 MEMBERS OF CROATIAN FRATERNAL LODGE CELEBRATE 50 YEARS OF SERVICE

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. VISCLOSKY. Mr. Speaker. I rise today to congratulate 19 outstanding individuals who are celebrating 50 years of membership in the Croatian Fraternal Union Lodge 170. The festivities will begin this Sunday, May 5, with a mass at St. Joseph the Worker Church in Gary, IN, followed by a banquet at Lodge 170 in Merrillville, IN. The esteemed guest speaker at this celebratory event will be the Hon. John Buncich, Sheriff of Lake County, IN.

At this time, I would like to recognize the following members who be will honored on Sunday for their 50 years of membership in the Croatian Fraternal Union Lodge 170: Rosemary Adams, Bryan Magdaline; John V. Chelich; Alvin Eugene Erbesti; Lillian Gorski; Andy Horvatich; Pauline Jocha; Mary Klen; Francis Medved; Jennie Miller; Anna Mordi; Rosemary Petrovich; John Pitula; Shirley Pollizatto; Robert Razumich; Anne Wagner; Catherine Yavor; Catherine Zitz; and Christine Zivcic. These 19 members of Lodge 170 have lived up to the highest ideals of their solidarity with the people of Croatia and service to the Croatian-American population.

I would also like to recognize Ms. Elizabeth Morgavan, who has served as president of Lodge 170 for over 10 years. As an honorary lifetime member, she has dedicated her efforts to all facets of the Croatian Fraternal Union. In 1992, Elizabeth was named "Woman of the Year" by her peers at Lodge 170 for the countless hours she has dedicated to various projects and programs within the Lodge and the Croatian-American community.

Over the years, it has been my privilege and honor to work with the membership of the Croatian Fraternal Union Lodge 170. They have, in no uncertain terms, played a key role in promoting fraternal and cultural activity among the Croatian-American population of northwest Indiana. Lodge 170, the largest Croatian Fraternal Union lodge in the United States, has provided its many members with opportunities to share their ethnic heritage with their fellow countrymen. More importantly, Lodge 170 has provided social assistance and insurance benefits for its members, as well as other Croatian-Americans.

Mr. Speaker, I urge you and my other colleagues to join me in commending the dedication and longevity of all those who have served for 50 years as members of the Croatian Fraternal Union Lodge 170.

STATE OCCUPANCY STANDARDS AFFIRMATION ACT OF 1996

HON. BILL McCOLLUM

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. McCOLLUM. Mr. Speaker, today I am introducing a bill, the "State Occupancy Standards Affirmation Act of 1996" to assert the rights of States in establishing occupancy standards for housing providers. Currently, there is no Federal law to establish the number of people permitted to live in a housing unit. It is imperative that we ensure that States retain the right to set reasonable occupancy standards; my bill does just this.

There is a national consensus that the appropriate level for most apartment properties is two-people-per-bedroom. Most States have adopted a two-per-bedroom policy, and HUD's own guidelines state that this is an appropriate level to maintain public housing and section 8 housing. Beyond this level, the negative effects of overcrowding can be triggered, including decreasing the stock of affordable housing.

However, HUD's Fair Housing Office has initiated legal actions over the past 3 years. And then last July, HUD issued a memorandum, without any consultation, that would pressure housing providers to rent to substantially more than two-per-bedroom or be potentially subject to lawsuits charging discrimination against families.

All types of housing providers, including managers of seniors housing and public housing, were dismayed with HUD's proposal. If this change were permitted to stand, it would adversely impact all involved in housing, from tenants who could be crowded into inadequate housing, to housing providers who would have to provide services for more residents than they may be equipped for, and whose property would deteriorate.

In the fiscal year 1996 VA/HUD appropriations bill, Congress disallowed HUD from implementing its July memorandum. But we need to go one step further.

The bill I am introducing is a simple clarification of existing law and practice. It says that States, not HUD, will set occupancy standards and that a two-per-bedroom standard is reasonable in the absence of a State law. American taxpayers have spent billions of dollars on HUD programs designed to reduce crowding. It is time to ensure that overcrowding will not be a possibility.

CONCERNING ACID RAIN

HON. BRUCE F. VENTO

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. VENTO. Mr. Speaker, important new long-term research shows that acid rain negatively impacts soil chemistry, which in turn has a deleterious effect on our Nation's forests. This ground-breaking study was conducted by Dr. Gene E. Likens, the director of the Institute of Ecosystem Studies in Millbrook, NY. Dr. Likens' findings were recently published in the respected professional journal, Science. Dr. Likens' work continues to provide and sustain the policymaking process. As an elected official, I am grateful for his positive efforts.

Whereas earlier research has suggested a link between acid rain and harmful impacts on deciduous forests, the Likens study provides more conclusive evidence of the damage caused by acid rain.

On Monday, April 22, we celebrated the 26th Earth Day. Let me remind my colleagues that every day is Earth Day for those of us who are entrusted by the American people to protect and conserve our Nation's natural resources. We must be responsible stewards of the environment and we have an obligation to use the best possible science and insights available to us when making critical decisions affecting America's natural treasures. Dr. Likens' study provides important new information concerning pollution and forests. I am including a New York Times article about the Likens study for the RECORD. I hope my colleagues will take a few minutes to read this important article on the topic of acid rain:

[From the New York Times, Apr. 16, 1996]

THE FOREST THAT STOPPED GROWING: TRAIL IS TRACED TO ACID RAIN

(By William K. Stevens)

In the first long-term study of its kind, researchers have found that a New England forest whose soil chemistry has been altered by acid rain essentially stopped growing nearly a decade ago and will probably be a long time in recovering.

The impact of acid rain on American forests has been a contentious subject. A 10-year Federal assessment of the problem concluded in 1990 that with some exceptions, there was no clear evidence linking acid precipitation to any important harmful effect on forests. Many scientists objected, arguing that the impact of changes in soil chemistry was not yet clear but that those changes would probably be damaging in the long term.

Now investigators have examined more than three decades of data from the Hubbard Brook Experimental Forest in the White Mountains of New Hampshire and discovered that increased acidity has deprived the soil of alkaline chemicals, mainly calcium, that are essential for plant growth. At the same time, they found that the annual rate of accumulation of forest biomass—its total plant material—dropped to nearly zero in 1987 and has remained there. Finally, they discovered that the soil was recovering its calcium and other alkaline chemicals very slowly because precipitation contains about 80 percent less of them than it is estimated to have contained in 1950.

The alkaline chemicals, or cations (pronounced CAT-ions), are leached from the soil by acid precipitation and carried away by streams. The precipitation contains sulfuric acid and nitric acid, produced by the burning of coal, oil and gasoline. A major source of these chemicals raining down on the Northeast has been the sulfur dioxide and nitrogen oxides emitted by Midwestern power plants and borne eastward by prevailing winds; they form sulfuric acid and nitric acid when they mix with water.

Congress amended the Clean Air Act in 1990 in an effort to cut the emission of sulfur dioxide and nitrogen oxides in half by 2000. But the findings from the Hubbard Brook forest suggest that this will not be enough if forests are to recover any time soon, said Dr. Gene E. Likens, the leader of the study.

Dr. Likens, an ecologist, is the director of the Institute of Ecosystem studies at Millbrook, N.Y., a nonprofit research and educational institution formerly associated with the New York Botanical Garden. The institute has been collecting a wide range of data since 1963 on the functioning of the Hubbard Brook forest, a 7,500-acre tract owned by the United States Forest Service. It is one of only a few ecological research projects looking at ecosystem behavior over the long term, and it is probably the only one to come up with decades-long detailed measurements on the effects of acid rain on American forests.

The report of the new findings appears in the current issue of the journal Science. It was prepared by Dr. Likens, Dr. Charles T. Driscoll of Syracuse University and Donald C. Buso of the Millbrook institution.

"It's just a landmark paper," said Dr. David Schindler, a prominent acid-rain researcher at the University of Alberta in Edmonton, Canada. "Hubbard Brook has the only data set that's thorough enough and long enough to show this happening."

Until now, Dr. Schindler said, the idea that acid rain is harming deciduous forests has amounted to a "robust" hypothesis. The Hubbard Brook results are "the clincher," he said, adding: "I think there's concern for the whole northeastern United States and eastern Canada that this is occurring."

Some other researchers were more cautious. "The large majority of forests in the eastern U.S. seem to be growing quite well," said Dr. Jay S. Jacobson, a plant physiologist at the Boyce Thompson Institute at Cornell University. While the Hubbard Brook results are suggestive, he said, other factors should be considered before reaching a firm conclusion on the effects of acid rain. These include the effects on forests of climatic changes and possible changes in the deposition of nitrogen, a critical forest nutrient.

Assuming that forests are recovering slowly, Dr. Jacobson said, "are we as a nation willing to accept slower growth of forests in order to avoid placing additional controls on emissions of pollutants?"

In their paper, the Millbrook researchers stopped short of asserting a firm cause-and-effect relationship between the depletion of cations in the soil and the slowing of forest growth. Pinpointing the cause of the slow growth, they wrote, "should become a major area of research." Dr. Likens said, "If indeed the forests has become limited in its growth by the disappearance of these base cations—and I emphasize the 'if'—then that's a very serious implication of these results."

Dr. Likens compared the action of acid rain in depleting the soil of cations with that of stomach acid eroding an antacid tablet. In the case of the Hubbard Brook forest's soils, he said, "it's like half the antacid has been eroded away, and you've only got half of it left." The continuing deposition of acid is making the system even less able to neutralize it. "The system is now very sensitive," he said.

The observed effects on soil chemistry were unexpected, Dr. Likens said, and neither those effects nor other data based on long-term observations were reflected in the 10-year Federal study, the National Acid Precipitation Assessment Program. The

study found that acid rain generally causes significant ecological damage, but not so much as originally feared.

Among other things, the study concluded that acid rain was harming aquatic life in about 10 percent of Eastern lakes and streams, that it was reducing the ability of red spruce trees at high altitudes to withstand the stress caused by cold and that it was contributing to the decline of sugar maples in some areas of eastern Canada. While forests otherwise appeared healthy, the study said, they could decline in future decades because of nutrient deficiencies brought on by acid rain.

BEN GILMAN: A REAL FRIEND OF THE IRISH

HON. TOM DeLAY

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. DELAY. Mr. Speaker, I commend to our colleagues an article written by Father Sean McManus, the president of the Irish National Caucus, that appeared in the Irish Echo on April 3, 1996, about our colleague, Chairman BEN GILMAN of New York.

This article describes the efforts of the Republican Congress to fight for fairness and peace in Ireland, and the great leadership of BEN GILMAN on these issues.

BEN GILMAN is proving that Republicans in the Congress do fight for justice around the world, especially in Ireland. I applaud him for his leadership, and I urge my colleagues to read the following article:

MY IRISH HERO IS A JEWISH CONGRESSMAN

(By Fr. Sean McManus)

I don't think that Irish Americans are sufficiently aware of the extraordinary revolution that has taken place in the U.S. Congress regarding Irish affairs.

For over 20 years the Irish National Caucus had campaigned for Congressional Hearings on Northern Ireland. But famous Irish-Catholic speakers of the house—with names like O'Neill and Foley—steadfastly blocked all hearings. They didn't want to offend Her majesty's government:

"An ad hoc Irish committee of 119 members has been formed in Congress. But the committee's attempts to publicize the outrages being committed in Northern Ireland, along with the efforts of the Irish National Caucus, have been blocked by House Speaker Tip O'Neill and other congressional leaders (Jack Anderson, "Carter Pressured on Northern Ireland," Detroit Free Press, Oct. 29, 1978.

When the MacBride Principles were launched in 1984 we had an even more legitimate reason for hearings because U.S. dollars were subsidizing anti-Catholic discrimination in Northern Ireland, where Catholics are twice likely to be unemployed as Protestants. But again—and now under speaker Tom Foley—hearings or legislative action were blocked. Furthermore, the then-chairman of House Foreign Affairs (now called International Relations Committee, Rep. Lee Hamilton, the Indiana Democrat, kept telling me there was no interest in the MacBride Principles among members of the Committee.

This was a deeply distressing experience. We knew we had a perfectly valid case for a hearing, yet it was being unfairly and undemocratically blocked in the interest of the English government (with the connivance of the then Dublin Government).

Yet oddly enough, some Irish Americans thought that when the Republicans seized control of both House and Senate in 1995, the Irish cause would suffer. But not this Fermanagh man. The first thing the Republican takeover meant to me was that our very best ally, Rep. Ben Gilman of New York would become chairman of the House International Relations Committee.

Ireland has never had a more dedicated, consistent, or genuine friend than Ben Gilman.

As far back as July 1979, Rep. Gilman, then a member of both the Committee of Foreign Relations and the Subcommittee on International Economic Policy and Trade, commissioned Rita Mullan, executive director of the Irish National Caucus, to conduct an investigation of the hiring practices of U.S. companies doing business in Northern Ireland. This was the first-ever American study of those companies and it marked the genesis of the MacBride Principles.

Rep. Gilman has been a champion of every Irish issue: the Birmingham Six, the Guilford Four, the right of political prisoners etc. He has been absolutely fearless on the Irish issue, never allowing the State Department or any foreign government to silence him.

One of the first things Chairman Gilman did early on in the 104th Congress was to hold hearings, the first on Northern Ireland since 1972. Then, despite heavy lobbying and pressure, he attached the MacBride Principles to the International Fund for Ireland. The House International Relations Committee, after spirited debate, voted on the issue on May 15, 1995. There are 41 Members of the Committee. Thirty-two voted for MacBride Principles, only 8 voted against. And yet for all those years I had to listen to Lee Hamilton tell me there was no interest in the Committee on MacBride.

The MacBride legislation is part of the American Overseas Interest-Act, H.R. 1561. The legislation has now been passed twice by the House of Representatives. It has also been endorsed by the House and Senate Conference. And the entire Republican Leadership—from Sen. Jesse Helms—are all on record of supporting the MacBride Principles, while the State Department opposes these efforts.

What an extraordinary political realignment. None of which could have happened without Ben Gilman's leadership.

For years I have been preaching the message: "Human Rights for Ireland is an American issue—not just an Irish-American issue." And I deeply believe that. Nonetheless, I am still deeply touched when someone who is not Irish stands up for Ireland. And there are many in the Congress who do: African-Americans, Italians, Polish, Jewish, etc.

Rep. Gilman is Jewish American. Isn't it extraordinary that it took a Jewish American to move the Irish agenda to the very top of the U.S. Congress? Isn't it truly amazing that while some powerful Irish Americans in Congress were too scared to take a stand, this quiet, unassuming man has emerged as Ireland's best friend in the U.S. Congress.

Every Irish-American worth his or her salt must stand up and cheer Ben Gilman. He is my Irish Hero.

I should end by explaining that the Irish National Caucus is nonpartisan: neither Democrat nor Republican. So I do not want readers to think this is a pro-Republican article. It is not. In fact, I've personally never voted Republican in my life. But then, I've never lived in Ben Gilman's district.

TRIBUTE TO DICK HOAK

HON. RON KLINK

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. KLINK. Mr. Speaker, when I think of the past 35 years of the Pittsburgh Steelers organization, certain memories come to mind. The rough and tumble Steelers of the early sixties with Bobby Layne and John Henry Johnson; the glory years of the seventies when the Steelers won an unprecedented four Super Bowls coached by Chuck Noll and under the leadership of Terry Bradshaw, Mean Joe Greene, Jack Lambert, Franco Harris, and other stars too numerous to mention; and finally the current Steelers, the reigning AFC champions. All these memories have one constant. That constant is Dick Hoak.

As we honor Dick Hoak this evening, we remember the enormous contribution he has given to the Steelers as both player and coach. When Dick graduated from Penn State in 1961, he was drafted by the Steelers in the seventh round. During his 9 years as a player, Dick led the Steelers in rushing for 3 years and also was named to the Pro Bowl in 1969. Dick is the fourth highest leading rusher in Steelers' history.

Dick also has made a profound impact as a Steelers' coach. For the past 24 years, Dick has been in charge of the offensive backfield and most recently has exclusively coached the running backs. Under Hoak's guidance, the Steelers have produced such notable running backs as Franco Harris, Rocky Bleier, Frank Pollard, Earnest Jackson, and more recently Barry Foster and Bam Morris. Dick has the distinction of being the longest-tenured coach in Steelers' history.

I am honored to present Dick with this letter of commendation. The city of Jeanette is truly blessed to call Dick one of its own.

A VISION OF VALUES

HON. JAMES A. BARCIA

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. BARCIA. Mr. Speaker, all too often people dwell upon the failings of our society, and ignore the true accomplishments of many devoted Americans. Nowhere is this more evident than in the case of talking about the misfortunes of those who either lose their jobs or simply fail to find one all together. I want our colleagues to know about a man who believes that success breeds success, and who for more than 30 years has worked to have that success serve as the foundation for even more success. I am talking about Rev. Leon H. Sullivan, the founder of the Opportunities Industrialization Centers of America, Inc.

There are many people in our society who need retraining to gain improved skills to find new jobs, and others who need basic training

to find meaningful jobs. Since 1964, Reverend Sullivan has worked to provide comprehensive employment training and placement for disadvantaged, unemployed, and unskilled Americans. Many of us recognize the symbol, OIC, and have seen it in our congressional districts. I am sure, however, that not many fully appreciate the effort and devotion demonstrated by Reverend Sullivan over these years.

The first OIC was founded in an abandoned Philadelphia jailhouse. It expanded to more than 70 centers around the country, and 28 centers overseas. In its more than 30 years of operation, OIC has trained and provided assistance to more than 1.5 million people.

Particularly at times like these when we are looking for private solutions to significant national problems like unemployment, Opportunities Industrialization Centers are more important than ever before. Growing from his ministry at the Zion Baptist Church in Philadelphia, Reverend Sullivan established a day care center, a credit union, an employment agency, a community center for youth and adults, adult education reading classes, athletic teams, choral groups, and family counseling services. This wonderful range of programs that became OIC goes to the heart of recognizing that the true solution to any difficulty lies within each of us personally as we take greater responsibility for solving the problems life presents to us, while taking the fullest advantage of the opportunities the same life presents to us.

Rev. Leon Sullivan has been rightly honored before for his work, having won more than 100 national and international awards, as well as the Presidential Medal of Freedom. His position on the boards of numerous corporations gives him a unique opportunity to see the kind of workers that successful businesses need so that OIC can train the best possible candidates.

Mr. Speaker, as the members of the OIC of Metropolitan Saginaw greet Reverend Sullivan at the dedication of their new facility, I ask you and all of our colleagues to join me in thanking this great man for bringing hope and opportunity to the many that OIC has touched, and pledging to work with him and his associates to restore the American dream for those who are still waiting.

COMMEMORATING A 25TH ANNIVERSARY—AND CREATING A NEW OSHA

HON. CASS BALLENGER

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. BALLENGER. Mr. Speaker, this week marks the 25th anniversary of the Federal Occupational Safety and Health Act [OSH Act] and the agency it helped to create, OSHA. Throughout the week events will commemorate not only the anniversary of OSHA, but highlight the importance of workplace safety. It is certainly appropriate and important for employers, employees, and public officials to be reminded of the importance of workplace safety—and of the cost to lives, families, and businesses when safety is not emphasized and accidents occur.

The 25th anniversary of the OSH Act is being used by some people for something else as well: to criticize Republicans who have been critical of OSHA.

Indeed, many of us in Congress have been critical of OSHA. We've claimed that it has too often been overreaching and lacking in common sense in its regulations, and adversarial and punitive in its enforcement. And we've said that it has not been cost effective in promoting worker safety and health.

The Clinton administration has agreed with many of our criticisms of OSHA. For example, just 1 year ago, President Clinton, speaking at a small business in Washington, DC, called for creation of "a new OSHA," an OSHA that puts emphasis on "prevention, not punishment" and uses "commonsense and market incentives to save lives." Vice President GORE was even more direct when he spoke to the White House Conference on Small Business last year: "I know that OSHA has been the subject of more small business complaints than any other agency. And I know that it is not because you don't care about keeping your workers safe. It is because the rules are too rigid and the inspections are often adversarial."

And in criticizing OSHA we've said nothing more than OSHA's record surely shows. Stories abound of OSHA's enforcement of rules that have little or nothing to do with workers' safety. We've sometimes been accused of fabricating stories about OSHA, but in each case not only has the example been true, but OSHA has then tried to quietly undo the fabricated regulation. Last year the owner of a small bakery near Chicago told the Subcommittee on Workforce Protections about her OSHA inspection, in which she was fined for not having the required documents on the health hazards associated with laundry detergent used to clean hands and aprons in the bakery. The head of OSHA publicly denied that there was any such requirement, and then quietly sent out new instructions to OSHA inspectors to "go easy" on issuing citations for such common household items. Similarly, Labor Secretary Reich assured at least two congressional committees that OSHA had no regulation banning gum chewing by workers doing roofing work: "pure fiction" he said. Then a few weeks later his own Department of Labor issued a report highlighting the same gum-chewing regulation as one that should be deleted from OSHA's books. I'll assume that when he testified before Congress the Secretary just did not know OSHA's 3,000 pages of rules in sufficient detail. But if he were a roofing contractor, rather than the Secretary of Labor, his ignorance of OSHA's rules would be no excuse, and he could be cited and fined if one of his employees violated the gum chewing ban.

Are such examples of silly and unproductive regulations and enforcement just aberrations? Hardly. Despite spending over $5 billion in taxpayer money over the past 25 years, there is little evidence that OSHA has made a significant difference to workers' health and safety. Example after example and study after study show that OSHA's focus on finding violations, no matter how minor and insignificant, has actually made OSHA ineffective in improving safety and health in the workplace. Why is that? One important reason appears to be that when the focus is on issuing penalties rather than fixing problems, there is much less attention paid to fixing problems. One study showed that the time required of OSHA to document citations increased an average inspection by at least 30 hours, thus greatly decreasing the number of workplaces OSHA could inspect. Penalties are sometimes necessary to compel irresponsible employers to address health and safety for their workers. But as the Clinton administration itself has said, inspections and penalties have not produced safety. OSHA must find new ways of operating.

The apparent agreement between the Clinton administration and those of us in Congress who support reform of OSHA marked a significant convergence of views. The 25 year history of OSHA has been marked by sharp partisan and philosophical differences over the value and direction of OSHA. So the unusual agreement in analysis and prescription for improving OSHA between the Clinton administration and Congress presented an unusual opportunity to use the 25th anniversary of OSHA to make meaningful changes.

Now the Clinton administration seems to be walking away from its own analysis and initiatives. Recently, with bipartisan cosponsorship, I introduced the Small Business OSHA Relief Act, which would enact several of the specific changes already proposed or endorsed by the Clinton administration for OSHA. We even borrowed the Clinton administration's language, so that there would be no dispute that these are initiatives to which they have already agreed.

Organized labor, which has opposed the Clinton administration's "reinvention" of OSHA all along, is also opposing the legislation, and their influence on the Clinton administration has never been stronger than it is in this election year. So the President must choose: did he really mean what he said about "a new OSHA," or will be stop meaningful change to OSHA, change which he has already said is needed, to appease his union supporters?

The 25th anniversary of OSHA is a timely opportunity to look back but also to look ahead. The President and Congress have an opportunity to enact needed reforms that will make OSHA more fair and more effective. Last May, speaking about OSHA, the President said, "Let's change this thing. Let's make it work. Let's lift unnecessary burdens and keep making sure we're committed to the health and welfare of the American workers so that we can do right and do well." If the President stands by his own words, we can in fact begin to create a "new OSHA" for the next 25 years.

BAY AREA URBAN LEAGUE CELEBRATES 50 YEARS OF SERVICE FOR SOCIAL AND ECONOMIC EQUALITY

HON. RONALD V. DELLUMS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. DELLUMS. Mr. Speaker, as we approach the 21st century, our Nation faces important issues of priority for the betterment of

our citizens. We need not reinvent the wheel. We need only to look at our local communities for the richness and wealth of experiences to achieve social and economic equality.

The Bay Area Urban League [BAUL], 1 of 144 affiliates of the National Urban League and founded in 1946, is a tremendous resource in the Ninth California Congressional District. It is a model of diversity, both in its members and the community it serves. BAUL is an interracial, nonprofit community service organization in the five Bay Area counties that helps African-Americans and minorities achieve equal opportunities in education and employment. It provides employment counseling, on-the-job training, sponsors job fairs, HIV–AIDS prevention projects, and runs the Oakland-Emiliano Zapata Street Academy for at-risk youth. BAUL's economic development program in low and moderate income communities advances economic development that promotes affordable housing and community and business lending as well as consumer education.

The five decades of outstanding and effective contribution to the community is equally marked with the recent appointment of Ms. Carole Watson, the first woman president in the Bay Area Urban League's history. Under her leadership and in her own words, "BAUL is needed today more than ever before. There are still a large number of African-Americans and people of color who are not getting access to all the opportunities of our technological world. We need to push for new activities that foster racial inclusion". This is the history and legacy of the Bay Area Urban League as it celebrates its 50 years.

TRIBUTE TO HAROLD JAMES BALLARD

HON. BOB FILNER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. FILNER. Mr. Speaker, I rise today to honor a great friend and community leader who passed away this week: Harold James Ballard.

Those of us in the educational community know that Harold always worked to make life better for everyone, especially our children. He lived the belief that activism was better than lipservice, progress better than the status quo.

In 1952, a young Harold Ballard decided to serve his country, joining the U.S. Army. He received the Army Occupation Medal while in Germany. For his service in Korea, he was awarded the National Defense Service Medal, Korean Service Medal, and the United Nations Medal. Following his discharge from the Army in 1955, he served for 30 years in the Army Reserve.

Those of us who care about the students in San Diego have all benefited from his many years of service. Harold started working with schools when his children were in grammar school. His concern was not limited to his own four sons, he was involved in parent groups throughout San Diego for over 30 years. He was awarded a lifetime membership in the PTA for services rendered to students and parents.

Harold supported the Encanto Little League and was honored with the Silver Beaver Award for leadership in Boy Scouts. Any child could go to him for help.

Also known as Jimmy, he volunteered as a member of the district advisory council [DAC], the school site council/school advisory council. Over the years, he served as the DAC representative for Johnson Elementary, Crawford High School, and Gompers Secondary School. His service on the DAC was recognized by his selection as its chairman. His leadership was rewarded with the Citizen of the Year for 1994–95 Award by Phi Delta Kappa, and his nomination for the J.C. Penney Golden Rule Award. I came to call him "Mr. Title I" for his commitment and service to our poorest and most disadvantaged students.

In this lifetime, we all come across a small number of special people, those who touch our minds, hearts, and souls with their activism, optimism, and dedication to making everyone's life richer. Harold was one of those chosen few. My thoughts and prayers go out to his wife, Jean, and his family, friends, and the community. This world needs more people like Harold Ballard. He will be sorely missed.

SALUTATIONS TO A LOCAL HERO

HON. STEVE C. LaTOURETTE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. LATOURETTE. Mr. Speaker, the U.S. Coast Guard earlier this year presented its highest lifesaving honor, the Gold Lifesaving Medal, to Kenneth M. Bauer of Mentor, OH.

On the afternoon of June 21, 1995, Bauer was mowing the backyard of his father's home on Thunderbird Drive in Mentor-on-the-Lake when he heard cries for help coming from Lake Erie. He could see two men about 200 yards offshore, both struggling to retrieve an inflatable raft. With no thought to his own safety, Bauer grabbed two floatation devices and ventured into the 65-degree waters, battling the merciless, 5-foot Lake Erie waves.

I would like to think if we were faced with the same circumstances as Bauer—two men pleading for help in the choppy waters of Lake Erie, unable to reach their raft, we would react in the same manner and place the lives and safety of others above our own. However, I think we know that would not be the case. Some would react with cowardice, indifference, paralyzing fear or panic. Fortunately, Bauer did not.

He swam out into the lake, gave one of the personal floatation devices to the nearest victim, Tim Novak, and continued farther out to reach the second victim, Christopher Arhar. By the time Bauer reached Arhar, he had slipped under the water. Bauer didn't give up. Instead, he continued to dive under the waves until he reached Arhar, dragging him to the surface by his arm. For 15 minutes, without any flotation device of his own, Bauer held onto Arhar, keeping his head above water.

Tragically, a wave crashed down and Arhar was ripped from Bauer's grasp. Again, he searched for Arhar, but could not find him. Exhausted, Bauer returned to shore.

What Ken Bauer attempted to do that afternoon was not only heroic, but miraculous. One man, Novak, owes his life to Bauer. Another, Arhar, sadly lost his, withering in the icy grip of the lake that has claimed so many over the years.

Shortly after the heroic rescue, Bauer spoke to reporters about the last words he heard from Arhar before his struggle ended: "Please help me."

I would imagine Bauer has relived this scene in his mind countless times, and maybe even second-guessed himself. "Please help me" are words that would haunt anyone. However, this extraordinary man should know that he did all within his power to save these two men, far more than most would do. At that moment in life when Bauer faced a true gut-check, he showed a valiant, selfless side we all must admire.

Bauer possesses the proudest of legacies of what it means to be an American—about our absolute necessity to help others in times of dire crisis. He restores our faith that good deeds indeed happen. This is one that will not go unnoticed.

There are times in life when we need affirmation that ours is a Nation made up of compassionate, thoughtful people. Sometimes we need to be reminded that Americans do extraordinary deeds for others every day, not because they seek recognition, but because everyday life requires it.

What Ken Bauer did last June 21 was, by definition, an extraordinary deed. On behalf of the residents of the 19th District of Ohio, he deserves our highest praise and thanks.

SOUTHERN ILLINOIS UNIVERSITY DEBATE TEAM

HON. JERRY F. COSTELLO

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. COSTELLO. Mr. Speaker, I rise today to congratulate the debate team at Southern Illinois University at Carbondale, located in my congressional district. This team of outstanding young students has distinguished itself yet again by winning the National Championship Tournament of the National Cross-Examination Debate Association.

The contest was held March 29 through April 1, 1996, at California State University at Long Beach, with each of the teams arguing the benefits and detractions of the U.S. foreign policy in Mexico. For the first time in the championship's 11-year history, judges handed SIU the tournament victory after the final debate between SIU and Fort Hays University of Fort Hays, KS.

The SIU debate team has an excellent history in debate competitions, winning the national championship from 1986 to 1989. This year's victory shows the team's ability to put together a winning performance with a talented group of individuals.

Their championship victory is a testament to the outstanding scholarship and dedication by the SIU debate team. I want to congratulate the member of the SIU debate team, including Zachery J. Anderson; Sean M. Featherstun;

Jason E. Griffith; Melissa D. Horn; Glenn P. Frappier; Matthew M. Moore; Zachary A. Sapienza; Bill M. Shinn; Joseph M. Vuglia; Jeremy J. West; and Wendy D. Woolery. I also want to congratulate Faculty Director Greffory D. Simerly, Assistant Coaches Stephen K. Hunt, Edwin D. Phillips and Yuri V. Kostun, as well as Dean John Jackson of the College of Liberal Arts. I ask my colleagues to join me in offering congratulations on a job well done in this prestigious academic competition.

KRISTINA WONG, CALIFORNIA WINNER OF SCRIPTWRITING CONTEST

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. LANTOS. Mr. Speaker, I rise today to recognize Kristina Wong, the California winner of the 1995–96 Veterans of Foreign Wars Voice of Democracy Broadcast Scriptwriting Contest. More than 116,000 students participated in the competition for 54 national scholarships. I am proud to include the text of her award-winning script in the CONGRESSIONAL RECORD.

ANSWERING AMERICA'S CALL

(By Kristina Wong)

"Hello . . . Oh, America! How are you! . . . Great. I'm sure you're still as generous as always . . . What's that? . . . Sure. . . . Of course I will. Of course! If you are kind enough to create such opportunities, I should be gracious enough to offer you want I can in return . . . No, no, no . . . Don't be silly, we depend on each other. Without you I couldn't be here . . . And you couldn't be where you are . . . Alright, thanks for calling. Bye."

That was America calling. She calls on me as she does all of us to take advantage of her innumerable opportunities. Now, more than ever, the chance for America to answer her call is marvelous. These opportunities are practically flung at America, so how could anyone resist-answering America's call?

America was founded over 200 years ago on the principle of life, liberty, and freedom, and she calls on us to take advantage of these principles. In regards to life, the chance is ours to live where we want, how we like, and with as much education as we would like to receive. Of course in doing this we must also respect other Americans' rights to live as they choose. We are offered excellent free public education. We are offered financial assistance when we stumble. The life America offers is unique from that of all other countries. Nowhere else in the world is there such a diversity of talent, culture, and experience.

We are granted liberty—the opportunity for us to live with rights not granted by other countries. We may speak freely as long as we do not take license which injuries others in doing so. America welcomes refugees whether that are political prisoners, prisoners of war, or those who are oppressed by the economic shackles that have bound them in their native lands. In America, we can speak out to government about issues that concern us.

Along with liberty, we are granted freedom—freedom to exercise our rights to pursue the religion of our choice, to elect the candidate we support, and to assemble at will. We have the right to publish our ideas and share them with other Americans, no matter how orthodox or unorthodox they may be. We can also create groups to reform government or educate the community on the issues of concern.

It can clearly be seen that America's opportunities are hard to turn down! But America doesn't just call on us to take advantage of her bounty, she also asks us to help sustain her services by giving back to her something in return. By doing this we keep America in balance. Without contributions from America, she is incapable of fulfilling the promise of life, liberty, and freedom. She needs our help.

One way we help is through the financial contributions we make each April—those infamous taxes which fund the services America offers. Another way we contribute is in the form of direct service. Some of us are called to serve in the military to fight to defend America, while others of us are asked to serve in the community by volunteering our time and skills to assist those in need.

And America, most of all, requests the moral support of her citizens. We sing the National Anthem before sporting events to remember the efforts of those who defended our country. We also build national spirit by observing holidays such as Veterans Day, Independence Day, and Presidents Day. We display our national pride by hanging our American Flag as a symbol of unity and spirit.

I, too, have answered America's call. I have taken a citizen's role in government through my work canvassing for the Sierra Club on environmental protection issues. I have also served America by giving my time at a convalescent home where I assisted the elderly with their art activities. I have donated time at a local soup kitchen, serving meals to the homeless. I have further involved myself in working for the environment by being on my school's Green Team, which collects recyclable in the school. My team's efforts enabled us to earn a can crusher this year to further our recycling activities. This work led me to volunteer at a local recycling center where I have spoken to the community about keeping open recycling centers which were scheduled to close.

America has kept her promise of life, liberty, and freedom. She gives us the right to voice our opinions on our government. She gives us the freedom to pursue our goals and to reach for excellence. She gives us the opportunity for education and success. She only asks that we answer her call by giving her our time, service, and talents in return. So, the next time America calls, don't hang up.

STRICT LIABILITY/RIGHTS OF WAY LEGISLATION

HON. WES COOLEY

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. COOLEY of Oregon. Mr. Speaker, today I am introducing the Rural Right-of-Way Fairness Act to make small but necessary adjustments to the way the Government manages right-of-ways [ROW] over Federal land. The provisions of the bill address situations involving right-of-way fees and liability standards affecting rural electric cooperatives and other ROW lessees.

These situations constitute examples of all too typical insensitivity on the part of Federal land regulators—particularly felt in the Western States where high percentages of Federal land ownership require rural citizens to depend on land management agencies to operate as good neighbors. Unfortunately, it appears that with regard to the management of right-of-ways for the transmission and distribution wires needed to bring electricity to the rural West, the Forest Service and the Bureau of Land Management have chosen, in some instances, to make life rough for the private citizens who live next door.

The first section of the bill deals with strict liability standards included in the contracts between the Forest Service and the Bureau of Land Management and ROW lessees. The provisions of those contracts set out the responsibility of each party for things that may go wrong on a Federal right-of-way.

Unfortunately, from time to time, things do go wrong. It would seem to make common sense that the responsibility for picking up the pieces in those instances should lie with those shown to be at fault. However, common sense seems to play little part in the calculation. In fact, as a matter of being able to qualify for use of a Federal right-of-way, rural electric cooperatives and other lessees are currently forced to take responsibility for anything that may happen on those right-of-ways whether they were at fault or not.

The 1976 Federal Land Policy and Management Act provided the Federal agencies with the authority to impose strict liability for costs associated with hazards on Federal lands. Prior to 1976, agencies recovered costs associated with hazards, such as costs required to put out a fire, through normal negligence. The agencies use crossing permits, which are a grant of right-of-way for a certain period of time, as the method for imposing strict liability.

Strict liability means that costs associated with a hazard are recovered from the holder of the rights-of-way without regard to who is responsible for the hazard or whether or not any negligence was involved. Normal negligence requires that costs associated with a hazard are recovered from whomever is responsible for that hazard.

Mr. Speaker, let me illustrate how this works on the ground by telling a story involving Midstate Electric Cooperative located in LaPine, OR. As a matter of prudent maintenance practice, Midstate Electric trims or removes trees on right-of-ways that pose a risk of falling onto electric lines. On Federal ROW's, the cooperative consults with the appropriate land management agency—who has ultimate authority to approve such actions.

After having proposed the removal of a number of trees on a Forest Service ROW in 1984, Midstate was told by the agency that it could cut some down, but had to leave other specified trees standing. Of course the predictable happened—one of the trees that Midstate had proposed cutting, which the Forest Service had refused to allow removed, fell into a power line and started a fire. It cost over $350,000 to put that fire out—a bill that was eventually forwarded to Midstate Electric. Knowing that the fire resulted from a management decision of the Forest Service, Midstate

was forced to initiate court action to attempt to appropriately assign the financial liability of fighting the fire. It lost that action because of a ruling which interpreted ROW contracts as holding the co-op—and other ROW lessees—to a "strict" liability standard.

The legislation that I am introducing today removes that strict liability standard for a more commonsense one—returning to a normal negligence standard that is routinely used in private ROW contracts. In essence, the new standard will say: if you caused it, you are responsible for it. By enforcing any standard more rigid than that, the Federal Government is purposefully transferring costs to private citizens. The minimum impact of the current strict liability policy is higher electric rates for those rural communities unfortunate enough to live adjacent to public lands. The possibility exists, however, of even more punitive impacts in the form of the loss of insurance coverage for entities with Federal right-of-way liability.

Utilities, telecommunications providers, and others in the West find it impossible to avoid Federal lands in providing area coverage. In some cases, the Federal agencies are the users of the services that require crossing permits across Federal lands.

No other landowner in the United States has the power to impose strict liability for hazard costs for grants of rights-of-ways. The Federal Government can do it because it owns so much land in the West and has the power to pass laws and regulations. Normal negligence is seen as adequate protection for landowners and for holders of non-Federal rights-of-way in the United States. The Federal Government should live by that same standard.

The second section of my bill deals with ROW fees for rural electric and telephone cooperatives. In 1984, Congress passed and President Reagan signed PL 98–300, an act clarifying that rural electric and telephone utilities were to be exempted from Federal ROW fees. The legislation was put forward out of frustration that the Forest Service and BLM were not using existing authority granted to them in 504(g) of Federal Land Protection and Management Act [FLPMA] to reduce or waive right-of-way fees for nonprofit organizations found to operate in the public's interest.

This congressional fix has not proved entirely successful. Unfortunately, as in the case with the strict liability issue, the example is a utility located in my district.

Oregon Trail Electric Cooperative [OTEC] of Baker City, OR, has the distinction of being the newest formed rural electric cooperative in the United States. It was created by private citizens who formed a cooperative to buy out the facilities of an investor-owned utility which had found that serving rugged, rural territory is not a profitable venture. The buyout served to ensure continued electric service for the citizens of that part of Oregon and, significantly, was achieved without relying on government financing.

It is this last fact that is at the root of the issue. Instead of being rewarded for avoiding the use of government financing, the Forest Service has sought to penalize OTEC. The vehicle they are using is the language included in PL 98–300 which describes fee exempted cooperatives as "financed pursuant to The Rural Electrification Act of 1936." What had been a convenient way to describe cooperatives in 1984—because 100 percent were REA-financed—no longer holds true. Despite the obvious congressional intent in PL 98–300 of exempting all cooperatives; despite the numerous attempts to get the agency to utilize other administrative authorities; the Forest Service is now charging OTEC full ROW fees. Ironically, one of the ROW's is used to serve a Forest Service Office.

As an example of the attempts to reason with the Forest Service, I ask unanimous consent that a letter to the Forest Service from the Pacific Northwest Generating Cooperative on OTEC's behalf be inserted in the RECORD after my statement.

The language of my bill is simple and straightforward. It would change FLPMA to exempt from ROW fees those electric and telephone utilities that are eligible for rural utility service financing rather than those utilizing it. In this era of budget consciousness, the last thing we need is to continue a monetary incentive to perpetuate reliance on government funding. We should be congratulating the OTEC's of the world rather than burdening them with ROW fees that other, government-financed, co-ops are exempted from.

Mr. Speaker, as you can see, my bill attempts to correct yet two more examples of the Federal bureaucracy run amok. I believe that the Forest Service and BLM already have the administrative authority to solve the problems that I have identified. Unfortunately, they have refused to do so. Rural citizens who want nothing more than to have access to reasonably priced electric and telephone service have to appeal to the jurisdiction of last resort—Congress.

It is my hope that the Resources Committee will take up this legislation, whether as a free-standing measure or as an amendment to another bill. As public servants who understand the challenges of country life and the importance of keeping the lights on in areas that are rural, small, and distant, I trust that the members of the committee will ensure that a measure of common sense prevails with regard to Federal right-of-way policies.

PACIFIC NORTHWEST
GENERATING COOPERATIVE,
Portland, OR, July 20, 1994.

Mr. JIM GALABA,
U.S. Forest Service, Pacific Northwest Region, Portland, OR.

DEAR JIM: Thank you for taking the time to meet with me during my recent trip to Portland. As I mentioned last week, both the Pacific Northwest Generating Cooperative (PNGC) and Oregon Trail Electric Cooperative (OTEC) are very interested in revisiting the issue of whether Forest Service right-of-way fees should be waived for OTEC electric transmission lines.

I appreciated your willingness to run through the Forest Service regulations in an effort to help me understand earlier Forest Service decisions to charge OTEC right-of-way fees and to help explore areas of possible compromise. Per your request, I have attached several documents detailing the Congressional history surrounding the enactment of P.L. 98–300—the Federal Lands Policy and Management Act (FLPMA) amendment requiring that ROW fees be waived for rural electric and telephone systems financed by the Rural Electrification Administration (REA).

LEGISLATIVE HISTORY

As you can see from the enclosed Senate Energy Committee report, at the time of the bill's consideration, both the Forest Service and the Bureau of Land Management (BLM) opposed the legislation because of their feeling that "there is no equitable basis for granting rural electric or telephone cooperatives free access and use of the public lands, especially when regulated private utilities and their customers are treated differently." At issue was the BLM and Forest Service's failure to waive right-of-way fees for cooperatives under the existing FLPMA section 504 (g).

The prevailing concern articulated by the agencies was that cooperatives engage in "practices comparable to private commercial enterprise." It is interesting to note that this is the same basis upon which OTEC's request of a fee waiver has been so far denied. In enacting P.L. 98–300, Congress explicitly rejected the agencies' reasoning in favor of holding down the cost of electric and telephone service to rural consumers. It is also interesting to note that Senator Hatfield, who supports a fee waiver for OTEC, was a member of the Senate Energy Committee at the time of its consideration of the waiver legislation.

While the legislative history does make a number of references specifically to entities funded through the REA, the enclosed floor statements from Senator Baucus and Congressmen Lujan, Oberstar, and Boucher make clear that Congress's prime concern was supporting rural electric and telephone consumers that receive service from member-owned cooperatives. Mr. Oberstar's statement includes the sentence: "It makes little sense for a Federal agency to impose new charges on these companies, most of whom borrow from REA to build and improve their systems." Mr. Boucher refers to Congressional intent, in passing FLPMA, to "exempt or reduce fees for nonprofit utilities."

As I mentioned during our visit, we believe that Congress, in enacting P.L. 98–300, sought to clarify their intention that the Forest Service and the BLM waive right-of-way fees for rural electric cooperatives—regardless of their financing. The goal, as evidenced by the testimony, was to help keep electric and telephone costs down for rural consumers. This is precisely the reason REA exists in the first place. It is contradictory to charge fees to the types of non-profit associations that are so worthy in the eyes of Congress as to spawn a subsidized loan program. It is important to remember that OTEC remains eligible for REA financing because it is helping to fulfill the REA's mandate of rural electrification.

A further irony is that OTEC does not now have any REA loans in an effort to keep their costs as low as possible to their members—the exact goal in mind when Congress passed the amendment. OTEC should not be penalized for pursuing that end.

EXISTING ADMINISTRATIVE DISCRETION

P.L. 98–300 was clearly an attempt to clarify whether rural electric cooperatives provided a public benefit sufficient to warrant a waiver of their right-of-way fees. The legislation originated out of frustration that the agencies were not properly utilizing administrative discretion already enacted by Congress in FLPMA. The Senate report states that "both FLPMA and the regulations contain a provision which explicitly grants discretionary authority to the relevant Secretary (Agriculture or Interior) to issue rights of way to nonprofit organizations for such lesser (or zero) charge as the Secretary finds equitable and in the public interest."

Even if the Forest Service continues to deny OTEC a fee waiver under P.L. 98–300 based on a strict reading of the statute rather than its intent, it is clear the Congress believes that the agencies have broader administrative discretion to grant the waiver under existing FLPMA section 504(g). Accordingly, we would be active in urging the Forest Service to exercise that discretion in favor of a fee waiver. Oregon Trail is a nonprofit association that provides substantial benefit both to the public and (because they serve the Forest Service) the programs of the Secretary. However, we believe a more immediate decision favorable to OTEC is warranted given that the legislative intent of P.L. 98–300 was to provide a fee waver to all rural electric cooperatives.

SCOPE OF DECISION

As I mentioned during our meeting, the impact of granting OTEC a waiver, does not set a large precedent. Nationwide, out of roughly 1,000 existing rural electric cooperatives, only approximately 32 do not have REA financing. Of these, the majority are located in the Midwest and South. Only a handful are located in public land states and fewer still have service territory comprised of large amounts of Federally owned acreage. While the amount of money at stake is minuscule in terms of any impact on the Federal Treasury, it is important to the customers of Oregon Trail.

Again, thank you for taking the time to visit with me. Your willingness to review OTEC's waiver request and to explore a solution to this problem is very much appreciated. If I can provide additional information or be helpful in any other way, please feel free to contact me at either 202/857–4876 or 503/288–1234.

Sincerely,

R. PATRICK REITEN.
Director of Government Relations.

MEDIGAP PROTECTION ACT OF 1996

HON. KEN BENTSEN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. BENTSEN. Mr. Speaker, I rise today to introduce vital consumer protection legislation, H.R. 3374, for Medicare beneficiaries. H.R. 3374, the Medigap Protection Act of 1996, will provide real freedom to senior citizens to choose between traditional fee-for-service Medicare and managed care Medicare programs without risk of penalty. It does so by guaranteeing access to Medigap supplemental insurance for seniors who choose to enroll in fee-for-service Medicare after participating in a Medicare managed care plan.

Congress is currently debating fundamental changes to the Medicare system. The Republican plan to reform Medicare would strongly encourage Medicare beneficiaries to enroll in managed care plans. Nationwide, approximately 13 percent of the Medicare population have enrolled in managed care options. I support providing freedom of choice for senior citizens, but the choice must be real and not coerced. As more senior citizens enroll in managed care plans, we need to ensure that they can reenroll in Medicare without losing benefits or paying a financial penalty.

Under current law, Medicare beneficiaries can enroll in either a managed care product or traditional Medicare Program. Many enrollees in traditional Medicare choose to purchase supplemental insurance policies, called medigap to cover the cost of copayments, deductibles, and other uncovered benefits such as prescription drugs. When Medicare beneficiaries make this initial choice, current law protects them by requiring all insurers to sell medigap insurance. Regrettably, this consumer protection is not provided after this initial enrollment period.

H.R. 3374 would require guaranteed issue of medigap policies for those senior citizens who choose to enroll in traditional Medicare after leaving a managed care Medicare Program. This bill would require any issuer of medigap insurance to provide an annual enrollment period of 30 days for those Medicare beneficiaries that reenroll in the traditional Medicare Program. The Secretary of Health and Human Services would issue regulations to enforce this act. The bill would become effective 90 days after enactment.

Without this protection, senior citizens do not have real choice. In addition, many senior citizens are not aware of this lack of protection and may enroll in managed care plans without knowledge of this problem. A constituent of mine, Ms. Nona Phillips of Pasadena, contacted me when she had difficulty obtaining medigap insurance after switching back to fee-for-service Medicare from an HMO. Consumers should be able to choose plans without financial coercion or penalties, such as lack of medigap insurance. For many senior citizens, medigap benefits are extremely important because traditional Medicare does not provide prescription drug coverage. I want to ensure that Medicare beneficiaries make a choice between equal options. It also provides greater freedom and choice for seniors without forcing them to cover the costs of higher copayments, deductibles, and prescription drugs.

This is another incremental health care reform we can pass immediately that should be supported on a bipartisan basis. President Clinton has endorsed this provision as part of his 1997 budget. We need to pass common sense, reasonable legislation, H.R. 3374, that will improve the Medicare Program so senior citizens are protected and have real choice. I urge my colleagues to join me in this effort to strengthen consumer protections for Medicare beneficiaries.

IN CELEBRATION OF EMANUEL DAY

HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. ACKERMAN. Mr. Speaker, I rise today to join with my colleagues and the members of Temple Emanuel of Great Neck, as they gather on May 5, 1996, in Temple Emanual to celebrate Emanuel Day, the end of a 10-year effort that has served to beautify the synagogue, and enhance it as an ongoing source of inspiration to its congregants and the Great Neck community. Conceived by Rabbi Robert Widom, spiritual leader of Temple Israel, the project evolved into the design of six stained glass windows for the synagogue's sanctuary, a new ark and eternal light. The initial project, under the direction of Rabbi Widom, undertook a search that would last for 10 years until the appropriate artist was selected and the creative plans were developed.

An extensive search by the rabbi and the congregation's refurbishing committee yielded Paul Winthrop Wood, a Canadian born artist, who comes from a family of renowned architects and builders. Mr. Wood brought to Temple Emanuel an innate understanding of the Old Testament and the many creative and imaginative themes that flow from it. It was his early upbringing by his mother that endowed him with a rich blend of talent and insight that would be brought to fruition by the many religious building challenges he undertook.

A native of Port Washington, Mr. Wood continues the family tradition of building and design. He began his early studies in the Art Studies League and the National Academy of Design. Soon thereafter, he founded his own school, and began a career that would include the design and construction of more than 100 churches and synagogues throughout the United States and 30 houses of worship on Long Island.

In rising to the challenge of bringing to the synagogue and sense of love, understanding, and compassion, Mr. Wood succeeded grandly. It is with great pride and love that the trustees of Temple Emanuel of Great Neck have declared Sunday, May 5, as Emanuel Day. As the hundreds of congregants of Temple Emanuel gather on this day, it is most exciting and reaffirming that in the truest tradition of the American spirit, this beautiful congregation continues to so willingly give of itself, to its members and the community.

CONGRATULATIONS TO MR. AND MRS. MATTHEWS

HON. EARL F. HILLIARD

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. HILLIARD. Mr. Speaker. There has been a great deal of discussion about the importance of family values in America during this session of Congress, and I can offer no better example than of Mr. and Mrs. Matthews of Bessemer, AL.

This Wednesday, May 1, will mark the 50th wedding anniversary of William and Margaret Matthews. By celebrating 50 years of marriage, they are serving as a shining example of what love, commitment, and dedication can do for a loving relationship and for society. I want to offer them my personal best wishes and congratulations on achieving this milestone in their relationship.

HATS OFF TO THE WOODLAND WAL-MART DISTRIBUTION CENTER

HON. BUD SHUSTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. SHUSTER. Mr. Speaker, I rise today to pay tribute to the men and women of the

Woodland Wal-Mart Distribution Center which is located in my congressional district. The Woodland Center was recently singled out by the Wal-Mart Corp. for its President's Award for Excellence. The President's Award is no small honor as it is only bestowed upon one center per year and its winner is generally recognized across the Nation as the top distribution center of the entire Wal-Mart Corp.

As if this was not enough, the private fleet operation at the Woodland Center also received the President's Award for Excellence in the area of dispatch, centerpoint and shop operations for 1995. These two awards are a testament to the drive and professionalism of the Woodland Center's employees who day in and day out do a first-class job for both their company and their community.

I will close by once again congratulating all the folks at the Woodland Center for a job well done. Your commitment to excellence speaks very well for both Wal-Mart and the people of west central Pennsylvania and it is my honor to represent you. Hats off to the best of the best. Hats off to the Woodland Wal-Mart Distribution Center.

TO AMEND THE INDIAN HEALTH CARE IMPROVEMENT ACT

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. YOUNG of Alaska. Mr. Speaker, I am pleased to introduce a bill to amend the Indian Health Care Improvement Act to extend the demonstration program for direct billing for Medicare, Medicaid, and other third-party payors to September 30, 1998.

Section 405 of the Indian Health Care Improvement Act established a demonstration program to authorize up to four tribally-operated Indian Health Service [IHS] hospitals or clinics to test methods for direct billing for and receipt of payment for heath services provided to Medicare- and Medicaid-eligible patients. This program was established to determine whether these collections could be increased through direct involvement of the tribal health provider as compared with the current practice which required such billings and collections to be channeled through the IHS.

Currently, there are four tribal health care providers participating in this demonstration project, the Bristol Bay Area Health Corp. of Dillingham, AK; the Southeast Alaska Regional Health Consortium of Sitka, AK; the Mississippi, Choctaw Health Center of Philadelphia, MI, and the Choctaw Tribe of Oklahoma of Durant, OK. All participants have unanimously expressed success and satisfaction with the demonstration program and report that dramatically increased collections for Medicare and Medicaid services, thereby providing additional revenues for Indian health programs at these facilities; significant reduction in the turn-around time between billing and receipt of payment; and increased efficiency by being able to track down their own billings and collections and thereby act quickly to resolve questions and problems.

The IHS is required to monitor participation and receive quarterly reports from the four participants. The law also requires the IHS to report to Congress on the demonstration program on September 30, 1996, the end of fiscal year 1996. This report is to evaluate whether the objective have been fulfilled, and whether direct billing should be allowed for other tribal providers who operate an entire IHS facility.

All four participants seek to extend the demonstration program authority for 2 more years to give Congress time to review the report IHS must submit on September 30, 1996, and determine the future of the program.

Without the extension, the four participants would have to close down their direct billing-collection departments and return to the old system of IHS-managed collections. This would mean the dismantling of highly specialized administrative staff and would have an immediate negative impact on revenue collection.

This is a technical amendment to extend the program in 2 more years so that the existing participants can continue their direct billing collection efforts while the required report from the IHS is reviewed.

CODY JESSE CRAIG ATTAINS RANK OF EAGLE SCOUT

HON. CHARLES WILSON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. WILSON. Mr. Speaker, I am proud and honored to present to you Cody Jesse Craig who, on February 20, 1996, achieved the rank of Eagle Scout, the highest rank awarded in the Boy Scouts of America. The achievement of the Eagle Scout rank for any young person is indeed a major accomplishment that eloquently addresses their personal character, diligence, initiative, tenacity, and many other equally desirable characteristics that we all admire in individuals. The factor that focuses the attention on his personal victory and sets him apart from most of the recipients of the Eagle Scout rank is that he is 15 years old; starting his scouting when he was 6 years old, subsequently earning every award offered as he progressed from the Cubs, Webelos, and on to the Boy Scouts. He obviously is a goal-oriented young man who has a bright and exciting future.

In addition to being an outstanding Boy Scout, Cody is an honor student who has been recognized by the Duke University Talent Search. In this hour of troubled times for many of the youth of America, Cody is truly a Point of Light that illuminates a living example and role model for other young people to emulate.

TRIBUTE TO MARY LOU PLATT

HON. SHERWOOD L. BOEHLERT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. BOEHLERT. Mr. Speaker, I would like to pay tribute to a woman who has worked tirelessly to make the lives of our disabled veterans a little brighter. Mrs. Mary Lou Platt of Westford, NY, is the New York State president of the American Legion Auxiliary, and a member of the Milford Unit #1566.

The American Legion Auxiliary has been helping veterans and their families for more than 75 years and Mrs. Platt has proudly kept up that tradition. President Platt has developed a program called RAVE which stands for recreation, audio and visual entertainment.

Many hospitalized veterans spend endless hours in their rooms or on hospital grounds. Some used to enjoy reading, but now find it difficult or impossible due to poor eyesight. Others used to enjoy listening to music on their radios, but can now only hear faint sounds. Even watching television can be difficult for many of these veterans.

President Platt has traveled extensively throughout New York's 62 counties helping veterans with her program. RAVE has provided veterans with large print books for easier reading, audio books for those who can no longer read, and VCR's and videos. RAVE even provides some video games and equipment to stimulate veterans both physically and emotionally. This program has benefited veterans in New York State VA medical centers and nursing homes.

Our veterans have sacrificed too much for their country to be left as prisoners of unproductive and frustrating lives. President Platt is trying to see that this does not happen. I think we should all RAVE about President Platt and the efforts of the American Legion Auxiliary.

NATIONAL HEAD START DAY

HON. ED PASTOR

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. PASTOR. Mr. Speaker, I rise today to pay tribute to National Head Start Day. Head Start demonstrates the type of innovate, cost-efficient, and proactive solution necessary to address the national dilemma facing economically disadvantaged preschoolers. The holistic approach taken by Head Start addresses the needs of both parent and child. Preschoolers are provided with educational, health and social service support, while parental involvement ensures support networks for parents.

Extensive studies in child development have shown that a quality early childhood experience returns anywhere from $5 to $7 for every dollar invested. We also know that one-third more children who attend quality early childhood programs graduate from high schools, as opposed to those children who did not have the benefits of programs such as Head Start. Without question, the future of America's poorest children is brighter because of the work of Head Start. I ask my colleagues to join me in recognizing the extraordinary work of Head Start.

THE FIRST HISPANIC WOMEN'S HEALTH CONFERENCE

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Ms. ROS-LEHTINEN. Mr. Speaker, in an effort to help the Nation's health care system better serve the Hispanic population, the First Hispanic Women's Health Conference will be held in the Knight Center on May 9 and 10.

It is sponsored by the U.S. Food and Drug Administration in collaboration with the Little Havana Activities and Nutrition Centers of Dade County and the University of Miami School of Medicine.

Hispanic women have a number of health problems that are complicated by the cultural differences. A doctor who is unaware of the culture framework of her patients will find her job that much harder.

For example, cancer carries a greater stigma in Hispanic populations, which results in a lack of early detection and the complications that then follow.

The conference will hear from a number of individuals with practical experience in the delivery of health care to the Hispanic population. Among the topics they will address are diabetes, breast cancer, mental health, heart disease, osteoporosis, and Alzheimer's disease.

The objectives of this conference include helping the health care system to reach out to the Hispanic population in general and to Hispanic women in particular.

The conference will provide a forum for the mutual exchange of information about the health needs and concerns of Hispanic women and to develop plans that will work in harmony with the cultural traditions of 27 million Americans.

I congratulate all who are involved in this project for their work on this important conference and wish them success in this effort to improve the quality of life for so many.

CONGRATULATING THE J. FRANK DOBIE HIGH SCHOOL DECATHLON TEAM

HON. TOM DeLAY

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. DELAY. Mr. Speaker, I want to congratulate the J. Frank Dobie High School Academic Decathlon Team for winning the national title in Atlanta. Their hard work and dedication is truly remarkable. I commend the faculty, students, and the parents at Dobie High School for their commitment to creating an excellent scholastic environment at Dobie.

I know I speak for the entire State of Texas when I say how very proud I am of your outstanding accomplishment. It is wonderful to see that the pursuit of academic excellence is alive and well in Texas.

DISAPPROVING OF ORDERS NUMBER 888 AND 889 BY THE FEDERAL ENERGY REGULATORY COMMISSION

HON. BOB FRANKS

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. FRANKS of New Jersey. Mr. Speaker, today I am introducing a joint resolution to disapprove the rules submitted by the Federal Energy Regulatory Commission on Wednesday, April 24, promoting wholesale competition through open access transmission services by public utilities.

The economic benefits of open transmission are great, as energy companies will be able to freely purchase the least expensive power from any generating facility and use open transmission lines to bring it to their customers. In fact, FERC estimates that consumers will save between $3.8 and $5.4 billion annually on their energy bills.

However, in formulating these rules, FERC has ignored the dramatic environmental impact that open transmission will have on the quality of air that drifts into the Northeastern United States. FERC's own numbers show that open transmission will result in an increase in several hundred thousand tons of nitrogen oxides into the 27 States east of the Mississippi River.

Since January, the Governors of several Northeastern States, 20 Members of Congress, and the Ozone Transport Commission urged FERC to consider environmental mitigation in the promulgation of these rules. Even the Environmental Protection Agency formally stated that this rule should be adopted only if FERC makes an appropriate commitment to mitigation of potential environmental harm.

Mr. Speaker, the restructuring of the electric power industry must only by done in conjunction with appropriate mitigation of power plant emissions. Until such measures are in place, this rule should not move forward.

Therefore, I am introducing this joint resolution to disapprove of these rules. I encourage the Federal Energy Regulatory Commission to work with the appropriate government agencies so that utility deregulation can proceed correctly. I strongly urge my colleagues to support this resolution.

HONORING PATRICK A. RODIO

HON. THOMAS M. DAVIS

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Mr. DAVIS. Mr. Speaker, it gives me great pleasure to rise today to pay tribute to Mr. Patrick A. Rodio, who is and continues to be an outstanding member of the Fairfax City community in my State of Virginia. On Sunday, May 5, 1996, the Central Fairfax Chamber of Commerce will be honoring Mr. Rodio for his numerous contributions to northern Virginia and for his loyal commitment to his family and fellow Virginians.

Mr. Rodio grew up in southern New Jersey as the 8th of 10 children before moving to Fairfax City in 1957. He was the first in his family to complete his education and received many U.S. Army and Navy commendations for his work as a munitions expert. After joining the Fairfax community, Mr. Rodio quickly became an active community participant and leader by contributing his endless energy and vast knowledge to many civic organizations, services, and local legislative bodies.

Mr. Rodio has been instrumental in building and strengthening area youth programs through the Fairfax Police Youth Club and has always been a major supporter of programs and activities for senior citizens. From 1958 to 1968, he acted as the coach and manager of the Fairfax Little League and served as its president in 1963. He also coached and managed the Fairfax Babe Ruth Baseball League for 9 years, was an assistant scout master for 4 years, and worked as an active member of the Fire and Rescue Services Task Force and the Fairfax Fire and Rescue Review Team. Mr. Rodio participated in the noonday Optimist Club and earned its 1985–86 Club Service Award. Additionally, he is a member of the Knights of Columbus, St. Leo's Catholic Church, and the Benevolent and Protective Order of the Elks.

For 8 years, Mr. Rodio headed the Fairfax City Republican Committee as its chairman and received a well-deserved Award of Appreciation for his service to the committee in 1991. He achieved a perfect attendance record as a member of the Fairfax City Council from July 1984 to July 1994 and represented the city of Fairfax in the Virginia Silver-Haired Legislature.

His dedication to his community has proven instrumental to the achievement of many important changes in the city of Fairfax. His assistance was vital to the transformation of the old Fairfax High School into the City of Fairfax Museum and Visitors' Center and to the creation of the Veternas' Memorial Statue and Amphitheater at Fairfax City Hall. Without question, Northern Virginia gained a loyal and devoted citizen when Mr. Rodio arrived in the city of Fairfax in 1957. We are extremely proud and honored to count him as one of our own and to have the opportunity to thank him for his years of service.

Mr. Speaker, at a time when localities are trying to find ways to promote community service and harmony, I know my colleagues will join me in applauding Mr. Rodio's enduring contributions to his fellow citizens.

THE RYAN WHITE CARE ACT SAVES LIVES

HON. SUSAN MOLINARI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 1, 1996

Ms. MOLINARI. Mr. Speaker, I would like to thank Chairman BLILEY and the entire Commerce Committee for their efforts to reauthorize the Ryan White CARE Act.

The Ryan White CARE Act programs play a vital role in the delivery of services to AIDS and HIV-positive populations in New York City and around this country. First authorized in 1990, this legislation authorizes agencies of

the Public Health Service to enhance the provision of prevention, testing. And care services to people with HIV who do not have insurance and who do not yet qualify for Medicaid or Medicare.

In New York City there is a $101 million portfolio of 300 contracts, mostly with community-based organizations. Although our Nation is facing budget restraints, we cannot ignore our Nation's health. In the United States, there is one AIDS-related death every 15 minutes; every 9 minutes another person is diagnosed with AIDS, and someone is infected with HIV every 13 minutes. Even more distressing is the fact that 17.9 percent of all the AIDS cases diagnosed in our country have been in New York City. Since 1988, AIDS has been the leading cause of death in New York City for men and women between the ages of 25 and 34. These statistics are at the very least sobering, at most they demonstrate the need for reauthorization of the Ryan White CARE Act.

Last March I was given a most vivid reminder of why I was driven to a career in public service. That afternoon, I met with several people from the Staten Island AIDS Task Force including Carol and Joseph Di Paulo. Joey is 15 years old and was infected with the AIDS virus when he underwent surgery in 1984. After speaking with Joey and his mother for an hour I couldn't help but be moved by their plight.

Like any mother, Carol DiPaulo wants what is best for her child. However, her only desire is to keep Joey healthy and alive for as long as possible. We know very little about the AIDS virus. But one thing about which we are sure is that we have no cure for this deadly disease. The best that we can do is to provide treatment through the Ryan White CARE Act.

Joey and his mom are two very courageous people. Carol is a single mother of two children, one happens to be very sick. She has taken her campaign to fight AIDS beyond her home and into the highest levels of Government and the media. Joey met with the Secretary of Health and Human Services, spoke before the United Nations, and has even done public service announcements for MTV. He is truly a hero, not merely because of what he has done, but because he is motivated not by self-gain or prosperity. Instead, he and his mom are driven because they have seen firsthand how AIDS can destroy not only an individual but a family as well.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, May 2, 1996, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

MAY 3

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1997 for the Department of Veterans Affairs.
SD–192

Joint Economic
To hold hearings to examine the employment-unemployment situation for April.
SD–562

10:00 a.m.
Finance
To hold hearings to examine transportation fuel taxes.
SD–215

MAY 7

9:30 a.m.
Environment and Public Works
Transportation and Infrastructure Subcommittee
To hold hearings on the General Service Administration's Public Buildings Service program request for fiscal year 1997 and on disposal of GSA-held property in Springfield, Virginia.
SD–406

10:00 a.m.
Commerce, Science, and Transportation
Consumer Affairs, Foreign Commerce, and Tourism Subcommittee
To hold oversight hearings on the Federal Trade Commission.
SR–253

Commerce, Science, and Transportation
Oceans and Fisheries Subcommittee
To hold hearings on the President's proposed budget request for fiscal year 1997 for the U.S. Coast Guard.
SR–385

Judiciary
To resume hearings on S. 1284, to amend title 17 to adapt the copyright law to the digital, networked environment of the National Information Infrastructure.
SD–106

Small Business
To hold hearings on proposed legislation relating to Small Business Investment Company reform.
SR–428A

Joint Library
Business meeting, to consider a report of the General Accounting Office on the Library of Congress.
SR–301

2:00 p.m.
Energy and Natural Resources
Forests and Public Land Management Subcommittee
To hold hearings on S. 1662, to establish areas of wilderness and recreation in the State of Oregon.
SD–366

MAY 8

9:30 a.m.
Appropriations
Defense Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1997 for the Department of Defense, focusing on environmental programs.
SD–192

Rules and Administration
To resume hearings on proposals to amend the Federal Election Campaign Act of 1971 to provide for a voluntary system of spending limits and partial public financing of Senate primary and general election campaigns, to limit contributions by multicandidate political committees, and to reform the financing of Federal elections and Senate campaigns.
SR–301

10:00 a.m.
Judiciary
Youth Violence Subcommittee
To hold hearings to examine Federal programs relating to youth violence.
SD–226

Veterans' Affairs
To hold hearings to examine the reform of health care priorities.
SR–418

2:00 p.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1997 for the Department of Housing and Urban Development.
SD–192

Appropriations
Treasury, Postal Service, and General Government Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1997 for the Internal Revenue Service, Department of the Treasury.
SD–138

MAY 9

9:30 a.m.
Energy and Natural Resources
To hold oversight hearings to examine the recent increase in gasoline prices.
SD–366

Indian Affairs
To hold oversight hearings on the impact of the U.S. Supreme Court's recent decision in Seminole Tribe v. Florida on the Indian Gaming Regulatory Act of 1988.
SD–G50

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1997 for the Federal Transit Administration.
SD–192

MAY 14

9:30 a.m.
Commerce, Science, and Transportation
To hold hearings on proposed legislation authorizing funds for fiscal year 1997 for the Federal Aviation Administration and the Airport Improvement Program.
SR–253

MAY 15

9:30 a.m.

Agriculture, Nutrition, and Forestry

To hold hearings to examine how the Commodity Futures Trading Commission oversees markets in times of volatile prices and tight supplies.

SR–332

Energy and Natural Resources

Business meeting, to consider pending calendar business.

SD–366

Rules and Administration

To resume hearings on proposals to amend the Federal Election Campaign Act of 1971 to provide for a voluntary system of spending limits and partial public financing of Senate primary and general election campaigns, to limit contributions by multicandidate political committees, and to reform the financing of Federal elections and Senate campaigns.

SR–301

2:00 p.m.

Appropriations

VA, HUD, and Independent Agencies Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1997 for the National Aeronautics and Space Administration.

SD–192

MAY 16

10:00 a.m.

Appropriations

Transportation Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1997 for the United States Coast Guard.

SD–192

MAY 17

9:30 a.m.

Appropriations

VA, HUD, and Independent Agencies Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1997 for the Corporation for National and Community Service.

SD–192

MAY 22

9:30 a.m.

Rules and Administration

To resume hearings on issues with regard to the Government Printing Office.

SR–301

MAY 24

9:30 a.m.

Appropriations

VA, HUD, and Independent Agencies Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1997 for the Environmental Protection Agency.

SD–192

JUNE 5

9:30 a.m.

Agriculture, Nutrition, and Forestry

To hold hearings to examine proposals to reform the Commodity Exchange Act.

SR–328A

SEPTEMBER 17

9:30 a.m.

Veterans' Affairs

To hold joint hearings with the House Committee on Veterans' Affairs to review the legislative recommendations of the American Legion.

334 Cannon Building